

MEDIA OWNERSHIP

HEARING

BEFORE THE

COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE
ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JANUARY 30, 2003

Printed for the use of the Committee on Commerce, Science, and Transportation



U.S. GOVERNMENT PRINTING OFFICE

95-894 PDF

WASHINGTON : 2007

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN McCAIN, Arizona, *Chairman*

TED STEVENS, Alaska	ERNEST F. HOLLINGS, South Carolina
CONRAD BURNS, Montana	DANIEL K. INOUE, Hawaii
TRENT LOTT, Mississippi	JOHN D. ROCKEFELLER IV, West Virginia
KAY BAILEY HUTCHISON, Texas	JOHN F. KERRY, Massachusetts
OLYMPIA J. SNOWE, Maine	JOHN B. BREAU, Louisiana
SAM BROWNBACK, Kansas	BYRON L. DORGAN, North Dakota
GORDON SMITH, Oregon	RON WYDEN, Oregon
PETER G. FITZGERALD, Illinois	BARBARA BOXER, California
JOHN ENSIGN, Nevada	BILL NELSON, Florida
GEORGE ALLEN, Virginia	MARIA CANTWELL, Washington
JOHN E. SUNUNU, New Hampshire	FRANK LAUTENBERG, New Jersey

JEANNE BUMPUS, *Republican Staff Director and General Counsel*

ROBERT W. CHAMBERLIN, *Republican Chief Counsel*

KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*

GREGG ELIAS, *Democratic General Counsel*

CONTENTS

	Page
Hearing held on January 30, 2003	1
Statement of Senator Brownback	17
Statement of Senator Burns	12
Prepared statement	13
Statement of Senator Dorgan	14
Statement of Senator Ensign	15
Statement of Senator Hollings	11
Prepared statement	11
Statement of Senator Hutchison	70
Statement of Senator Lott	64
Statement of Senator McCain	1
Prepared statement	1
Statement of Senator Smith	82
Statement of Senator Wyden	16
Article from The Wall Street Journal, dated February 25, 2002, entitled, From a Distance: A Giant Radio Chain is Perfecting the Art of Seeming Local	73

WITNESSES

Berman, Hon. Howard L., U.S. Representative from California	7
Feingold, Hon. Russell D., U.S. Senator from Wisconsin	2
Prepared statement	5
Fritts, Edward O., President and CEO, National Association of Broadcasters ..	24
Prepared statement	26
Henley, Don, Recording Artists' Coalition	33
Prepared statement	36
Mays, Lowry L., Chairman and CEO, Clear Channel Communications, Inc.	18
Prepared statement	20
Short, Jr., Robert, President, Short Broadcasting Co., Inc.	38
Prepared statement	40
Toomey, Jenny, Executive Director, Future of Music Coalition	47
Prepared statement	49
Prepared statement of Thomas F. Lee, President, American Federation of Musicians	56

MEDIA OWNERSHIP

THURSDAY, JANUARY 30, 2003

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 9:36 a.m. in room SR-253, Russell Senate Office Building, Hon. John McCain, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

The CHAIRMAN. I tell the Members of the Committee we are waiting for three more Members to show up. In the meantime, perhaps in the interest of time, we could have Senator Feingold and Congressman Berman begin their opening statements. I may have to interrupt you. In fact, I hope I have to interrupt you, but please begin with your opening statement. Welcome Senator Feingold, Congressman Berman. Please proceed.

[The prepared statement of Senator McCain follows:]

PREPARED STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA

Today, the Committee begins a series of hearings examining media ownership. Later this year, the Federal Communications Commission will act on a proceeding that addresses a number of different media ownership issues. These decisions will have a significant impact on the American media landscape.

I have always been a firm believer in free market principles. I continue to believe that anachronistic government regulations that do not reflect today's multimedia marketplace should be thoroughly reviewed by the FCC and repealed or modified wherever appropriate. Given the tremendous impact media can have in the everyday lives and thinking of Americans, however, we must approach these issues thoughtfully and it is important that the Committee hold hearings to better understand them.

Today we will examine media ownership in the radio industry. After enactment of the Telecommunications Act of 1996, the radio industry saw unprecedented consolidation. Several station owners began to purchase stations across the United States and the largest owner, Clear Channel Communications, has grown from 60 stations in 1996 to over 1,200 stations today. Many critics have voiced their concerns about radio consolidation and have alleged that some companies have been engaging in anticompetitive behavior.

For instance, some have claimed that Clear Channel's vertical integration with its entertainment division has hurt independent concert promoters and artists. Some artists suggest that their refusal to use Clear Channel's promotion services has led to their music not being played on Clear Channel stations. I am concerned about these allegations and I look forward to hearing from the witnesses on these specific issues.

Finally, I believe that, wherever possible, we should look to market-based approaches to ensure there is diversity in media ownership. Later today, I will re-introduce the "The Telecommunications Ownership Diversification Act." The bill provides a tax deferral and other market-based incentives designed to ensure that our

tax laws do not disadvantage small businesses that may be owned by women and minorities who can help to further viewpoint diversity in media. I hope that other Members of the Committee will join me on this important legislation.

**STATEMENT OF HON. RUSSELL D. FEINGOLD,
U.S. SENATOR FROM WISCONSIN**

Senator FEINGOLD. Thank you very much, Mr. Chairman, for holding this hearing and my thanks also to the ranking Member, Senator Hollings, for holding this hearing to examine the effects of radio station ownership consolidation. I appreciated the conversations I have had with both of you about this, and this is a very early time in the session to be able to bring up this issue, so I am grateful.

I also want to thank Senator Dorgan for his leadership on this issue. If Congress had heeded Senator Dorgan's warnings about the effects of consolidation on many of our communities, perhaps we would not have to be here today.

Before I begin, I would ask, Mr. Chairman, that my full statement be allowed to be printed in the record.

The CHAIRMAN. Without objection.

Senator FEINGOLD. Let me start by saying that like I am sure all of you, I love radio. It brought baseball play by play and Bob Dylan songs into my life, along with many other enriching influences. And I am sure everyone in this room has his or her own version of that sentence because radio has always been and continues to be, despite competition from assorted new technologies, nothing less than the soundtrack of American life. Whatever our different experiences, we are all beneficiaries of radio's basic, uncomplicated and utterly vital principle: radio is a public medium that must serve the public good.

Over the last year, Mr. Chairman, I have learned that the rapid consolidation in ownership of the radio and concert industry has made it difficult for individuals, artists, and organizations to find outlets to express their creativity and promote diversity. To be honest with you, Mr. Chairman, I find that a groundswell of anger is building in Wisconsin and across the country about these changes. People are actually angry about this. I know this, of course, because when people are angry, they tend to call up their Senators.

I received the first contact about this more than a year ago. Owners of a local concert promotion company said that they were being pushed out of business by the anticompetitive practices of a large radio station and promotion company.

Then I heard independently from a local radio station owner. He said that his station had, without warning and without compensation, lost syndicated programming, after investing lots of years and a big chunk of money into building an audience for that program, to a station across town, a station recently bought by a large radio station ownership group.

Both of these small local businesses that I just mentioned cited the same company, the Clear Channel Corporation.

Now, I first asked the Administration to look into anticompetitive activities and allegations that Clear Channel and other companies were trying to evade the already minimal local ownership limits, and I did not hear back for quite a while.

I did, however, get an earful from many others, especially after I spoke to a reporter from the *Chicago Tribune*. In the interview, I simply expressed my concerns about these issues. I also mentioned that I was looking at possible legislation. And the response to this was overwhelming and fervent. Songwriters, artists, promoters, managers, consumer groups, religious organizations, unions, and radio station owners all called or wrote right away asking, what can I do to support your efforts?

Mr. Chairman, this legislation is not just about entertainment. More broadly, neither is this issue. I am here not just because I want to preserve radio as an entertainment. I am also here because we must preserve radio as a medium for democracy.

There will likely be a number of conflicting views expressed about the levels and effects of radio ownership consolidation during the hearing today. After all, market power can be measured in a number of different ways. Some may argue that owning 1,000 stations is only a fraction of the total number of stations in the United States. While this statement is true, I think it is important to view any ownership numbers in recent historical perspective.

When the 1996 Telecom Act became law, there were approximately 5,100 owners of radio stations. Today, Mr. Chairman, there are only about 3,800 owners, a reduction of 25 percent.

Minority ownership has also decreased. The number of African-American owners of radio stations has fallen by 14 percent.

Prior to 1996, one company could not own more than 20 AM stations and 20 FM stations. Now two companies—two companies, Mr. Chairman—control 42 percent of the content that reaches listeners and 45 percent of industry revenue. The concentration of ownership is perhaps most startling when we look at radio station ownership in local markets. Four radio station companies control nearly 80 percent of the New York market. Three of the same four companies own nearly 60 percent of the market share in Chicago. In my home State of Wisconsin, four companies own 86 percent of the market share in our largest Milwaukee radio market.

At the same time that national and local markets have been consolidated, I have heard really countless stories of how some of the large radio station ownership groups also wield increasing power through their ownership of a growing number of businesses related to the music industry.

Take Clear Channel as an example. This corporation owns more than 1,200 radio companies, Mr. Chairman, more than 700,000 billboards and control venues across the United States, and it also owns the largest concert promotion company in the United States.

During the last year and a half, I have also heard countless allegations about actually leveraging this cross-ownership in an anti-competitive manner. I have heard from small businesses in Wisconsin, local promoters and local radio stations who talk about large radio and promotion companies tying in radio and promotion services to push them out of business. These local businesses are happy to compete in a free marketplace, but when a company uses their cross-ownership, especially using a public medium like radio, in an anticompetitive manner, it is simply unacceptable.

Some will argue that there are consumer benefits. For example, they will often say that since 1996, there have been more formats

or types of radio stations in almost every market, but what they will not tell you is that since many of these formats are owned by the same out-of-state companies, that they play the same songs and they share the same news, which actually reduces consumer choices.

There are other disturbing ways in which the concentration of ownership is changing what we hear on the radio. Singers, musicians, and managers have talked with my staff and with me about some of the new and very daunting challenges they face when trying to get their songs played on the airwaves. These people are very concerned that playlists are no longer based on quality, subjective as that is, but are sold to the highest bidder instead. They told me how in the past if you could not get a deejay to play your song in Cleveland, perhaps you could try in Pittsburgh, and if the song was a hit in Pittsburgh, the Cleveland deejay would probably hear about it. Now I am told, Mr. Chairman, that does not happen anymore. It really cannot. The same companies own the stations in both markets. If they do not want to play a song, they do not, anywhere. Opportunities for artists to try their music somewhere else just do not exist.

I have also been hearing about a new shakedown system. The large radio stations allegedly require huge payments through independent promoters before they will put a song on the air. If you do not have the money to play in this system, you are shut out. Is this pay-for-play? If it is not, I would like to know what is.

Consider also how the rise in ticket prices coincided with the passage of the 1996 Telecom Act. More precisely, consider that ticket prices went through the roof. Before the act was passed, ticket prices were increasing at a rate that was slightly higher than the Consumer Price Index. Since the Act became law, ticket prices have increased at a rate that is almost 50 percentage points higher than the Consumer Price Index.

Mr. Chairman, because of these concerns, I have reintroduced legislation, the Competition in the Radio and Concert Industries Act, which would address the levels of concentration, curb some of the anticompetitive practices, and end the alleged new payola system. The legislation prohibits those who own radio stations and concert promotion services or venues from leveraging their cross-ownership to hinder competition in the industry. For example, if an owner of a radio station and a promotion service hinders access to the airwaves of a rival promoter or artist, then the owner would be subject to penalties.

My legislation will also help to curb further concentration that leads to these anticompetitive practices. It would strengthen the FCC merger review process by requiring the FCC to scrutinize the mergers of any radio station ownership group that reaches more than 60 percent of the Nation's listeners.

The legislation would also curb consolidation on the local level by preventing any upward revision of the limitation on multiple ownership of radio stations in local markets.

And finally, the bill would also prohibit the alleged new payola system where the big radio corporations are said to leverage their market power to require payments from artists in exchange for playing their songs.

Mr. Chairman, these are not radical notions. All my legislation says is let us first get a handle on consolidation and crack down on alleged anticompetitive practices. Second, let us modernize our payola laws to make sure all forms of payola are banned.

I hope that a lot of you will join me in cosponsoring this legislation, but I also hope that this hearing will flesh out other issues that are leading to many of the concerns that I have been hearing.

Americans should be able to hear new and different voices, and those voices deserve a place on the publicly owned airwaves. Radio is one of the most vibrant mediums we have for the exchange of ideas and for artistic expression. This public medium has long served the public good, and we must ensure that it continues to do so. If we do not act now, Mr. Chairman, further concentration of the industry will guarantee that the range of voices we listen for when we turn on the radio, the voices of democracy that make radio unique will continue to fade away.

So thank you so much, Mr. Chairman, for holding this hearing, and I look forward to working with you, the ranking Member, and all the other Members of the Committee.

[The prepared statement of Senator Feingold follows:]

PREPARED STATEMENT OF HON. RUSSELL D. FEINGOLD,
U.S. SENATOR FROM WISCONSIN

Thank you Mr. Chairman and ranking Member Hollings for holding this hearing to examine the effects of radio station ownership consolidation. I also want to thank Senator Dorgan for his leadership on this issue. If Congress had heeded Senator Dorgan's warnings about the effects of consolidation on many of our communities, perhaps we wouldn't be here today.

I'll start by saying that I love radio. It brought baseball play-by-play and Bob Dylan songs into my life, along with countless other enriching influences. I'm sure everyone in this room has his or her own version of that sentence, because radio always has been—and continues to be, despite competition from assorted new technologies—nothing less than the soundtrack of American life. Whatever our different experiences, we are all the beneficiaries of radio's basic, uncomplicated and utterly vital principle: Radio is a public medium that must serve the public good.

But, over the last year, I have learned that the rapid consolidation in ownership of the radio and concert industry has made it difficult for individuals, artists, and organizations to find outlets to express their creativity and promote diversity.

A groundswell of anger is building in Wisconsin and across the country about these changes. People are actually angry about this. I know, of course, because when people are angry they call their senators.

I received my first contact about this more than a year ago. Owners of a local concert promotion company said they were being pushed out of business by the anti-competitive practices of a large radio station and promotion company. Then I heard from a local radio station owner. He said his station had, without warning and without compensation, lost syndicated programming—after investing a lot of years and a big chunk of money into building an audience for that programming—to a station across town, a station recently bought by a large radio station ownership group. Both of these small, local businesses cited the same company—the Clear Channel Corporation.

I first asked the Administration to look into anti-competitive activities and allegations that Clear Channel and other companies were trying to evade the already minimal local ownership limits. I didn't hear back for quite a while.

I did, however, get an earful from many others, especially after I spoke to a reporter from the *Chicago Tribune*. In the interview I expressed my concerns about these issues. I also mentioned that I was looking at possible legislation. The response to this was overwhelming and fervent. Songwriters, artists, promoters, managers, consumer groups, religious organizations, unions and radio station owners all called or wrote, asking "What can I do to support your efforts?"

This legislation is not just about entertainment. More broadly, neither is this issue. I am here not just because I want to preserve radio as entertainment. I am here because we must preserve radio as a medium for democracy.

There will likely be a number of conflicting views expressed about both the levels and effects of radio ownership consolidation during this hearing today. After all the market power can be measured in a number of different ways. Some may argue that owning a thousand stations is only a fraction of the total number of stations in the United States. While this statement is true, I think it is important to view any ownership numbers in recent historical perspective.

When the 1996 Telecommunications Act became law there were approximately 5,100 owners of radio stations. Today, there are only about 3,800 owners, a reduction of about 25 percent. Minority ownership has also decreased—the number of African-American owners of radio stations has fallen by 14 percent. Prior to 1996, one company couldn't own more than 20 AM stations and 20 FM stations. Now two companies control 42 percent of the content that reaches listeners and 45 percent of industry revenues.

The concentration of ownership is perhaps most startling when we look at radio station ownership in local markets.

Four radio station companies control nearly 80 percent of the New York market. Three of these same four companies own nearly 60 percent of the market share in Chicago. In my home state of Wisconsin, four companies own 86 percent of the market share in the Milwaukee radio market.

At the same time that national and local markets have been consolidated, I have heard countless stories of how some of the large radio station ownership groups also wield increasing power through their ownership of a growing number of businesses related to the music industry.

Take Clear Channel as an example. This corporation owns more than 1,200 radio companies, more than 700,000 billboards, and controls numerous venues across the United States. It also owns the largest concert promotion company in the United States.

During the last year and a half, I have heard countless allegations about leveraging its cross ownership in an anti-competitive manner. I have heard from small businesses in Wisconsin—local promoters and local radio stations—who talk about large radio and promotion companies tying in radio and promotion services to push them out of business.

These local businesses are happy to compete in a free marketplace, but when a company uses their cross ownership—especially using a public medium like radio—in an anti-competitive manner, it is simply unacceptable.

Some will likely argue that consolidation benefits consumers. For example, they will often say that since 1996, there have been more formats, or type of radio stations, in almost every market. But what they won't tell you is that since many of these same "formats" are owned by the same out-of-state companies that play the same songs and share the same news—which actually reduces consumer choices.

There are other disturbing ways in which the concentration of ownership is changing what we hear on the radio. Singers, musicians and managers have talked with my staff and with me about some new and very daunting challenges they face when trying to get their songs onto the airwaves. These people are very concerned that playlists are no longer based on quality—subjective as that is—but are sold to the highest bidder instead. They told me how, in the past, if you couldn't get a DJ in Cleveland to play your song, you could try to find one in Pittsburgh who would. And if the song was a hit in Pittsburgh, the Cleveland DJ would hear about it.

I am told that doesn't happen any more. It can't. The same companies own stations in both markets. If they don't want to play a song, they don't—anywhere. Opportunities for artists to try their music "somewhere else" just don't exist.

I have been hearing about a shakedown system, where large radio stations allegedly require huge payments through independent promoters before they'll put a song on the air. If you don't have the money to play in this system, you are shut out. Is this "pay-for-play"? If it isn't, I'd like to know what is.

Consider also how the rise in ticket prices coincided with the passage of the 1996 Telecom Act. More precisely, consider that ticket prices went through the roof.

Before the Act was passed, ticket prices were increasing at a rate that was slightly higher than the Consumer Price Index. Since the Act became law, ticket prices have increased at a rate that's almost 50 percentage points higher than the Consumer Price Index. From 1996–2001, concert ticket prices rose by more than 61 percent, while the Consumer Price Index increased by just 13 percent.

There are a number of factors behind this rise in ticket prices. But the fact is that the largest radio station ownership group also is involved in over 60 percent of the concert industry, in terms of revenue, certainly begs the question—has consolidation within the radio and concert industry led to increased ticket prices?

Because of these concerns, I have re-introduced legislation, the Competition in the Radio and Concert Industries Act, which would address the levels of concentration, curb some of the anti-competitive practices, and end the alleged new payola system.

My legislation prohibits those who own radio stations and concert promotion services or venues from leveraging their cross-ownership to hinder competition in the industry. For example, if an owner of a radio station and a promotion service hinders access to the airwaves of a rival promoter or artist, then the owner would be subject to penalties.

My legislation will also help to curb further concentration that leads to these anti-competitive practices.

It would strengthen the FCC merger review process by requiring the FCC to scrutinize the mergers of any radio station ownership group that reaches more than 60 percent of the Nation.

My legislation would also curb consolidation on the local level by preventing any upward revision of the limitation on multiple ownership of radio stations in local markets.

The bill would also prohibit the alleged new payola system, where the big radio corporations are said to leverage their market power to require payments from artists in exchange for playing their songs.

These are not radical notions. All my legislation says is that first, let's get a handle on consolidation and crack down on alleged anti-competitive practices. Second, let's modernize our payola laws to make sure all forms of payola are banned.

I hope many of you will join me in cosponsoring this legislation, but I also hope that this hearing will flush out other issues that are leading to many of the concerns I have been hearing.

Americans should be able to hear new and different voices, and those voices deserve a place on the publicly-owned airwaves. Radio is one of the most vibrant mediums we have for the exchange of ideas and for artistic expression.

This public medium has long served the public good, and we must ensure that it continues to do so. If we don't act now, further concentration in the industry will guarantee that the range of voices we listen for when we turn on the radio, the voices of democracy that make radio unique, will continue to fade away.

Again, Mr. Chairman, thank you for holding this hearing and I look forward to working with you and the other Members of this Committee.

The CHAIRMAN. Thank you very much, Senator Feingold.
[Recess.]

The CHAIRMAN. And now Congressman Berman thank you for appearing. It is nice to see you again.

**STATEMENT OF HON. HOWARD L. BERMAN,
U.S. REPRESENTATIVE FROM CALIFORNIA**

Mr. BERMAN. Thank you, Mr. Chairman and Ranking Member Hollings and distinguished Committee Members. I appreciate very much your decision to hold this hearing on consolidation in the radio industry.

I am deeply concerned that radio industry consolidation and related activities related to that consolidation are hurting songwriters, musicians, recording artists, concert promoters, radio listeners, and the music community as a whole. I believe the negative effects of radio industry consolidation merit serious Congressional scrutiny and should spur investigations by the Department of Justice and the Federal Communications Commission.

Nearly a year ago, I wrote the DOJ and the FCC on this issue. I encouraged them to fully investigate the allegations I relayed and, if they found violations of law, to prosecute.

The public reaction to my letter was utterly unexpected and totally overwhelming. Independent broadcasters, concert promoters, venue owners, radio deejays, musicians, bands agents, managers, theatrical producers, actors' representatives, and recording industry executives inundated me with calls, e-mails, and letters. Vir-

tually all decried the evils of consolidation in the radio and concert industries. Many focused on the conduct of Clear Channel in particular. The breadth of their allegations was astounding and went far beyond the issues I had addressed in my January 2002 letter.

Clear Channel representatives also contacted me and I met with Lowry and Mark Mays here in D.C. They denied the allegations of wrongdoing. Admitting to being hard-nosed businessmen, they explained the many complaints as the sour grapes of their failed competitors. And I am glad they are here today because I think they should have a chance to both hear and respond to some of the allegations that have been made to me.

While many of these allegations are derived from firsthand accounts, you will have to use your own judgment about whether they warrant an investigation. But here are the most serious.

Clear Channel denies or threatens to deny radio airplay to recording artists if they use companies other than Clear Channel Entertainment to promote their concerts, if they refuse to give local Clear Channel stations free concert tickets, or if they refuse to do interviews and free drop-by performances for Clear Channel stations.

Clear Channel Entertainment refuses to let artists play venues it owns unless the artists agree to let Clear Channel Entertainment be the nationwide tour promoter or agree to use Clear Channel Entertainment venues in other markets.

Clear Channel Entertainment uses predatory pricing to offer recording artists or events deals that independent concert and event promoters cannot offer.

Clear Channel parks or warehouses radio and TV stations in certain markets in what seems like a violation of legal ownership caps.

By threatening to boycott them, Clear Channel Entertainment signs exclusive deals with venues and thus ensures that competing concert promoters cannot use these venues.

Clear Channel has removed Clear Channel-owned programming such as Rush Limbaugh from independent stations and then given competing Clear Channel-owned stations exclusive rights to carry this programming in a clear attempt to drive competing broadcasters out of business.

And radio stations generally demand payment from record companies—Senator Feingold made reference to this—usually through middlemen known as independent music promoters in order to play the music of artists signed by those record companies.

Regardless of their legality, these alleged activities may negatively affect consumers, musicians, independent broadcasters, and concert promoters. We as policy makers must decide whether these effects are likely and, if so, whether we should do something to counteract them.

As you will hear from Jenny Toomey later, there is substantial evidence that the radio industry consolidation has reduced music programming diversity. Music programming homogeneity has particular implications for musicians and songwriters. Musicians rely on radio airplay to drive both CD sales and concert attendance which comprise their main source of revenue. Similarly, songwriters depend on airplay of their musical composition for perform-

ance royalties and to drive CD sales for which they receive mechanical royalties. To the extent that different radio stations share the same playlists, songwriters and musicians who are not on these narrower playlists thus suffer.

The allegations concerning payola also have a variety of troubling implications. At its core, payola constitutes blackmail of musicians, songwriters, and record companies. If they fail to pay, they may be denied access to a public resource essential to their survival. Payola has long had a disproportionate effect on those little known or independent artists who lack the resources to either pay for play or to engage in major marketing campaigns.

But as the radio industry has consolidated, the payola rates have evidently risen to the point where even the big guys cannot afford them. The proof is that the major record labels, independents, and several artist groups recently put aside their intramural squabbling and jointly called on the FCC and Congress to address payola.

If, through its control of the airwaves and concert venues in certain markets, Clear Channel is forcing recording artists to sign with Clear Channel Entertainment in other markets, these tying arrangements could clearly have anticompetitive effects on independent concert promoters. While I personally believe that consolidation within an industry is not necessarily an evil, independent concert promoters should at least be given a level playing field on which to compete.

While I believe the allegations and negative effects outlined above and additional ones that I detail in my written statement merit a full investigation, it does not appear that the agencies of jurisdiction will conduct one. The reaction of the DOJ has been most disappointing.

In a meeting with my staff and in a written response to me 3 months after I sent my letter, the DOJ encouraged me to forward any evidence of anticompetitive conduct in the concert promotion or radio industries. DOJ indicated it would initiate an investigation if it found such evidence credible.

As a result, I encouraged all those who had contacted me with firsthand evidence to, in turn, contact the DOJ. To those who expressed skepticism, I asserted that DOJ would do its job by vigorously investigating allegations of antitrust violations and other illegal conduct.

It is now one year later, and as far as I can tell, the DOJ has done nothing. And I do mean nothing. According to many of the folks I told to contact the DOJ, the DOJ has never responded to their overtures and never followed up as promised after an initial call. My staff has attempted to follow up with DOJ several times, but their calls have not been returned either.

Some may say, I told you so. Since the day I sent my letter, many claimed that the Administration would not allow the DOJ to actively pursue antitrust investigations, but I do not think this is a sufficient explanation. The ongoing investigation of the Press Play and MusicNet ventures indicates the Bush DOJ is interested in probably pursuing a lengthy investigation of a somewhat speculative antitrust concern. If it has such grave antitrust concerns about new entities in the as-yet infinitesimally small market for

legal online music, why is it not willing to pursue allegations of actual anticompetitive behavior in the radio and concert industries? I do not know the answer to this question, but judging by the responsiveness of the DOJ to date, I do not expect to get a response even if I ask.

Anyway, that is why I am here, and I think this is an issue that Congress has to deal with and I am very grateful that you are beginning that process with this hearing. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Senator Feingold and Congressman Berman. We thank you for coming, and we appreciate your comments. They have been very helpful to the Committee. Thank you very much.

Today the Committee begins a series of hearings examining media ownership. Later this year, the Federal Communications Commission will act on a proceeding that addresses a number of different media ownership issues. These decisions will have a significant impact on the American media landscape.

I have always been a firm believer in free market principles, and I continue to believe that anachronistic Government regulations that do not reflect today's multi-media marketplace should be thoroughly reviewed by the FCC and repealed or modified wherever appropriate. Given the tremendous impact media can have in the everyday lives and thinking of Americans, however, we must approach these issues thoughtfully, and it is important that the Committee hold hearings to better understand them.

Today we will examine the media ownership in the radio industry. After enactment of the Telecommunications Act of 1996, the radio industry saw unprecedented consolidation. Several station owners began to purchase stations across the United States, and the largest owner, Clear Channel Communications, has grown from 60 stations in 1996 to over 1,200 stations today. Many critics have voiced their concerns about radio consolidation and have alleged that some companies have been engaging in anticompetitive behavior.

For instance, some have claimed that Clear Channel's vertical integration with its entertainment division has hurt independent concert promoters and artists. Some artists suggest that their refusal to use Clear Channel's promotion services has led to their music not being played on Clear Channel stations. I am concerned about these allegations and I look forward to hearing from the witnesses on these specific issues.

Finally, I believe that, wherever possible, we should look to market-based approaches to ensure there is diversity in media ownership. Later today I will reintroduce the Telecommunications Ownership Diversification Act. The bill provides a tax deferral and other market-based incentives designed to ensure that our tax laws do not disadvantage small businesses that may be owned by women and minorities who can help to further viewpoint diversity in media. I hope that other Members of the Committee will examine this legislation and possibly join in its partnership.

I want to thank the witnesses for coming today.
Senator Hollings.

**STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA**

Senator HOLLINGS. Mr. Chairman, I will just file my statement with one comment, and that is, from the testimony of the distinguished Congressman and Senator Feingold, I think the Committee ought to bring the Department of Justice up here before we move on any legislation. It has always been my opinion that these anti-trust provisions forbid exactly what they have attested to. And similarly, with respect to payola, we definitely passed a law with respect to payola some years back, and it ought to be enforced.

Thank you.

[The prepared statement of Senator Hollings follows:]

PREPARED STATEMENT OF HON. ERNEST F. HOLLINGS,
U.S. SENATOR FROM SOUTH CAROLINA

Thank you, Mr. Chairman. I appreciate your leadership in scheduling this, the first in a series of hearings on media consolidation. These discussions come at a critical time in the history of American media. In many quarters, the core values of competition, diversity, and localism that have long served as fundamental pillars of our democracy, are today under attack.

They are under attack by an industry that appears unsatisfied with the tremendous consolidation that has already taken place; by the courts, who seem to ignore Supreme Court precedent about the government's strong interest in preserving a "multiplicity of information sources"; and, most importantly, by FCC Commissioners who seem intent on relaxing or eliminating many of the existing ownership rules without regard to the tremendous consolidation that has already occurred.

Likewise, it is fitting we begin with radio—where a tidal wave of mergers over the last six years has left both consumers and the medium with visible scars.

Since 1934, when radio broadcasts were the only broadcasts on the public airwaves, the FCC has been charged with ensuring that use of the public airwaves is consistent with the "public interest, convenience, and necessity." Historically, this obligation has required the Commission to go beyond the bounds of traditional anti-trust analysis in order to promote the diversity of owners and viewpoints; to ensure public access to multiple sources of information; and to meet the needs of local communities that are the true "owners" of the airwaves.

This attention to diversity and localism has served America well by expanding economic opportunity and energizing civic discourse. Indeed, it is the preservation of diversity and localism that promotes competition and choices for advertisers; that creates opportunities for small companies, minorities, and women; that allows innovative programming to find an outlet; and that ensures that the interests of each community is served by the license of this public asset.

Consequently, soon after the 1934 Act's inception, this public interest responsibility led the FCC to create sensible restrictions on the number of radio stations that a single party could own, both nationally and on the local level.

Unfortunately, the compromise required to ensure passage of the Telecommunications Act of 1996 eliminated the FCC's national ownership cap for radio and changed the local limit, which now permits a single licensee to own up to 8 stations in some markets. Predictably, radio broadcasters went into in a feeding frenzy.

In the first year after the 1996 Act, more than 2,100 radio stations changed hands. Today, according to one recent study, the top ten radio group owners control 67 percent of industry revenue and 65 percent of radio listeners. At the top of the heap is Clear Channel, which has grown in six short years from a small cluster of 39 stations with \$495 million in revenues into a nationwide radio conglomerate with 1,211 stations, earning \$3.2 billion in revenues. As a result, Clear Channel now reaches more listeners in the U.S. than its second, third, fourth, and fifth competitors combined.

And beyond the impact that such consolidation has had within the radio industry, there are troubling allegations that Clear Channel unfairly uses its control over sizable portions of the airwaves, its approximately 135 concert venues, and its over 700,000 outdoor billboards to engage in anti-competitive practices that harm independent promoters, music artists and consumers.

In sum, while investors on Wall Street have profited handsomely from these mergers, consumers on Main Street have suffered. Radio consolidation has contrib-

uted to a 34 percent decline in the number of owners, a 90 percent rise in the cost of advertising rates, a rise in indecent broadcasts, and the replacement of local news and community programming with remote "voice tracking" and syndicated hollering that ill-serves the public interest.

If ever there were a cautionary tale, this is it.

The CHAIRMAN. Senator Burns.

**STATEMENT OF HON. CONRAD BURNS,
U.S. SENATOR FROM MONTANA**

Senator BURNS. Thank you, Mr. Chairman. Thank you for the hearing today. I also will file my full statement.

I do want to bring out a point, though, that sort of addresses the concerns of both Congressman Berman and Senator Feingold. I am wondering if they have given the same attention to the situation where we find grocery stores who sell shelf space in their stores to one company to display their articles or their food products or whatever. That is a practice that is going on across this country too, and I think that needs to be looked at about as much as what we hear of here.

Also, I got to bring before the Committee a recent Arbitron study. Now, I come out of radio. I am sort of familiar with radio. Of course, my years were in farm broadcast, which is sort of a niche in the market, that I enjoyed very much. I would have gone into hard news, but I could not read and that is noted here on this Committee just about every time we meet.

[Laughter.]

The CHAIRMAN. It is not a requirement of Committee membership.

[Laughter.]

Senator BURNS. It is not a requirement?

I always liked the idea that I am probably one of the very few that did not have a college degree in this group, and I got intimidated by the people who had letters in back of their names when I arrived in this town. So I come up with my own letters. I put N.D.B.A., no degree but boss anyway.

[Laughter.]

Senator BURNS. I like that idea.

We are all familiar with the Arbitron surveys and we all lived by them when we were in the radio business. But I was caught the other day by a note that 74 percent of the consumers believe radio does a good job, a very good job, in providing the type of programming that they want to hear. I am sure that they would be less satisfied with what they get on television or the recording industry, but nonetheless radio seems to be doing a very good job this time.

And yes, maybe we have some concentration in some areas that are troubling to some of us, but we have antitrust laws, as Senator Hollings pointed out, that should be looked at.

But radio has come a long way in the last 5 or 6 years in improving their own financial viability. There was a time when you might have owned a license that was not worth very much and it was just a short time ago.

So I would say that the 1996 Telco Act has actually worked, and I do not want that reopened or bothered at the present time. We have the laws in place. Enforcement of those laws may be a little

bit lax in some areas, but it is not because the policy is not maybe at the right proportion right now as we find it in the industry.

So I am happy about this hearing. I am happy about the information that will come out of it. I think probably there are always complaints from competitors and those complaints will always be there in a free market system. But I would suggest that we did good work in that 1996 Act as far as the AM/FM radio broadcast industry was concerned. And I thank you, Mr. Chairman, for holding the hearing.

[The prepared statement of Senator Burns follows:]

PREPARED STATEMENT OF HON. CONRAD BURNS, U.S. SENATOR FROM MONTANA

Mr. Chairman, thank you for calling for this hearing in what I understand is to be the first in a line of hearings on media ownership. Today's focus will be on the state of competition in the radio marketplace.

As many of you know, I have a fondness for radio stemming from my days when I was a farm broadcaster in both radio and television. Given my interest in agriculture and Montana, I decided to launch my own radio network based on the issue of agriculture, and in 1975, I founded four radio stations that I named the Northern Ag Network.

Those four stations grew to serve a total of 31 radio and television stations across Montana and Wyoming continuing to focus on agriculture. There is no question in my mind, with my own personal history, that the state of radio itself today is much more sound financially and much more diverse in programming choices.

I note a recent Arbitron study that shows 74 percent of consumers believe radio does a good or very good job providing the type of programming they want to hear. I am sure the same public would be less satisfied with what they get on television, cable or with the recording industry.

The radio industry has certainly rebounded from some difficult times in the not-too-distant past. In fact, in the early 1990s, half of all the Nation's radio stations in America were losing money. So what happened that has made the radio industry significantly more financially stable and even more robust today, especially when one considers the economic downturn over the last three years? The answer is simple: the 1996 Telecommunications Act.

The Telecom Act and the wave of sensible deregulation it ushered in has brought a breath of fresh air and fiscal sense to the radio market. The deregulation of radio ownership allowed private businesses to enjoy financial efficiencies.

By allowing radio owners to expand their holdings in local markets and on a national scale, radio companies could make more efficient use of capital to deliver a better product.

The revolution in radio technology that has erupted beginning in the late 1990s can be directly attributable to the Telecom Act. In fact, today's radio stations look nothing like the ones I helped create more than 27 years ago. The ability to expand in local markets has also allowed radio owners to expand into different formats. In the past, when one could only own a couple of stations in a local market, the temptation was to go after the largest single audience no matter what, which typically was the pop music audience in most markets. You would then get three or four owners that would be playing the same kind of programming hoping to attract that largest audience group possible.

I would also like to address the current ban on newspaper/broadcast cross-ownership. The FCC's newspaper/broadcast cross-ownership rule is clearly outdated and unnecessary in light of the abundance of competitive outlets in today's media marketplace. The rule was adopted at a time when the media environment was dominated by just three over-the-air networks and their affiliates. In the intervening years, explosive growth in the number of traditional media outlets—combined with a flood of new entrants, including an extraordinary variety of cable, DBS, and Internet sources—has transformed the marketplace and given consumers a vast array of news and information choices.

Even in a market as small as Miles City, Montana, where Star Printing Company has continued to own and operate a "grandfathered" newspaper/AM radio combination since the cross-ownership rule was adopted in 1975, there are plenty of alternative outlets to ensure adequate viewpoint diversity. In fact, the number of competitors in the market has grown steadily since 1975. Today, there are five separately owned television stations in the Designated Market Area, five radio stations

in Miles City alone (four of which are under separate ownership), numerous radio stations in neighboring communities, a competing daily newspaper in Billings, and a cable television franchise offering at least thirty channels.

As a result of the explosive growth in the media marketplace over the last quarter century, the FCC, Congress, and the courts have eliminated or substantially relaxed *all* of the Commission's other media ownership restrictions. However, newspaper publishers have been forced to stand on the sidelines as their competitors have pursued acquisition opportunities and entered into more efficient and cost-effective operating agreements. Repeal of this discriminatory restriction is necessary in order to place newspapers and broadcasters on an even playing field with their multi-channel, multi-media competitors. In addition, I believe that eliminating the ban will advance the public interest by enhancing the quality and quantity of news and other informational services available at the local level.

I look forward to the testimony of the witnesses on these and other key issues before the Committee today.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.
Senator Dorgan.

**STATEMENT OF HON. BYRON L. DORGAN,
U.S. SENATOR FROM NORTH DAKOTA**

Senator DORGAN. Mr. Chairman, thank you very much. I am going to have to step away for a few minutes, but I intend to come back for the bulk of the hearing today. This is, I think, an important hearing.

I have some disagreement perhaps with my friend from Montana. I think since 1996 we have had galloping concentration in radio and television. Frankly, I think we ought to raise a lot of questions about it. Free markets are very important, but free markets are less free when you have concentration, I believe.

Let me make a couple of points.

I do not think big is necessarily bad or small is necessarily beautiful. But I do think what makes the market system work is robust, aggressive competition, and I do think that in most cases concentration, left unchecked, clogs the arteries of competition and clogs the arteries of the marketplace.

Attached to licenses that we provide for broadcast is the requirement to serve local interests, localism. That is something I am very concerned about.

I want to mention one thing. In 1996 when we took the limits off radio ownership and relaxed the limits on television station ownership, the only vote that occurred was a vote that I forced on the Senate about 4 o'clock one afternoon to try to restore the limits on television station ownership back to the 25 percent level. I actually won that vote; I think by 3 or 4 votes at 4:30 in the afternoon.

And then we had a reconsideration of the vote about 3 hours later following dinner, and several of my colleagues had an epiphany over dinner, I guess. I believe our colleague, Senator Dole, was on the other side, and I was surprised to have beaten him actually, but I only beat him for 3 hours because after dinner we had a second vote, and I lost by three or four votes. I have no idea what was served that evening.

[Laughter.]

Senator DORGAN. But whatever it was, it was very effective for my colleague's position because I lost.

But I raised the points then, in 1996, because I was concerned about where I thought this was headed. And, I am concerned today. Again, let me say, I do not think big is necessarily always bad. You cannot build a 757 airplane in a garage in Regent, North Dakota. You need economies of scale and so on. But with respect to broadcast, I am very concerned about where we are headed in television and radio and the substantial concentration that has occurred since 1996.

The question is, where does it end? Is it if someone wants to buy 3,000 stations, if someone wants to capture most of the television market in most of the metropolitan areas? Where does it end? Where are the practical limits?

And those are the public policy questions we should address, and I am very appreciative, Senator McCain, that you have called this hearing. I think we should be thoughtful about it and move through it. A number of questions have been raised this morning that are very interesting to me, and I do not have the foggiest idea what the answers are. But I know we are going to have people testifying today and we can ask those questions of them. So I appreciate the hearing, Senator McCain.

The CHAIRMAN. Thank you very much.

Senator Ensign.

**STATEMENT OF HON. JOHN ENSIGN,
U.S. SENATOR FROM NEVADA**

Senator ENSIGN. I think we can agree that diversity in radio markets is important. Our constituents want and need access to diverse, quality programming. Over the past 10 years, 1,283 new radio stations were licensed by the FCC. That is about 25 new radio stations per state. In my home town of Las Vegas, almost every frequency on the FM band is occupied with the choice of country, rock, rap, R&B, alternative, easy listening, instrumental, classical, talk radio, or sports programming; not to mention Hispanic radio stations in Las Vegas. While I may not always be able to hear my favorite song while listening, there is certainly diversity in programming. I am confident that any music fan would be able to find something to listen to in our local markets.

Recently there has been much discussion regarding ownership of such radio stations; specifically, whether such ownership is beneficial for our constituents' ability to access quality diverse programming. I believe that we got it right in 1996 by substantially deregulating restrictions on radio ownership.

While diversity in the market is vital, think back to where we were technologically in the early 1990s. Those of us who had seen the Internet saw only a text-based browser. Neither Internet nor satellite radio had yet come to market. Legitimate online music services such as Press Play, where you can purchase tracks from CDs in a digital format for a nominal fee, had not yet been invented. Digital radio was not even on the horizon. Indeed, radio technology has advanced significantly over the last decade and music fans are winning.

I was pleased that Chairman Powell is taking a close look at these outdated, antiquated ownership restrictions. I urge both Chairman Powell and the FCC to continue on the path toward

unleashing market forces, thereby allowing the market to determine the winners and losers, not bureaucrats in Washington, D.C.

While I understand the concerns of some of our witnesses regarding concentration in radio markets, I would like to remind them of antitrust laws already on the books that prohibit anticompetitive behavior in free markets or collusion among businesses.

I would also like to point out that since the 1996 Act, when ownership restrictions were further deregulated, 720 new stations were added to the airwaves, further increasing diversity of programming on the airwaves. Moreover, since I have been elected to the Senate, I have not heard from a single Nevadan complaining about the access to quality, diverse radio programming, perhaps because we have better radio programming than we did just a few years ago.

Just a couple of comments on a personal level, Mr. Chairman. I read the testimony of Don Henley, who is one of my favorite artists, and I hate to be on the other side of an issue than one of my favorite artists. However, when he was talking in his testimony about how on certain radio stations in years past, a listener would hear a lot of different types of formats or a lot of different types of music on a single radio station. That increased and challenged the musicians and artists to broaden what they were producing. As a listener, it used to drive me crazy when I wanted to listen to a certain type of music and a radio station aired other types of music.

I love the fact that today you can listen to exactly what you want to listen to. If you want to listen to country music—I am big country music fan. I love to listen to it. When I want to listen to that, I want to listen to that. When I want to listen to alternative rock, I listen to alternative rock. When I want to listen to sports, I listen to sports, and so on. I think that, for the consumer, the choices are greater than ever, and we have to recognize the role that choice plays in the radio marketplace today.

Thank you, Mr. Chairman, for holding this hearing.

The CHAIRMAN. Senator Wyden.

**STATEMENT OF HON. RON WYDEN,
U.S. SENATOR FROM OREGON**

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Chairman and colleagues, since 1996, when Congress lifted the radio ownership caps, radio concentration shot up virtually immediately. I have been told that there have been about 10,000 radio transactions worth about \$100 billion. It just seems to me that there is an important lesson to be learned here, and that is, that media consolidation races ahead if you let it.

I think this is a very important hearing, Mr. Chairman, because it seems to me that we are now faced with the prospect that the Federal Communications Commission wishes to repeat an experiment that the evidence suggests has created as many problems as it has solved. I think we ought to be very reluctant to repeat the experiment that Congress gave the green light to in 1996 in other areas of the media.

I want to note that one of the FCC commissioners, Mr. Adelstein, when he appeared recently, said that radio was in his view the ca-

nary in the coal mine. I think Congress ought to take a careful look at what the canary has to tell us.

And I will tell you that I am very reluctant to allow this train of consolidation that is going forward down at the Federal Communications Commission to go forward unchecked because I think it would allow the repeat of an experiment that was begun by the Congress in 1996 which has caused problems for competition, which has caused problems for localism, and Congress should be reluctant to allow it to continue.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Brownback.

**STATEMENT OF HON. SAM BROWNBACK,
U.S. SENATOR FROM KANSAS**

Senator BROWNBACK. Thank you, Mr. Chairman, for holding the hearing.

I will just note a couple of things, some of which has been noted already, but I want to also take off on another area.

In the over-the-air radio market, while ownership of stations has consolidated, consumers have access to more diverse programming than ever before. In addition, many consumers also have access to radio streamed over the Internet by webcasters and news satellite services. I think those would need to be looked at all together.

Terrestrial radio is, of course, perfectly harmonious with consumers' interest where price is concerned because it is free. Webcasting in its infancy has also provided many consumers with free access to music. And I am going to be paying close attention to see how webcasting royalties impact this nascent market for opportunities and for consumers. As with all new technologies and services, the price of satellite radio will continue to drop, making it ever more affordable for consumers.

Now, the point of the hearing, regulatory legislation that seeks to create competitive advantages in certain areas instead of permitting market forces to function naturally in combination with anti-trust laws, which I think are a very important aspect of this, are uniquely situated to address radio consolidation concerns on a fact-intensive, market-by-market basis.

This is not the kind of competition policy this Committee should support where we go in and re-regulate. We have spent the last 7 years dealing with just such an artificial policy in other segments of the telecom space, and I will not support exporting such a policy to other segments of the economy where we seek to regulate that economy.

Recently the recording companies created a coalition with others in an effort to advance webcasting royalty legislation that ultimately could have driven many small webcasters out of business. It is my understanding that some people that are testifying here today supported this bill as a way of forcing an increase in the royalties charged by BMI and ASCAP.

Webcasting, whether provided through wireline Internet connections or especially wireless Internet connections when such capability developed, is exactly the kind of distribution outlet that could be invaluable for publicizing new and unknown artists, increasing artists' direct access to the public without middlemen, and further

increasing competition in the radio industry generally. So if that is the area that we are interested in, if that is the particular problem, I think the answer is one that we should look at more in the area of webcasting.

Mr. Chairman, thank you very much for holding this hearing. I think it is an important subject, and I look forward to the testimony. I am going to have to slip out myself. I hope I will be able to get back for some of it.

The CHAIRMAN. Thank you, Senator Brownback.

Our next panel is Mr. Lowry L. Mays, Chairman and CEO of Clear Channel Communications. Would you all please come forward. Mr. Edward Fritts, President and CEO of the National Association of Broadcasters; Mr. Don Henley, singer and songwriter; Mr. Robert Short, President, Short Broadcasting; and Ms. Jenny Toomey, Executive Director of Future of Music Coalition.

As our witnesses are coming forward, I am entertained by the continued suggestion that we go to the Department of Justice when we have a Federal Communications Commission that was set up and funded with hundreds of millions of dollars to regulate the industry. That any problem could be handled by the Department of Justice is entertaining. I hope that that same approach will be used to other matters that concern Members of the Committee.

Mr. Mays, we will begin with you, sir. Welcome before the Committee.

STATEMENT OF LOWRY L. MAYS, CHAIRMAN AND CEO, CLEAR CHANNEL COMMUNICATIONS, INC.

Mr. MAYS. Good morning, Chairman McCain—Senator Hollings I am sorry has left—and Members of the Committee. It is my pleasure and privilege to appear before you today. I welcome this opportunity to discuss the radio business with you because it has been a passion of mine for over 30 years.

Far from being a cautionary tale of the dangers of deregulation, radio has a great story to tell. The industry is healthier and more robust today than ever before. That would not be true if radio stations like ours across the country were not pleasing their listeners each and every day.

Radio has changed in many ways since Richard Nixon and George McGovern faced off in 1972. That was the year I bought my first radio station in San Antonio, Texas. I knew very little about the business then but I understood the core principle that makes any radio station a success: you must be locally focused and delight and inform the listener every hour of every day.

While radio may have changed in many ways over the past 30 years, the key lesson I learned then still applies today. That means Clear Channel must continue to serve our local communities in the very best way that we can.

Remember back to the early 1990s for a moment. The competition from cable, broadcast television, and hundreds of new FM stations forced literally half of the Nation's radio stations into the red, and many others were operating close to it. In 1989 and 1990 alone, AM stations' profits plummeted 50 percent and FM profits by a third. Stations often had to cut back on news and other local programming to survive.

All of that began to change with deregulation. With the ability to own more stations both locally and nationally, stations could cut costs and compete more effectively for media advertising dollars. Owners could reinvest more in their stations, improving their facilities, increasing the quantity and quality of their programming, and hiring better on-air talent.

Study after study has demonstrated that there are now more formats available to listeners to choose from in local markets across the Nation.

In addition, more stations today are owned by minorities than in 1996, the year that Congress passed the Telecommunications Act. Clear Channel is committed to encouraging diversity in media ownership. In connection with our acquisition of AM/FM a few years ago, we sold more than \$1.5 billion in radio properties to minority buyers. We also committed \$15 million to the Quetzal/Chase Fund which invests in minority-owned media. And, Mr. Chairman, we strongly support your bill to provide tax incentives to increase media ownership by small business. We have done all of this not because it is a benefit to Clear Channel, because we think it is the right thing to do.

Still, some say that deregulation has gone too far, that the industry is too consolidated. Let us stop for a moment and put those numbers in perspective.

Radio is by far the least consolidated of any of the media and entertainment industries. The 10 largest radio operators account for only 44 percent of the industry's advertising revenues. The top 10, 44 percent. Compare that to the top five record companies. They control 84 percent; cable companies, 89 percent; movie studios, 99 percent.

Even though the number sounds large, Clear Channel's 1,200 radio stations represent only 9 percent of all of the stations in this country. That means that over 90 percent of the Nation's radio stations are owned by nearly 4,000 companies other than Clear Channel.

Some object, however, whatever the radio percentages are, that Clear Channel has too much power in the music industry and power over musicians. We heard some of that this morning. The fact is that major artists wield monopoly power of their own. If we cannot meet their terms, they will simply go to another local, regional, or national competitor.

Finally, I would like to take the opportunity to dispel the myth that Clear Channel, or any other concert promoter for that matter, is responsible for the steep rise in concert ticket prices. That presumes we actually set the price of the ticket, which we do not. The reality is that the artists not only set the price of the ticket, but then they set large guarantees which have been affecting small concert promoters. The artists are demanding more and more money from touring because their album sales are decreasing. It is not unusual for Clear Channel, or any other promoter for that matter, to receive only 5 to less than 10 percent of the door.

Let me conclude by going back to the beginning. We succeed when our radio stations serve the needs and interests of their local communities. I am pleased that according to recent surveys, we are

doing just that. While I am pleased with these surveys, I think we can always do better.

I look forward, Mr. Chairman, to joining the dialogue that we are beginning here today. Thank you.

[The prepared statement of Mr. Mays follows:]

PREPARED STATEMENT OF LOWRY L. MAYS, CHAIRMAN AND CEO, CLEAR CHANNEL COMMUNICATIONS, INC.

Good morning Chairman McCain, Senator Hollings, and Members of the Committee, it is my pleasure and privilege to appear before you today. My name is Lowry Mays, and I am the Chairman and CEO of Clear Channel Communications. I want to thank you for inviting me to discuss the radio business with you, because it has been my passion for over thirty years.

Radio: A Great Story

Far from being a “cautionary tale” of the dangers of deregulation, radio has a great story to tell. The industry is healthier and more robust today than ever before. And that just wouldn’t be true if radio stations across the country weren’t pleasing listeners each and every day. In fact, according to a recent survey, the industry is doing just that. Nearly 3 out of 4 listeners believe radio does a good or very good job providing the music, news and information they want to hear. And 60 percent said they believe radio is getting even better.

Radio has changed in many ways since Richard Nixon and George McGovern faced off in 1972, and Don McLean’s American Pie was number one on the charts. That was also the year Clear Channel bought its first radio station in San Antonio, Texas. I knew very little about the business then, but I did understand the core principle that makes any radio station a success. You must delight the listener, every hour of every day.

That’s why, in 1975, we made our radio station the first all news format in San Antonio. Listeners were drawn to the local news, weather, and sports we offered. And when we broadcast live from local places of business, listeners would flock to see our on-air talent in person and learn more about the merchant’s goods and services. Everyone benefited, and it was great radio.

Benefits of Deregulation

Radio is, without a doubt, healthier today as a result of deregulation, and the public clearly benefits as a result. Recall for a moment the financial health of radio in the early 1990s, before the passage of the Telecommunications Act of 1996. Competition from cable and broadcast television and hundreds of newly authorized FM stations had forced half of the Nation’s radio stations into the red. Many others were operating close to it.

In 1989 and 1990 alone, AM station profits plummeted 50 percent, and FM station profits dropped by one-third. Investment capital dried up, causing facilities modernization to grind to a halt, and stations owners who wanted to sell couldn’t find buyers. Radio stations struggled to compete with televisions and newspapers, and found it increasingly difficult—if not impossible—to survive periodic downturns in the local economy. Many radio stations resorted to cutting their news budgets or other local programming. Some eliminated local news departments altogether.

All of that began to change with deregulation. With the ability to own more stations, both locally and nationally, radio companies could create economies of scale and benefit from the substantial cost savings that result. An owner of multiple stations in a market could diversify formats and, for the first time since the advent of television, compete successfully in the total market for media advertising dollars.

From 1975 to 1995, for example, radio labored with only about 7 percent of the total advertising pie. Since deregulation, there has been growth in that share, with radio finally moving above 8 percent in 1999 and continuing to increase in 2000. Radio operators can reinvest those savings in their stations, improving technical facilities, increasing the quantity and quality of local programming, and hiring more and better on-air talent.

In Syracuse, New York, for example, Clear Channel saves approximately \$200,000 a year by operating its stations as a unit instead of as standalone properties. We have reinvested much of that savings in the stations, upgrading the WSYR transmitter, acquiring a booster for WPHR, and installing state-of-the-art studio equipment. We increased local news programming on WSYR by one hour a day, and produce the area’s only local listener call-in show. WWHT now provides local news, but did not before Clear Channel entered the market.

Deregulation has been good for radio in other significant ways. Today, more stations are owned by minority-owned businesses than in 1996 when the Telecommunications Act was passed. Clear Channel is committed to encouraging diverse media ownership, and I am proud to say that we have been able to make significant contributions toward that worthy goal. In connection with our acquisition of AM/FM a few years ago, we sold more than \$1.5 billion in radio properties to minority buyers. That represented one-third of all the stations we had to divest to obtain regulatory approval of the transaction. In addition, we have committed \$15 million to the Quetzal/Chase Fund, which invests in minority-owned media. And, Mr. Chairman, we strongly support your bill to provide tax incentives to increase media ownership by small businesses and new entrants. We have done all of this not because of any direct benefit to Clear Channel, but because it is the right thing to do.

Deregulation has benefited listeners as well as owners. Study after study, by academics and market analysts, demonstrate that consolidation has led to increases in the diversity of formats available to listeners in local markets, large and small. One recent study by Bear Stearns found that the number of core formats has risen 7 percent since 1996. It's easy to see why this is true. Owners with several stations are better able to diversify their programming to serve the variety of demographics that are present in the market. That is just what we did in Syracuse, which did not have an urban formatted station when we entered the market. By drawing upon our resources, we were able to target this underserved audience and turn WPHR-FM into a successful urban formatted station.

Deregulation: The Bigger Picture

Despite these benefits of deregulation, which are in evidence in local markets of all sizes, some say that deregulation has gone too far. They say the industry is too consolidated. And they contend that Clear Channel, as the Nation's largest operator, has too much market power. Let's stop for a moment and put the numbers in perspective. Let's generate some light to accompany the heat.

Radio is by far the least consolidated segment of the media and entertainment industry. The ten largest radio operators account for only 48 percent of the industry's advertising revenues. Compare that to the recording industry, where the top five record companies control 84 percent of all album sales.

It's also interesting to note that in cable television, the ten largest companies account for 89 percent of the revenues. For movie studios it's a whopping 99 percent. And, though the number sounds large, Clear Channel's 1,200 radio stations represent only 9 percent of all the stations in the country. That means that over 90 percent of the Nation's radio stations are owned by companies other than Clear Channel.

When these numbers are evaluated objectively, it quickly becomes apparent that radio does not pose a media concentration threat. In fact, the drafters of the 1996 Act made certain of that by limiting any individual company to a maximum of eight stations per market, and only then in markets containing 45 or more radio stations.

Serving Local Listeners

While radio may have changed in many ways over my three decades in the business, the key lessons I learned from that first San Antonio radio station still apply today. Stations must serve the needs and interests of their local communities, listeners and advertisers alike. Radio is inherently a local medium and always will be. That means Clear Channel—along with nearly 4,000 other owners of radio stations in the U.S.—must continually strive to serve our local communities in the best ways we can.

Some have suggested, however, that the commitment to local listeners has been lost as a result of deregulation—lost in a mad dash of consolidation. Let me assure you nothing could be further from the truth. Listeners want to hear a variety of music, news, local affairs and other entertainment programming that appeals to their individual tastes. And in today's multimedia world, those listeners are very discerning. If they don't like what they hear, they will turn the dial, burn a CD, or download an .mp3 recording that is more to their taste. It's that simple, and that risky to our financial health.

That's why Clear Channel will always be in tune with what local listeners want to hear. One tired song, a commercial that lasts too long, or a failure to provide timely news, weather or traffic, and the listener is gone. After all, radio is the only business I know of where you can lose a customer with the push of a button at 60 miles per hour.

We may have grown from that single AM station in San Antonio into the largest radio operator in the country, but we haven't outgrown our commitment to localism and diversity. Contrary to what some would suggest, our radio play lists are not put

together at headquarters, hundreds or even thousands of miles away from the communities in which they are played. Far from it. Our play lists are developed by local station managers, program directors, and on-air talent, and are based on extensive audience research, listener feedback, and our employees' knowledge of local tastes and culture.

While we make sure that our radio stations have access to the highest quality news and information sources, we do not dictate the quantity or content of news and information from our San Antonio headquarters. Our local managers decide how to use the tools we give them to meet the needs of their audience. The result is that over 80 percent of what airs on Clear Channel stations is produced locally.

We simply couldn't operate any other way. The preferences of listeners vary from market to market, and we must respond to those differences if we are to succeed. That is why a song like "Screaming Infidelities" by Dashboard Confessional received hundreds of spins on our Dallas station last year, but just a handful in Indianapolis and here in Washington, D.C. Standardized play lists just don't exist at Clear Channel.

Committed to Our Local Communities

But we don't just serve our communities by playing the music our listeners want to hear. Clear Channel stations around the country are deeply involved in supporting and promoting a wide variety of local civic and charitable events. Consider just one market—Syracuse, New York—where Clear Channel stations routinely help the community whenever the need arises. For example, last year the State of New York cited the Blodgett Library, located in one of the poorest neighborhoods in the country, as a safety hazard. Clear Channel raised over \$80,000 in a radiothon to help create the "Dream Center," a state-of-the-art library and dynamic learning center at a local elementary school.

Our local news/talk station in Syracuse, WSYR, produced a ten-part series on child abuse and raised money to help create the McMahon/Ryan Child Advocacy Site. The station also raised \$35,000 for the Child Abuse Referral and Evaluation program at University Hospital, and published a guide to help prevent child abuse. The National Association of Broadcasters awarded WSYR its "Service to America" award for this series.

These are just two small examples of the countless number of contributions Clear Channel radio stations make every day to the communities we serve in over 300 U.S. markets. From radiothons to 10K races, our stations help raise money for important charities like breast cancer research, child literacy, and AIDS research, to name a few.

Radio and the Concert Business: Effect on the Artist

I've heard some say that Clear Channel has too much power in the music industry. They say that the combination of our radio stations and our involvement in the live entertainment business, through concert promotion and ownership of concert venues, gives us unprecedented clout. They claim we can leverage those businesses to intimidate artists, force out competing concert promoters, and drive up ticket prices.

Well, I don't know if any of these critics have had the privilege of negotiating a concert deal with Cher. Well, we have—and I can assure you she is not intimidated by us one bit. And the same goes for Madonna, Paul McCartney, and the Rolling Stones. The artists themselves wield monopoly power. After all, there is only one Cher.

The truth is that major artists dictate nearly every aspect of their tours—increasingly large performance fees, choice of venues, tiered ticket pricing, percentage of merchandising, even the color of the roses and brand of bottled water in their dressing rooms. If we can't meet their terms, they won't think twice about signing with any one of the local, regional and national concert promoters that compete with us. And when we do sign to promote a tour, we are often not the exclusive promoter. Many artists split promotion of their tour between Clear Channel and other national or local competitors.

Speaking of our radio stations, let me say clearly, and for the record, that Clear Channel does not use the threat of reduced airplay to force musicians to tour with us or retaliate against competing concert promoters by failing to promote their shows on the air. Anyone who would make such allegations simply doesn't understand our business. The fact is live entertainment accounts for less than 7 percent of Clear Channel's revenue. Radio is the bread and butter of our business, and we simply wouldn't risk the ratings of any station by refusing to play or promote a popular artist who isn't touring with us, or by overplaying a less popular artist who is.

To cite just one example, Britney Spears actually received 73 percent more airplay on Clear Channel radio stations in 2002, when she was touring with a competing promoter Concerts West, than she got in 2001 when she was touring with us. Why? Because Britney Spears was one of America's most popular music artists in 2002, and our radio stations hardly could ignore her songs and still meet the needs of our listeners. Remember, if we are not playing what people want to hear, they will quickly vote against us by pressing another button on their radio. It couldn't be easier—or more risky to our financial health.

Even when the artist is lesser known, we cannot, and would not, take advantage of any perceived change in the negotiating dynamic. It is not in our interest to do so. It happens that Clear Channel Entertainment depends on small and mid-size venues for a substantial portion of its revenue, and so we have a vested interest in booking the up and coming artists that frequent these smaller stages. In fact, in 2001 Clear Channel hosted over 3,100 acts, of which nearly 70 percent were staged at clubs and other smaller venues. Of all these acts, two-thirds were not affiliated with a major record label, and almost one-quarter were not signed to any label at all. Like our radio stations, Clear Channel Entertainment is absolutely committed to promoting new artists and their music.

Developing New Artists

Our commitment to local audiences involves introducing them to new artists and their music. Make no mistake: new artists and music are the lifeblood of many of our radio stations, whether they play country, adult contemporary, rock or hip-hop. Unfortunately, the five major record companies increasingly are failing to take the risks necessary to sign, produce, and promote talented newcomers. Sadly, the result is less new albums each year than listeners (and radio stations) would like. But there is one thing you can count on: if the public wants to hear a new song, Clear Channel will strive to be first to put it on the air.

That's why Clear Channel has taken great pains to develop new artists on our own. In September 2001, we began an Internet pilot program called the Artist and Repertoire Network, which is dedicated to providing music industry professionals with information about high quality, unsigned artists from around the globe who have great potential to succeed. The "A&R Network" (located at www.anrnetwork.com) provides information such as the type of deal an act is seeking, its biography and discography, tour information, and more. I am proud to say that in just one year since its inception, the A&R Network has played a key role in helping thirteen new artists sign major and/or independent label record deals.

Then, on September 26, 2002, we launched another artist development initiative, a not-for-profit, Internet-based forum for performers, industry professionals, and fans called the New Music Network (located at www.clearchannelnewmusicnetwork.com). This website allows unsigned bands to upload their songs in .mp3 format to the Internet. It is a free way for these artists to reach new audiences, promote their music, and network with recording industry executives. Again, I am proud to say that, even at this early stage, the New Music Network is a phenomenal success. After just four months, we have already registered more than 1,000 promising new musicians in genres as diverse as blues, classical, folk, funk, punk, tejano, and gospel.

Our passion for discovering and developing new artists doesn't stop there. At nearly 60 radio stations in 40 markets across the country, Clear Channel's local managers are devoting airtime to showcase up and coming talent in their local communities. In Detroit, for example, our WJLB-FM plays new music by local artists every night for an hour beginning at 9:05 p.m. Any original music that listeners request can and does end up on the station's regular play lists.

And right here in Washington, D.C., every Sunday night WWDC-FM produces the "DC 101 New Music Mart." This hour-long program, which has been on the air for eight years, features new music, including releases from smaller labels, which our local managers select by hand. And if the music is popular, it can make all the difference for a new band. For example, Carbonleaf, an unsigned band out of Richmond, Virginia, saw its music move from the Sunday night show to DC 101's so-called "power rotation," which includes the station's most heavily-played songs.

Clear Channel's new music programs can have a national effect as well. Stu Sobol, of Spivak Sobol Entertainment, gives the DC program credit for breaking the new band The Calling, whose album went on to become multi-platinum. Our radio stations sponsor local new music programs in a host of diverse markets from Anchorage, Alaska to Medford, Oregon to Sioux City, Iowa.

Rising Ticket Prices

A common misperception is that Clear Channel is responsible for the steep rise in concert ticket prices over the past ten years. That presumes that Clear Channel, or any concert promoter, actually controls the price of the ticket. Unfortunately, that is not the case. I say unfortunately because if ticket prices were controlled by us, we'd set them low in the hope of getting more people through the door. That's because our company makes very little income from ticket sales—rather, our revenue comes primarily from ancillary services at the shows, such as parking, concessions, and sponsorships. In fact, it is not uncommon for us, or any promoter, to receive just 5–10 percent of the “door,” with the rest going to the artist.

The reality is that artists not only establish the ticket price, and do so for all tiers (including the so-called “golden circle”), but also demand a set performance fee or “guarantee” from the promoter. And artists are demanding more money from touring than ever before, presumably due to a marked decrease in album sales. In fact, of the top twenty touring artists in 2002, 62 percent of their income came from concerts. Compare that to the 22 percent of their income that came from album sales.

[It is interesting to note, by the way, that the *Seattle Times*, in an article dated November 3, 2002, wrote that the escalation of concert ticket prices began “in 1994 when the long-feuding Eagles reunited for their “Hell Freezes Over” tour. That outing launched a tiered system, in which the best seats—commonly dubbed ‘golden circle’ seats—cost more. Ticket prices topped \$100 for the first time.”]

Working Together to Improve Radio

Let me conclude by going back to the beginning. Clear Channel succeeds when our radio stations serve the needs and interests of their local communities. And I am pleased that, according to recent surveys, we are doing just that. In one survey, 74 percent of respondents said radio does a good or very good job of playing the kinds of music they like. Seventy percent said radio does a good or very good job of providing the kinds of news and information they want. And almost 60 percent said radio is getting better lately. Yes, I'm pleased by these responses, but I'm not satisfied. There is always more that we can do to improve radio. I look forward, Mr. Chairman, to joining the dialogue that you are beginning here today.

The CHAIRMAN. Thank you very much, Mr. Mays.
Mr. Fritts.

STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CEO, NATIONAL ASSOCIATION OF BROADCASTERS

Mr. FRITTS. Thank you, Mr. Chairman. I am Eddie Fritts, President and CEO of the National Association of Broadcasters. NAB represents America's free over-the-air radio and television stations, and today there are nearly 4,000 separate owners of the some 13,000 local radio stations that serve America's listeners. I am pleased to testify on their behalf.

While the industry continues to change, one thing has remained constant, radio's commitment to serving local communities. This attribute distinguishes us from all competitors. From online music to satellite radio, local service to the community is that which separates us from the competition.

Radio broadcasters are proud of their commitment to localism. A recent NAB study found that in 2001 alone, radio stations contributed \$7 billion worth of public service to their communities. That number includes the value of public service announcements, as well as monies raised for charities, disaster relief, and for the needy.

While this is an impressive figure, it does not tell the whole story. Radio's local connection allows it to offer services that cannot be measured in just dollars and cents. Take, for instance, the Amber Alert program. Over 40 abducted children have been returned to their families largely due to radio, and the Amber program, which I note that Senator Hutchison has been a prime spon-

sor of, has recently passed the Senate with our support. I do not think one can put a price tag on the return of an abducted child.

Radio underscored its value also in helping solve the D.C. sniper case. After hearing the vehicle description and the tag number on the radio, a listener called authorities resulting in the immediate arrest of the suspects.

And no dollar figure can account for radio's work following the events of 9/11. Stations across the country raised donations for rescue equipment for victims, organized blood drives, and overall reassured and informed Americans during that dark hour.

These, of course, are just a few examples and I could go on.

Today the industry has rebounded financially, but just 10 years ago—just 10 years ago—60 percent of all radio stations were losing money. Many had to go off the air depriving communities of local service upon which they had come to rely. It was that state of affairs that the Congress and the FCC revised radio ownership rules. NAB believes the limits implemented through the 1996 Telecommunications Act enabled radio to better serve local audiences across the country, as well as strengthening the industry economically.

As radio deregulation has moved forward, radio's critics have tended to overstate the effects of industry trends. Compared to other industry choices, radio is perhaps the least consolidated sector. Take, for instance, the Hollywood movie studios, the record companies, direct broadcast satellite, cable systems, newspapers, even the Internet. All have more of their revenue share concentrated among the top 10 owners than does radio.

Of course, radio's diversity is not measured by revenue shares. Radio broadcasters recognize the importance of diversity. Chairman McCain's proposal, which he announced today, will have great support from the NAB because it will help foster diversity through tax deferrals. We look forward to working with the Chairman and this Committee and the Senate in moving this legislation forward.

Already today, radio formats mirror the diversities we have in our American society. Spanish language formats have increased by over 80 percent in the last decade. Other ethnicities are well represented on the dial. From Persian to Polish to Chinese to Haitian, the list goes on in specialty programming.

Radio also remains the most trusted source for music. According to Arbitron, two-thirds of Americans say radio is where they first heard new music. Ninety-five percent of Americans listen to the radio every week. Our listeners have good reason for tuning in, for last year alone radio debuted 3,000 new songs of some 550 new artists.

In sum, Mr. Chairman, the Telecommunications Act has been a success for our listeners, and what is good for our listeners is good for our industry. It was a goal of Congress, when formulating the Act, to keep radio a viable, vibrant and local medium. That objective, we believe, has been met. Radio today is more financially stable. Radio's programming is as diverse as its audience, and today, radio remains the ultimate local community medium. We look forward to continuing that proud tradition into the future. I appreciate the fact that we were able to testify at this hearing, and I look forward to answering your questions. Thank you.

[The prepared statement of Mr. Fritts follows:]

PREPARED STATEMENT OF EDWARD O. FRITTS, PRESIDENT AND CEO, NATIONAL
ASSOCIATION OF BROADCASTERS

Introduction

This testimony represents the views of the National Association of Broadcasters (NAB) on the current state of the radio industry. The testimony examines how regulatory changes implemented by the FCC in 1992 and by Congress in 1996 have advantaged both the industry's financial health and its ability to serve listeners. We then examine the current state of programming diversity in the industry, refuting critics' charges that consolidation has resulted in homogenized programming and had a deleterious effect upon radio's connection with local community. Finally, this testimony comments on recent Congressional proposals to re-regulate the industry, paying special heed to the "The Competition in Radio and Concert Industries Act" (S. 2691), which was introduced by Senator Russ Feingold in June of 2002.

Deregulatory Actions of the 1990s Have Improved Both Radio's Economic Health and Its Ability to Serve Listeners

1992: The Commission Moves to Deregulate Radio Ownership

Prior to the deregulatory gains of the 1990s, radio was encumbered with anachronistic ownership limitations that restricted the industry's ability to effectively compete with other mediums.

When the Commission issued its 1992 ruling liberalizing ownership regulations, the industry was in serious decline. Radio's share of the local advertising market was flat throughout the 1980s even as the respective shares of directly competitive media, most notably cable, increased. In fact, radio's share of the local advertising share, remained at 12 percent from 1980 to 1990.¹

Small market radio stations were particularly hard hit. More than half of all stations, primarily those with less than \$1 million in sales, were losing money. Most disconcerting, the FCC has found that almost 300 stations had ceased transmitting (due largely to financial pressures).²

It was with these concerns in mind that the Commission adopted new ownership regulations in 1992. The new regulations modestly increased the number of radio stations that could be owned by a single licensee both nationally and in local markets, depending upon market size.³

1996: Congress Further Deregulates Radio

In formulating the 1996 Act, Congress updated ownership regulations again. While debating the 1996 Act, it was a primary concern of Congress that radio remain an economically viable medium in an environment with a host of new mediums competing for the same limited pool of advertising dollars. For instance, in support of the 1996 Act's radio ownership provisions, Senator Conrad Burns stated, "For the longest time we have viewed radio as competing only with itself . . . Radio goes head-on with other forms of mass media for the audience and for those advertising dollars. We need to start acknowledging this important distinction and give radio the tools it needs to compete with all other information providers."⁴ As will be evidenced below, the Telecommunications Act has met this Congressional objective as radio continues to prosper in the face of new competitors.

Under the 1996 Act, radio owners are now allowed to own as many stations as they like nationally. The Act also developed prudent regulations for local ownership based upon market size. Under the provisions of the 1996 Act, stations may own as many as 8 commercial stations in a market with 45 commercial stations; markets with between 30 and 44 stations have a cap of 7 commercial stations for a single owner; markets with 15 to 29 stations are limited to owning 6 stations in the market; and in radio markets with fewer than 14 stations, a party may own up to 5 commercial stations (but not more than half of the stations in that market). In addition to these guidelines, the Act regulates how many of these commonly owned stations may be in the same band.

¹FCC Report and Order. MM Docket No. 91-140. Released April 10, 1992. 7 FCC Rcd 2759.

²*Id.* at 2760.

³FCC Memorandum Opinion and Order. MM Docket No. 91-140. Released September 4, 1992. 7 FCC Rcd 6387.

⁴See Senate Congressional Record, June 15, 1995, S. 8424.

The Congressionally enumerated regulations for radio ownership have improved local radio from both an industry economic perspective and from the perspective of listeners.

Numerous private and governmental studies (including FCC studies⁵) have well documented the economic as well as public interest benefits flowing from joint ownership of media entities in a market. Radio stations are no exception. Many of radio stations' costs are fixed and can be significantly reduced through common ownership. For instance, commonly owned radio stations in single markets may share a single general manager, management personnel and clerical staff. Commonly owned stations may also avail themselves of "[B]ulk discounts on services and supplies, shared operating facilities, advertising and promotional expenses, and combined technical facilities."⁶

Even before the full market effects of the 1996 Act were felt, several observers documented the financial advantages of in-market radio ownership concentration. As early as 1997, a study by BIA Research, Inc. found, "The average station involved in a duopoly combination in the Top 50 markets generated revenue of over \$4.6 million. For the average non-duopoly station [also in Top 50 markets] . . . revenues were under \$2.6 million."⁷

The significant cost savings and enhanced profitability stemming from consolidation have rescued the radio industry from economic failure. Even during 2001, a devastating year for all advertising supported mediums, radio's share of the entire mass media advertising revenue pie remained strong, ranking third with a seventh of all spending among other advertising mediums such as newspaper and television.⁸ Moreover, early projections indicate that local radio advertising revenues will continue to grow by as much as 5 percent during 2003.⁹

State of the Dial: In Addition to Remaining Economically Vibrant, the Radio Industry Has Become More Diverse Since Consolidation

While the deregulatory gains made by the Commission in 1992 and by Congress in 1996 have, as expected, resulted in ownership concentration, NAB strongly disputes that these trends have negatively impacted diversity on the dial. In fact, radio continues adapting to represent America's evolving demographics and changing musical tastes.

As an initial matter, before demonstrating the positive causal connection between in-market concentration and enhanced programming diversity, NAB must stress that recent consolidation trends in the radio industry may be less dramatic than is commonly assumed. A recent NAB study found that a large number of commercial radio stations remain "standalones," or are part of local duopolies, in their respective markets. The study found that nationally, as of November 2001, 1,510 stations (or 23.6 percent of the 6,403 commercial stations operating in Arbitron markets at the time) are the only stations owned within their respective market by stations' owners; an additional 1,064 stations (16.6 percent) are part of duopolies within their respective markets. Thus, while there has been a decline in "standalone" and duopoly stations, it remains the case that a large number of stations in Arbitron markets are "independent voices" in their markets. This large number of stand-alone and duopoly stations also provide a path to entry for new radio broadcasters.

Examining the industry from the perspective of revenue share reinforces the point that the industry is less consolidated than critics commonly assume. A Wachovia Securities analysis (Attachment A*) of the top ten owners in ten media sectors found radio to be the least consolidated, with the top ten owners controlling only 44 percent of revenue share. By way of comparison, in the movie studio, Direct Broadcast Satellite and Theme Park industries, the top ten owners controlled over 90 percent of industry revenue share. For cable MSOs and outdoor advertisers, over 80 percent of revenue is concentrated among the top ten players. Moreover, 3,400 separate entities control radio stations in the United States.¹⁰ While there has of course been

⁵ See, e.g., Report and Order in MM Docket Nos. 91-221 and 87-88, 14 Rcd 12903 (1999) (in loosening the television duopoly rule, the FCC discussed the "significant efficiencies inherent in joint ownership and operation of television station in the same market," and how "[t]hese efficiencies can contribute to programming and other benefits.")

⁶ R.B. Ekelund, Jr., G.S. Ford, and T. Koutsky, *Market Power in Radio Markets: An Empirical Analysis of Local and National Concentration*, 43 J. Law & Econ. 157 (2000).

⁷ BIA Research, Inc., *Radio State of the Industry*, 1997.

⁸ BIAfn, Inc. *State of the Radio Industry: Radio Revenues; Is the Bloom Back?* Page 14.

⁹ Robert Cohen, *Insider's Report Presentation on Advertising Expenditures*, December 2002, Universal McCann, page 4

¹⁰ *Radio Industry Review 2002: Trends in Ownership, Format and Finance*. George Williams and Scott Roberts. FCC Media Bureau staff research paper. Page 3.

consolidation in the industry since 1996—that was the intended effect of the 1996 Act—NAB submits that critics of deregulation have vastly overstated the effects of recent ownership trends.

Furthermore, listeners' choices continue to grow. Thirty years ago, there were but a handful of radio formats on the dial. Today, listeners may choose from over 250 discrete formats.¹¹ Moreover, the available data would indicate a correlation between deregulation and expansion in the number of available formats. For instance, an analysis of available “core” formats (the most common classifications) found that format diversity increased by 7 percent between fall of 1996 (prior to passage of the Act) and the fall of 2001.¹²

The link between in-market ownership concentration and enhanced programming choice was originally postulated by economist Peter Steiner in his 1952 seminal work, *“Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting.”*¹³ Steiner argues that multiple ownership of stations in a market by a single entity acts as a natural disincentive towards duplicative programming. After all, station owners would not want their commonly owned stations competing for the same audience share. As a result, greater ownership concentration within a market encourages owners to experiment with different formats to attract different and untapped listening bases.

A series of more recent studies have validated Steiner's theory. A 1999 study concluded that, “[b]etween 1993 and 1997 ownership concentration and programming variety available in local radio markets both increased substantially,” consequently “suggest[ing] that the increased concentration has been good for listeners.”¹⁴ The same study found that “increased concentration *caused* an increase in available programming variety.”¹⁵

Most recently, BIA Financial Networks issued a study¹⁶ on the state of format diversity demonstrating that the number of programming formats in Arbitron markets has continued to increase and that a causal link exists between increased ownership concentration and increased programming diversity. (The full BIA Study is attached as Attachment B*). Specifically, the study finds that, since 1998, the average number of general programming formats offered in all Arbitron surveyed markets has increased by 8 percent, and the average number of specific programming by 11.1 percent.¹⁷ This study therefore clearly shows that diversity of radio programming has continued to rise in markets of all sizes.¹⁸

Interestingly, the BIA Financial Networks study also found that the above analysis actually understates the level of programming diversity because it fails to take into account “out of market” listening. On average, the study finds, less than three-quarters (71.1 percent) of the listening within a market is attributable to commercial radio stations listed by Arbitron as being “home” to that market. The effect of “out of market” listening is most pronounced in smaller markets where this “distant” listening is most common.¹⁹

On multiple occasions, the FCC itself has recognized the relationship between concentration and format diversity. When liberalizing inter-market ownership regulations in 1992, the Commission envisioned that consolidated ownership would promote “program service diversity and the development of new broadcast services.”²⁰

In short, not only is there a preponderance of evidence to back the assertion that greater levels of ownership concentration promote programming diversity rather than hinder it, but there is also empirical evidence that this theory has played out in reality since the deregulatory moves by the Commission in 1992 and by Congress in 1996. Additionally, industry growth has further contributed to diversity. The

¹¹ *Format Diversity: More or Less*. Bear Stearns. November 4, 2002.

¹² *Ibid.*

¹³ *Quarterly Journal of Economics*. 66. 1952.

¹⁴ Steven Berry and Joel Waldfogel, *Merger, Station Entry, and Programming Variety in Radio Broadcasting*, National Bureau of Economic Research, Working Paper 7080 at 25–26 (April 1999).

¹⁵ *Id.* at 25 (emphasis added).

¹⁶ *Has Format Diversity Continued to Increase?* BIA Financial Network, June 5, 2002.

¹⁷ *Ibid.* at 5 and 7. This larger increase in the number of specific programming formats is particularly significant, as it shows that stations have continued to adopt new and different sub-formats that an aggregated measure of formats using general format categories does not capture.

¹⁸ *Id.* at 5–6. The smallest Arbitron markets (rank 101 and higher) receive, on average, 9.5 general and 12.3 specific programming formats. The largest markets (rank 1–10) receive, on average, 17.0 general and 38.6 specific programming formats.

¹⁹ *Id.* at 9.

²⁰ 1992 *Radio Ownership Order*, 7 FCC Rcd at 2757.

number of FM stations has tripled in the last 30 years and, in 2001 alone, 73 new FM stations went on-air.²¹

Finally, in addition to the range of choices terrestrial radio affords listeners (that is largely resultant of ownership deregulation), technological innovation has further broadened consumers' options with several newly arrived competitors that were not even considered when the Telecommunications Act was formulated. Internet-only radio continues to blossom as a competitor to traditional radio. Estimates suggest that more than half of all American households are online.²² As more Americans become Internet savvy, this new outlet will only grow in importance. The 2001 and 2002 launches of XM and Sirius satellite radio, each transmitting over 100 channels of niche radio programming, provide consumers with yet more options. With over 1 million listeners expected to be subscribing to XM alone by year-end 2003,²³ and Sirius having over 16,000 subscribers as of October 2002,²⁴ satellite radio clearly provides another vigorous competitor. Additionally, according to the FCC's website, there are 70 Low Power FM stations currently licensed.²⁵ The FCC's continued roll out of this service will further expand listening alternatives. In short, technology will only serve to enrich listeners' already diverse range of choices in the years ahead.

The Enhanced Diversity Resulting From the Telecommunications Act Benefits the Listening Public

Listeners have benefited from expanded diversity in a number of ways. In recent years, radio has closely mirrored America's evolving demography. The past decade, for instance, has seen an 82 percent increase in Spanish language formatted stations.²⁶ Other ethnicities are well represented on the dial. Today, listeners may experience Korean language stations, Farsi language radio, Chinese radio programming, Polish-American programming, Arab language formats, Vietnamese and Russian language programming, and Haitian targeted programming. Moreover, these stations are not located exclusively in major markets; as the American suburbs diversify demographically, suburban American radio has responded with programming targeted to these new audiences.²⁷ These ethnically targeted stations play an irreplaceable role in America's ethnic communities. In reference to KIRN-AM 670, a Farsi language station in Los Angeles, one listener said, "The station is a kind of town hall. It became a clearinghouse of information . . . 670 has become a meeting place for the Iranian community."²⁸

Terrestrial radio also continues to be America's dominant source for emerging trends in popular music. In 2002 alone, over 3,000 new songs debuted on local radio and over 550 new artists received airplay.²⁹ A recent FCC study of "playlist" diversity on radio stations found that, while song diversity overall remained stable between 1996 and 2001, the playlists for stations with the same general formats competing in the same local market "have diverged, so that listeners in local radio markets may have experienced increasing song diversity."³⁰

Accordingly, listeners trust radio as their primary source for music. *Arbitron* has found that over two-thirds of listeners said that radio is where they turn first to hear new artists.³¹ A December survey by the Washington polling firm the *Mellman Group* found that 77 percent of consumers believe their favorite local radio stations provide the music that they like either all of the time, most of the time or some of the time. Only 13 percent of radio listeners believe that local stations rarely or never carry music that they like. (The Mellman Group's Analysis is attached as Attachment C*.)

The Mellman survey also found that consumer satisfaction with the medium is not limited to music. Seventy-eight percent of respondents to the survey felt that radio played a "very important" or "somewhat important" role in providing valuable

²¹ *Radio Today: How America Listens to Radio*, Arbitron Study, 2001.

²² Knowledge Networks/SRI *Home Technology Monitor Ownership Report*, Spring 2002.

²³ *XM reaches 360,000 subscribers*. XM Satellite Radio Press Release. January 8, 2003.

²⁴ *Sirius Announces Third Quarter Financial and Operating Results*. Sirius Satellite Radio Press Release. November 14, 2002.

²⁵ http://svartifoss2.fcc.gov/cgi-bin/ws.exe/prod/cdbs/pubacc/prod/sta_list.pl.

²⁶ *M Street Directory*, 2002.

²⁷ See *All Languages, All the Time, and All Over the Suburban Dial*. *New York Times*, July 21, 2001. 21.

²⁸ See *Iranian Anger on AM Dial: Persian station KIRN serves as a forum for immigrants upset by Dec. 16 detentions*. *Los Angeles Times*. December 29, 2002. Part 2; Page 1.

²⁹ *Media Base 2002*. <http://www.mediabase.com/> Note: Airplay defined as at least 50 plays.

³⁰ FCC, George Williams, Keith Brown and Pete Alexander, *Radio Market Structure and Music Diversity* at 17-18 (September 2002).

³¹ *Internet 9: The Media and Entertainment World of Online Consumers*. Arbitron/Edison Media. July, 2002.

news and information. Consumers also rate radio highly in comparison to other mediums. The *Arbitron* study found that consumers (aged 12 and higher) rated only the ubiquitous television as more essential to their lives.³²

It should not be surprising that consumers rely so heavily upon radio for music, news and community information despite the arrival of other information and entertainment outlets (e.g., broadcast, cable and satellite television and, more recently, the Internet and satellite radio). Arguably, radio is perhaps the medium *most* responsive to consumers' changing tastes. Stations spend millions of dollars every year researching consumer preferences and with station revenues linked directly to regularly issued ratings reports, radio acts in the best tradition of the free market, providing consumers with the programming they want, when they want it.

Equally important to radio's strong retention of consumer loyalty, is that radio, even in the twenty-first century, remains first and foremost a local, community-oriented medium. This remains true even after consolidation. Radio stations, regardless of their ownership status, continue to tailor their programming and news to local audiences' preferences and needs. In 2002, for instance, radio aired over 11,000 sporting events targeted to local communities. Local interests also largely determine music selected for airplay. The song "Screaming Infidelities" by Dashboard Confessional, for instance, had hundreds of plays in Dallas, Texas during 2002, but only a handful in Washington, D.C.³³

Perhaps more importantly, radio stations use their strong local connection to improve the communities in which they operate. Through the airing of Public Service Announcements (PSAs), by acting as a forum for discussion of community issues, by raising money to address local (and for that matter national) problems and in countless other ways, radio stations endeavor to serve their communities. The recent successes of the AMBER Plan system, which uses the Emergency Alert System to assist law enforcement in the recovery of abducted children, speaks to the unique role radio plays in serving communities.

Radio broadcasters' community service efforts add up quickly. A 2002 study by the National Association of Broadcasters found that during a single year (2001), local radio contributed \$7 billion dollars worth of public service. This dollar amount represented the value of PSAs contributed by broadcasters as well as monies raised for charities, disaster relief, and needy individuals.³⁴

Clearly, the radio industry has a bright future as it continues to serve local needs and interests. This service will be augmented as the industry rolls-out HD (high-definition) radio™ which will offer listeners CD-quality sound on FM, and FM-quality sound on AM, all for free. Over 40 markets are expected to be broadcasting in the IBOC digital format by the end of 2003³⁵ and broadcasters look forward to harnessing this technology to better serve American consumers.

The "Competition in Radio and Concert Industries Act" Would Not Further the Causes of Diversity or Competition but Could Engender Severe Unintended Consequences

For the many reasons explained above, the National Association of Broadcasters believes that the Congressionally enumerated ownership regulations contained in the Telecommunications Act of 1996 have positively impacted the radio industry's economic health and its ability to better serve local communities. As such, NAB is skeptical that the recently introduced "Competition in Radio and Concert Industries Act"³⁶ would affect any positive change. NAB believes the bill could potentially have several severe unintended consequences.

Several aspects of the bill are duplicative of existing safeguards and would simply create unnecessary work for already burdened regulators. Section 3 of the bill prohibits radio stations, concert promoters, and concert venue operators from engaging in allegedly anticompetitive conduct. The bill instructs the FCC to revoke the license of any radio station that uses its cross-ownership of radio stations, promotion services or venues to discriminate against concert promoters, content providers, or other stations.

These provisions are unnecessary in light of the existing regulatory framework. The Federal Trade Commission and the Department of Justice are already equipped to identify and address anticompetitive conduct. Under current statute, the FTC and DOJ have the authority to remedy anticompetitive behavior through preliminary or permanent injunctive relief. Since passage of the 1996 Act, the DOJ has diligently

³² *Ibid* at 3.

³³ *MediaBase*, 2002.

³⁴ *A National Report on Local Broadcasters' Community Service*, June 2002.

³⁵ *40 Markets to Broadcast HD Radio in Early 2003*. Ibiqity Digital Radio Press Release. January 10, 2003.

reviewed allegations of consumer harm caused by consolidation in the radio industry, often requiring divestiture of stations.³⁶

Section 7 of the bill is also redundant in light of current law. The Section requires the Commission to modify “pay-for-play” or payola regulations. Under the overbroad language, a licensee would be prohibited from garnering consideration, directly or indirectly, from record companies, artists or concert promoters. Moreover, the language could be construed to prohibit broadcasters from accepting advertising from record companies.

NAB believes that the payola laws enacted in 1960 remain effective today and that no Congressional intervention is required. The system of independent promoters is largely of the record companies’ creation and the record companies should be responsible for ending the practice should they feel unfairly burdened by it. Moreover, NAB submits that the radio industry is in compliance with current statute and, if there were indeed violations of the law, evidence of those violations would most certainly have been presented to the FCC or Department of Justice. No such complaints have been made and NAB questions the wisdom of passing duplicative legislation to remedy non-existent problems.

While Sections 3 and 7 of the bill are largely duplicative of current law, other provisions in the bill are more onerous. NAB is strongly opposed to sections of the bill that would impose new ownership regulations. Section 4(b) of the bill directs the FCC to amend its regulations to prohibit any transfer when the applicant would control stations with more than 35 percent of the audience or advertising revenue in a local market. By doing so, the bill could potentially lock into place permanent competitive imbalances. In markets where one entity already commands over 35 percent of audience share (presumably these entities would be grandfathered as the legislation contains no provisions for divestiture), other station owners would be permanently disadvantaged as the bill would prohibit these new competitors from growing their advertising or audience share beyond the newly established 35 percent threshold. As such, the “early consolidator” that is grandfathered in behind the 35 percent cap would retain a permanent in-market advantage.

Already, the FCC’s policy of “flagging” for further scrutiny any proposed radio transactions that would result in a single radio group controlling 50 percent or more of the advertising revenues, or two radio groups accounting for 70 percent or more of the advertising revenues in that market, has contributed to competitive imbalances.³⁷ Section 4(b) of the bill would go well beyond the FCC’s “50/70” test and reproduce this unhappy phenomenon in countless other markets.

Additionally, by requiring the Commission to conduct a hearing on any transfer application that, if granted, would result in the applicant having a national audience reach in excess of 60 percent (Section 4 (a)(1)), the legislation would arbitrarily target a new requirement at one company. Only one company, Clear Channel Communications, is even remotely close to approaching a 60 percent national audience share.

Regardless of the dangerous precedent involved in crafting new regulations aimed at penalizing a single entity, the provision would unfairly burden any company to which the new regulation would apply. By designating for hearing any “application for the grant, transfer, assignment, or renewal of a license” that would result in a company exceeding 60 percent national audience share, the bill would mandate hearings for routine license renewals, for transactions involving the purchase of single stations, and even for the construction of new stations.

³⁶The Antitrust Division of the Department of Justice has actively regulated the radio industry to address competitive concerns. For example, the Antitrust Division forced Sinclair Broadcasting to restructure a transaction to exclude a radio station that raised antitrust concerns; challenged the merger between Jacor and Citicasters, leading to an agreement to divest a station; challenged the proposed acquisition of three stations by American Radio Systems from the Lincoln Group, leading to the divestiture of three stations; challenged the \$4.9 billion acquisition of Infinity Broadcasting by Westinghouse, requiring the divestiture of stations; challenged the proposed acquisition of three stations by Gulfstar Communications, which led the parties to abandon the deal; challenged Chancellor’s acquisition of four stations, resulting in abandonment of the deal and Chancellor terminating a local marketing agreement under which Chancellor had been operating the stations in anticipation of the acquisition; challenged the \$1.6 billion acquisition of American Radio Systems by CBS, requiring CBS to divest seven stations; and challenged the \$2.1 billion acquisition of SFX Broadcasting by Capstar Broadcasting Partners, Inc., requiring Capstar to divest 11 radio stations. 1999 Antitrust Division, United States Department of Justice, Annual Report. This is but a small sampling of the active involvement of the Department of Justice in regulating competitive concerns in the radio industry since the passage of the 1996 Act.

³⁷See NAB’s FCC Comments on MM Docket Nos. 01–317 and 00–244. March 27, 2002. Page 48.

Moreover, setting an arbitrary threshold (such as 60 percent) seems unwise given the dynamic nature of media markets. As new mediums such as satellite radio and online music come to full gestation, regulators will need more latitude, not less, in regulating radio ownership and how radio competes with other media.

NAB also opposes section 5 of the bill, which would require the Commission to review the “advisability of its continuing to utilize privately-controlled audience measurement systems to determine the local markets of radio stations.” In fact, at this time, the FCC does not utilize Arbitron or any privately controlled services to determine markets for purposes of its radio ownership rules. Currently, the Commission relies on overlapping station contours to determine geographic markets, although it has sought comment on the subject as part of its ongoing rulemaking.³⁸

In sum, “The Competition in Radio and Concert Industries Act” imposes a number of new, unneeded and cumbersome regulations upon radio licensees. NAB believes that any problems the bill seeks to remedy are already adequately addressed in current law. Implementation of the bill would unnecessarily burden the FCC with duties it is ill equipped to fulfill, unfairly penalize broadcasters and engender several unintended, severe, and anticompetitive consequences.

Broadcasters Support “The Telecommunications Ownership Diversification Act”

While the NAB must oppose Senator Feingold’s bill, we recognize that radio’s greatest strengths have always been its connection to local community and the diversity of its owners and, therefore, its programming. That is why NAB has commended Chairman McCain for introducing the “Telecommunications Ownership Diversification Act of 2002” (S. 3112). Through use of the tax code, this legislation would foster ownership diversity and encourage minority acquisition of radio as well as other telecommunications outlets. NAB encourages the Committee and Congress to further explore such innovative approaches in the future.

Conclusion

Since the first station went on the air in the 1920s, American radio has been defined by its dedication to localism and community. As technology has offered new competitors, the government has granted radio the flexibility to more effectively compete for advertising dollars. These deregulatory gains, implemented first in 1992 by the Commission and furthered by Congress in 1996, have allowed the industry to flourish financially. Additionally, recent ownership trends involving greater concentration within local markets have acted as a natural incentive towards greater programming diversity.

Clearly, the steps taken by the Commission and Congress have provided radio with the necessary tools to compete with other outlets in the information age. As such, NAB opposes the “Competition in Radio and Concert Industries Act” which would, in many cases, duplicate current law and in other cases engender several severe unintended consequences. NAB urges Congress to retain the prudent ownership regulations instated through the Telecommunications Act of 1996 in order to advance the financial health of the industry, promote diversity on the airwaves, and allow radio to continue providing local communities with the service upon which they have come to rely.

**The Attachments referred to (in this prepared statement) have been retained in Committee files.*

The CHAIRMAN. Thank you very much.
Mr. Henley, welcome.

³⁸In FCC filings in February 2001, March 2002, and January 2003, NAB strongly advised the Commission against changing the way in which it defines radio markets, and particularly advised the Commission not to adopt Arbitron’s market definitions. The current methodology for defining radio markets was in effect in 1996 and was unchanged by Congress when it revised the radio ownership rules. Further, while the widely varied nature of radio stations inevitably means that any market definition will result in some anomalies, the number of perceived anomalies with the FCC’s existing method is quite small and there is no evidence that any alternative would result in fewer. The large amount of out-of-market listening described above also suggests that the current definitions, based on predicted contours, is actually conservative and there may be more competing stations than the current definition recognizes.

**STATEMENT OF DON HENLEY, RECORDING ARTISTS'
COALITION**

Mr. HENLEY. Thank you, sir. I am honored to be here and I thank you and all the other Members of the Committee for letting me speak today on behalf of the Recording Artists' Coalition.

Before I begin my testimony, I feel compelled to speak to a statement that was made a little bit earlier by Senator Brownback. I very much feel it is important that I address some of the comments he made not only in this room, but in a press release from his office that came out this morning. So if I may, I would like to address that and then I will begin my testimony.

Senator Brownback's news release said "It is my understanding that the Future of Music Coalition and Mr. Henley are here today to address how consolidation is preventing artists' access to the airwaves and the public.

Recently the artist community banded together with recording companies in an effort to advance webcasting royalty legislation that ultimately could have driven many small webcasters out of business. It is my understanding that artists supported this bill as a way of forcing an increase in the royalties charged by BMI and ASCAP."

And I would like to state for the record that nothing could be further from the truth. In fact, we pushed for a small webcaster bill from day one when the Copyright Office released its rates. We were on the radio the very next day condoning that and saying that we were all for it.

First of all, the small webcaster bill kept people in the business, and for the very first time, artists were paid a performance royalty for webcasting. We are not traditionally paid. Because of the power of Mr. Fritts' lobby here in Washington, we are not traditionally paid a performance royalty for terrestrial broadcasts. We are the only country in the free world that does not pay an artist a performance royalty when a singer sings on the radio, and we are penalized for that around the world.

So we worked closely with Senator Leahy and Senator Hatch, and we were totally in favor of a viable small webcaster bill for people who have businesses and who pay all their royalties. So I just wanted to clear that up. Thank you for letting me do that.

It is often said that radio airplay determines whether a recording artist will succeed or fail, and even with the ascendancy of the Internet and webcasting, radio airplay is still the most important factor in an artist's career. And this is especially true for new and younger artists. Getting on the radio, in one way or another, is the holy grail of our business. And in a perfect world, merit would determine which records get played on the radio, but this is far from a perfect world.

When I started in this business some 35 years ago, radio, and especially FM radio, offered a wide variety of stations, each presenting an interesting array of musical genres. A listener could tune into a single FM station and hear rock music, rhythm and blues, folk music, soul music, pop music, and everything in between. The breadth of music on the airwaves was varied and exciting, and genres were not compartmentalized and put into little boxes. Listeners were encouraged to explore different styles and to

stretch the boundaries of their tastes. The idea was not to fragment society into what is now called demographics, but rather to bring people together. The benefit to the public and to our culture and to our economy was enormous. Artists could spread their wings and reach audiences never reached before and create self-sustaining careers on an unprecedented scale.

But slowly the radio world and, along with it, the music industry changed. As local and independent radio stations were purchased by larger corporations, radio playlists started to contract and become much more uniform. In an effort to gain more control over the music industry, radio conglomerates started to narrow their playlists and to centralize the radio programming function that had traditionally been done independently by each individual station. Radio consolidation made it increasingly more difficult for an artist to get radio airplay. Radio network programmers became more powerful and demanding. And not only did they erode the vitality of American music, they placed themselves in a singularly powerful position to extract additional concessions from the labels and the artists.

Payola is not new. It has been around for a very long time, going back at least to the 1950s. It has always been here. But today, as a result of this unprecedented consolidation, record labels must now hire independent promoters on an even grander scale to help convince radio networks and stations to play certain records. Millions and millions of dollars are spent annually on what is called "independent radio promotion." The unspoken rule is that some form of special promotional or marketing consideration must be provided by the independent promoters to the radio station. The more consideration, the better chance a record has of being represented by the independent promoter and then getting airplay. So we all accept, with great sadness, the fact that merit plays only a small part in the equation, if it plays any part at all. A recording artist has a much better chance of getting on the radio if the promotional budget for a record is large than if the record is good. And then, adding insult to injury, the promotional fees paid to the independent promoters are recouped either in whole or in part against the artist's royalties. So essentially, the artist is still paying for radio airplay and paying more than ever.

The 1996 Telecommunications Act strengthened the conglomerates' position tenfold when it loosened the restrictions even further. The consideration sought for radio airplay increased because there was less competition among radio stations and networks. The more powerful the radio network, the greater the pressure on artists and labels to spend independent promotion money. These days, many radio stations are now demanding exclusive promotional concerts from certain artists who are on their way up the ladder of success. And this is just another form of payola. When these up and coming artists refuse to do these promotional concerts, there can be negative repercussions, as evidenced in some of the materials that I have provided or will be providing to the Committee staff.

In recent years, the problem has escalated unimaginably because some of the same conglomerates that are buying radio stations at an unprecedented pace have also embarked on a buying spree of

venues, agencies, and concert promotion companies. So, the company determining whether or not a record is played on the air may be the very same company that owns the venue and books the tour.

There was an incident not too long ago involving my manager and one of the other artists that he manages and Clear Channel Entertainment. This artist was asked to do a promotional concert for Clear Channel Entertainment. She had done a couple of these things before. She declined in this instance for a very good reason. She was in the studio trying to finish an album on deadline. The record label was breathing down her neck and she declined to play this promotional concert.

My manager received a phone call from a gentleman named Michael Martin, who is a San Francisco programmer for Clear Channel, requesting this appearance by the artist. Also on the phone was an independent promotion man. My manager was told, after he declined the artist's participation, that Michael Martin programmed all 40 rhythm stations owned by Clear Channel. And to make a long story short, the artist's next single was basically boycotted.

I have an exchange of letters that some of you have seen. Clear Channel, of course, denies this. My manager would be glad to speak to any of you about this incident.

So, this institutionalized conflict of interest places the artist in a vastly uncompetitive and weak position. What happens when an artist refuses to perform in venues that are owned by the radio network or chooses not to go on tour with a promotion company not owned by the same company that owns the radio network? Will the artist's records be played on that network, or will the company reduce or eliminate radio airplay? Most artists cannot afford to find out.

In fact, I come here today at my own peril. There is a very good chance that my records or that records of The Eagles could be reduced in airplay or eliminated altogether. I do not know.

This unprecedented control over the music industry by the conglomerates is hurting the music business and it is hurting the culture. It is preventing talented new artists from emerging and it is generally casting a pall over a business that has already been decimated by peer-to-peer file sharing, a faltering economy and fierce competition from other entertainment industries.

Artists, managers, and record labels are not the only ones speaking out about this. Mr. William Safire, one of the most well-known conservative columnists in the country, has strongly condemned the unbridled consolidation of the radio industry in a recent *New York Times* editorial. Mr. Safire persuasively makes the case that further deregulation will hasten the demise of diversity and competition on the airwaves.

Because of the 1996 Act and subsequent FCC deregulation, the two largest radio chains in 1996 owned 115 stations. Today those two own more than 1,400 stations. The top five radio chains used to generate only 20 percent of industry revenue. Now, they generate 55 percent of all money spent on local radio.

Mr. Mays claims that his company owns a very small percentage of the total stations in the country. Yet he fails to break down their ownership by format. He fails to point out that they are 50 percent

of the pop airplay in the United States of America, which is the crucial “make it or break it” format. They are 50 percent.

The number of station owners has plummeted by a third and, as a result, as Mr. Safire says, “the great cacophony of different sounds and voices on the radio is being amalgamated and homogenized.”

As Mr. Safire also points out, the radio airwaves are loaned by the public to the radio station owners. The radio airwaves cannot be equated with grocery store shelves. The airwaves belong to the public, just as national forests belong to the public, and they are supposed to be used to benefit the public as well as to foster economic growth.

When radio station owners engage in unbridled, unregulated consolidation, clearly the public interest is not served and the industry as a whole stagnates. Deregulation in this regard is not pro-business. It is anticompetitive. And like Teddy Roosevelt before him, Mr. Safire’s conservative economic religion is founded on the rock of competition, and endless consolidation harms competition. Regulation does not always have to be anti-business.

The problem of radio consolidation will only get worse if the FCC is allowed to remove the last limitations on ownership. The Recording Artists’ Coalition not only strongly opposes the proposed FCC action, we strongly advocate for a reexamination of the effect of the 1996 Telecommunications Act, and with that reexamination, propose the implementation of new restrictions on the conglomerates. Artists can no longer stand for the exorbitant radio promotion costs, nor can we tolerate the overt or covert threats posed by companies owning radio stations and venues and agencies. The public interest is only served when the airwaves provide diverse and exciting programming which benefits both our culture and our economy, and this will only be possible when artists are free to compete in an open marketplace, not shackled by anticompetitive practices of the conglomerates.

And in conclusion, I want to say this. What is the definition of liberty and freedom? What is the definition of a free market? Is it being able to own as much as you can own even if it runs counter and contrary to the public interest? Historically, the FCC’s definition of the public interest is threefold: diversity, localism, and competition. And we believe that consolidation is undermining this.

The radio conglomerates have usurped and they have coopted the people’s airwaves. And they get them for free. They build multi-billion dollar empires on the public airwaves for free. You talk about a “takings” issue. To me this is a “taking.”

So, Congress must address these issues as quickly as possible because the future of musical creativity and artistic expression in this Nation depends upon your action. And I thank you again for this opportunity to discuss these important issues.

[The prepared statement of Mr. Henley follows:]

PREPARED STATEMENT OF DON HENLEY, REPRESENTING THE RECORDING ARTISTS’
COALITION

Mr. Chairman and Members of the Committee:

I am honored to be here and I thank you for the opportunity to speak today on behalf of recording artists and the Recording Artists’ Coalition (RAC).

It is often said that radio airplay determines whether a recording artist will succeed or fail. Even with the ascendancy of the Internet, radio airplay is still the most important factor in an artist's career, and this is especially true for new and younger artists. Getting on the radio, in one way or another, is the holy grail of our business. In a perfect world, merit would determine which records get played on radio, but this is far from a perfect world.

When I started in this business, radio, especially FM radio, offered a wide variety of stations, each presenting an interesting array of musical genres. A listener could tune into a single FM station and hear rock music, rhythm and blues music, folk music, soul music, pop music and everything in between. The breadth of music on the airwaves was varied and exciting and genres were not compartmentalized and put into little boxes. Listeners were encouraged to explore different styles and to stretch the boundaries of their tastes. The idea was not to fragment society into what is now called demographics, but rather to bring people together. The benefit to the public, our culture and economy, was enormous. Artists could spread their wings, reach audiences never reached before, and create self-sustaining careers on an unprecedented scale.

But slowly the radio world along with the music industry has changed. As local and independent radio stations were purchased by larger corporations, radio playlists started to contract and become much more uniform. In an effort to gain more control over the music industry, radio conglomerates started to narrow playlists and centralize the radio programming function that had traditionally been done independently by each individual station. Radio consolidation made it increasingly more difficult for an artist to get radio airplay. Radio network programmers became more powerful and demanding. And not only did they erode the vitality of American music, they placed themselves in a singularly powerful position to extract additional concessions from the labels and the artists.

As a result of this unprecedented consolidation, record labels must now hire independent promoters on an even grander scale to help convince radio networks and stations to play certain records. The unspoken rule is that some form of special promotional or marketing consideration must be provided by the independent promoters to the radio station. The more consideration, the better chance a record has of being represented by the independent promoter and getting airplay. So, we all accept with great sadness the fact that merit plays only a small part in the equation, if it plays any part at all. A recording artist has a much better chance of getting radio airplay if the promotional budget for a record is large, than if the record is good. And then adding insult to injury, the promotional fees paid to the independent promoters are recouped either in whole or in part, against the artist's royalties. So essentially, the artist is still paying for radio airplay—and paying more than ever.

The 1996 Telecommunications Act strengthened the conglomerates position tenfold when it loosened the restrictions even further. The consideration sought for radio airplay increased because there was less competition among radio stations and networks—the more powerful the radio network, the greater the pressure on artists and labels to spend independent promotion money. These days, many radio stations are now demanding exclusive promotional concerts from certain artists who are on their way up the ladder of success. When these up and coming artists refuse, there can be negative repercussions as evidenced in some of the materials that I have provided—or will be providing—to Committee staff.

In recent years, the problem has escalated unimaginably because some of the same conglomerates that are buying radio stations at an unprecedented pace have also embarked on a buying spree of venues, agencies, and concert promotion companies. So, the company determining whether or not a record is played on the air may be the same company owning the venue and booking the tour.

This institutionalized conflict of interest places the artist in a vastly uncompetitive and weak position. What happens when an artist refuses to perform in venues that are owned by the radio network, or chooses to go on tour with a promotion company not owned by the same company that owns the radio network? Will the artist's records be played on that network or will the company reduce or eliminate radio airplay? Most artists cannot afford to find out.

This unprecedented control over the music industry by the conglomerates is hurting the music business and the culture. It is preventing talented, new artists from emerging and is generally casting a pall over a business that has already been decimated by peer to peer sharing, a faltering economy and fierce competition from other entertainment industries.

Artists, managers and record labels are not the only ones speaking out. William Safire, one of the most well-known, conservative columnists in the country, has strongly condemned the unbridled consolidation of the radio industry in a recent

New York Times editorial. Mr. Safire persuasively makes the case that further deregulation will hasten the demise of diversity and competition on the airwaves.

Because of the 1996 Act, and subsequent FCC deregulation, the two largest radio chains in 1996 owned 115 stations. Today, those two own more than 1,400. The top five radio chains used to generate only 20 percent of industry revenue; now they generate 55 percent of all money spent on local radio. The number of station owners has plummeted by a third. As a result, "the great cacophony of different sounds and voices on the radio is being amalgamated and homogenized." As Mr. Safire points out, the radio airwaves are loaned by the public to the radio station owners for the benefit of the public, as well as to foster economic growth. When radio station owners engage in unbridled, unregulated consolidation, clearly the public interest is not served, and the industry as a whole stagnates. Deregulation in this regard is not pro-business, it is anti-competitive, and like Teddy Roosevelt before him, Mr. Safire's conservative economic religion is founded on the rock of competition and endless consolidation harms competition. Regulation does not always have to be anti-business.

The problem of radio consolidation will only get worse if the FCC is allowed to remove the last limitations on ownership. The RAC not only strongly opposes the proposed FCC action, we strongly advocate for a reexamination of the effect of the 1996 Telecommunications Act, and with that reexamination, propose the implementation of new restrictions on the conglomerates. Artists can no longer stand for the exorbitant radio promotion costs nor can we tolerate the overt or covert threats posed by companies owning radio stations, venues and agencies. The public interest is only served when the airwaves provide diverse and exciting programming—our culture benefits and the economy is strengthened. This will only be possible when artists are free to compete in an open marketplace, not shackled by the anti-competitive practices of the conglomerates. Congress must address these issues as quickly as possible. The future of musical creativity and artistic expression in this Nation depends upon your action.

I thank you again for this opportunity to discuss these important issues with the Committee.

The CHAIRMAN. Thank you very much, Mr. Henley.
Mr. Short, welcome.

**STATEMENT OF ROBERT SHORT, JR., PRESIDENT, SHORT
BROADCASTING CO., INC.**

Mr. SHORT. Thank you. Good morning, Mr. Chairman McCain and Members of the Committee. My name is Robert Short, Jr., and I am the president of Short Broadcasting Company, Incorporated. I am also a former member of the board of directors of the National Association of Black Owned Broadcasters, Incorporated, NABOB.

I thank you for inviting me to testify this morning. It is a pleasure to have the opportunity to talk about the negative effects on the American public of the excessive consolidation of ownership in the broadcast industry since the passage of the Telecommunications Act of 1996.

Short Broadcasting is a victim of the Telecommunications Act of 1996. Short Broadcasting sold our only broadcast station WRDS, Syracuse, New York in 2000 after a brief five-and-a-half years on the air. We were a stand-alone radio station providing a locally owned and programmed voice for the African-American community of Syracuse. We provided local news and public affairs programming without regard to oversight from any distant corporate parent. WRDS carried news stories that other media ignored. Through the public affairs programs that we offered, we allowed individuals on our station who were not invited to speak on other stations. We hired people with no broadcast experience and we taught them the business.

It was not my desire to sell WRDS when we did. We sold because we were unable to compete with Clear Channel. Clear Channel had and continues to have more than a 50 percent revenue share in the Syracuse market. With its ownership of over 1,200 radio stations nationwide and 7 radio stations in the Syracuse market, Clear Channel was able to exercise market power with advertisers in a manner which rendered us unable to compete. In addition, Citadel, which now has over 200 radio stations across the country, had 4 stations in the Syracuse market, and a 25 percent share of the revenue. The market dominance of Clear Channel and Citadel made it impossible for WRDS to continue to operate in this market.

WRDS went on the air in 1995 with an urban format and became an instant success with the Syracuse urban community. WRDS offered quality urban programming and lifestyle information that had never before been available to the Syracuse urban community. WRDS served the urban community on a daily basis and was the most effective medium to reach the African-American community in Syracuse. For many local business owners, WRDS was the only viable outlet to reach their target demographic at an affordable price. Yet, with all of the community success that we experienced, it was difficult for WRDS to survive.

WRDS was very successful in the Arbitron ratings. We ranked number 1 or 2 with adults 18 to 34 years old in some day-parts, and we usually had the highest time spent listening in the market. Nevertheless, WRDS found it very difficult to convert this audience rating success into advertising revenue and financial success. WRDS was a stand-alone station that was forced to compete against media giants with multiple stations in the Syracuse market.

From the time Clear Channel entered the market in Syracuse, it began the process of squeezing Short Broadcasting out of the market. Among the most egregious acts were the following:

One, in 1996, as soon as Clear Channel came into the market, they converted a country station to a format that competed with WRDS.

Number two, Clear Channel used its national advertising dominance to dominate local advertising in Syracuse.

Three, Clear Channel owns Katz Media, one of only two national rep firms. This allowed Clear Channel to control national advertising in Syracuse.

Number four, Clear Channel offered advertisers sales packages in which, if they purchased the package, they could receive advertising on stations that competed with WRDS at little or no charge.

Today WRDS no longer exists. After nearly five-and-a-half years of being unable to compete from a revenue and operational standpoint, I was forced to sell WRDS to Galaxy Communications. The Syracuse community lost an important source of diversity when WRDS was sold. Now the only urban format in Syracuse is WPHR, which is owned by Clear Channel, and the African-American community in Syracuse is not as well served by this change. Clear Channel, unlike Short Broadcasting, allows disc jockeys to use profanity on the air. Clear Channel, unlike Short Broadcasting, uses on-air positioning statements that contain profanity. Additionally, much of the rap music that airs on Clear Channel's urban and top

40 stations also has profanity in it. These lax standards result in unsuitable programming for children and teens. It is distasteful and degrading to women and self-respecting African-Americans.

The issue now before Congress is this. Minorities were virtually shut out of the ownership in the broadcast industry until 1978 when, with Congressional approval, the FCC adopted a policy to promote minority ownership of broadcast stations. The Telecommunications Act of 1996 in a few short years has eliminated many of the gains of the preceding 18 years. Now one company, Clear Channel, touts itself as the largest programmer to minority audiences. However, it has achieved this position by driving small minority and local broadcasters out of the business, and it has driven these small broadcasters out of the business using questionable tactics, such as the discounted group sales strategy that it used in Syracuse. Congress should not allow one company to dominate the radio industry to the exclusion of the small, minority-owned companies, and it should not allow the American people to have their programming dictated to them by a single company.

I am pleased that Senator Feingold has introduced legislation to slow the continued consolidation in the radio industry. I believe the legislation is long overdue and I hope that it will be enacted so that other small minority broadcasters will not be forced out of the business as I was. The First Amendment guarantees that all Americans should have diversity of viewpoint. We need your help to preserve and guarantee that this right exists for all Americans, not just a select few.

Thank you for giving me this opportunity to appear before you today.

[The prepared statement of Mr. Short follows:]

PREPARED STATEMENT OF ROBERT SHORT, JR., PRESIDENT, SHORT BROADCASTING
CO., INC.

Good Morning Chairman McCain and Members of the Committee. My name is Robert Short, Jr., and I am the President of Short Broadcasting Co., Inc. I am also a former member of the Board of Directors of the National Association of Black Owned Broadcasters, Inc. (NABOB). I thank you for inviting me to testify this morning. It is a pleasure to have the opportunity to talk about the negative effects upon the American public resulting from the excessive consolidation of ownership in the broadcast industry since the passage of the Telecommunications Act of 1996.

1. Summary

Short Broadcasting sold our only broadcast station, WRDS, Syracuse, New York, in 2000, after a brief five-and-a-half-years on the air. WRDS is a victim of the Telecommunications Act of 1996. We were a stand-alone radio station providing a locally owned and programmed voice for the African-American community of Syracuse. We provided local news and public affairs programming without regard to oversight from any distant corporate parent. WRDS carried news stories that other media ignored. We allowed individuals on our station in our public affairs programming who were not invited to speak on other stations. We hired people with no broadcast experience and taught them the business.

I understand that the Committee is considering whether consolidation under the Telecommunications Act has resulted in excess concentration of ownership in the broadcast industry. I also understand the FCC is considering how it can demonstrate to the courts through evidence to be developed by economists and lawyers whether there is a need to have any rules limiting broadcast ownership. I know that NABOB has addressed these issues in its Comments in the FCC's rulemaking proceeding examining its ownership rules. NABOB identified several research studies that demonstrated that minority ownership of broadcast stations promotes diversity of viewpoints.

What I would like to do today is give you a specific example of the diversity of viewpoint provided by my station, WRDS in Syracuse, New York, and the market forces that forced us to sell. It was not my desire to sell WRDS when we did. We sold because we were unable to compete with Clear Channel. Clear Channel had, and continues to have, more than a fifty percent revenue share in the Syracuse market. With its ownership of over 1,200 radio stations nationwide, and seven radio stations in the Syracuse market, Clear Channel was able to exercise market power with advertisers in a manner with which we were unable to compete. In addition, Citadel, which has over 200 radio stations across the country, had four stations in the market and a twenty five percent revenue share. The market dominance of Clear Channel and Citadel made it impossible for WRDS to continue to operate in the market.

I believe the story of WRDS demonstrates clearly that Congress should limit any further consolidation in the radio industry, and should reverse some of the excesses that have been created by the Telecommunications Act of 1996. The story of WRDS shows that one of the principal reasons Congress should prevent any further consolidation in the radio industry is because the ills of consolidation cannot be measured by economists and lawyers. No one retains records of which news stories stations cover. No one retains records of who is invited to speak on the public affairs programs of radio stations. However, from the letters, phone calls, and in-person expressions of thanks and congratulations we received during our time on the air, I know that we were able to provide a voice in Syracuse that had not been provided before our arrival, and has not been provided since our sale.

2. Background

Short Broadcasting was formed in May of 1988, when I filed an application at the Federal Communications Commission (FCC) for a construction permit to build an FM radio station licensed to Phoenix, New York, which is part of the greater Syracuse metropolitan area. I was one of seven original applicants to compete for the new station. I was required to participate before the FCC in a costly and time-consuming comparative hearing. In November 1993, the FCC ruled that I was the winning applicant for the new FM channel. In May 1995, I completed the construction of the new station and was granted the call sign WRDS.

WRDS-FM was locally owned and operated, and was the first African-American owned radio station in Syracuse history. When WRDS debuted, it was one of only three African-American owned commercial FM radio stations in the State of New York. The other two African-American owned commercial FM stations in New York State at that time were WBLS in New York City and WDKX in Rochester.

3. The Format

WRDS had an urban format and became an instant success with the Syracuse urban community. WRDS offered quality urban programming and lifestyle information that had never before been available to the Syracuse urban community. WRDS provided local entertainment programming daily with a local live air staff, consisting of six air personalities. Our local air personalities reported local news, traffic and weather every half hour during morning drive-time, and we provided local traffic and weather during afternoon drive-time.

We provided public affairs programming throughout the broadcast day. Our air personalities would discuss issues of importance to the local community as those issues arose during our regular programming. These public affairs discussions would range from discussions of current news stories to solicitation of funds for community organizations. These impromptu discussions of public affairs were in addition to the broadcast of programs specifically devoted to public affairs, which we also did.

In addition, WRDS connected African-Americans in Syracuse to African-Americans nationally by providing nationally syndicated shows such as *The Tom Joyner Morning Show*, *The Doug Banks Show*, *On The Air With Russ Parr*, and was an affiliate of *ABC Radio Networks*, *the American Urban Radio Network*, and *Superadio Network*.

I was the general manager and program director for WRDS. I exercised ultimate control over all programming and music. We did not play songs that were overly controversial or had explicit lyrics. In many cases, we refused to play songs that were hits across other parts of the Nation, solely because we strongly believed the songs would be considered offensive by the majority of our audience.

4. The Benefits of Diversity

WRDS brought diversity to the Syracuse airwaves. WRDS served the urban community on a daily basis, and was the most effective medium available to reach African-Americans in Syracuse. Public service announcements were being aired on

WRDS that no other radio or television station carried. For many local business owners WRDS was the only viable outlet to reach their target demographic at an affordable price.

With the exception of the years that I was in college, I have lived in Syracuse, New York since 1968. I used my long-standing residency to build a strong working relationship between WRDS and the Syracuse community.

WRDS specialized in providing programming designed specifically for the Syracuse urban community. News stories that were unreported or considered minor stories by other mainstream media outlets were often the lead story on the WRDS morning news. WRDS preempted regularly scheduled programming to cover issues of local concern on a frequent basis.

It was common practice for WRDS to interview African-American elected officials, as well as those who were running for office, during our drive time programs, regardless of whether it was during an election period. When problems such as gun violence or bomb threats became commonplace in the inner city schools and neighborhoods, I would personally give editorials or put professional counselors on the air to address these issues and offer strategies and solutions to these types of problems.

WRDS was a business partner with the Syracuse City School District. WRDS frequently publicized issues and activities regarding the public schools. WRDS sponsored numerous Syracuse City School field trips and provided tours of the radio station for elementary students. WRDS offered teenagers and young adults the opportunity to shadow our staff so that they could learn first hand about the job duties and responsibilities of a radio broadcaster. WRDS sponsored many other youth oriented events such as a citywide Halloween Party at the Carousel Center, Syracuse's largest mall. I was invited to speak at most of the Syracuse public high schools, as well as at middle schools and elementary schools. At Solace Elementary School, I was asked to speak numerous times, including at graduation.

WRDS sponsored an on-air promotion that sent approximately five hundred youth to see an NBA exhibition basketball game between the New York Knicks and the Cleveland Cavaliers at the Carrier Dome. WRDS also sent an estimated one thousand young children and their parents to an ice hockey game with the Syracuse Crunch, a minor league professional hockey team. After the game, all of the children were invited to skate on the ice with the Syracuse Crunch players and given a souvenir.

WRDS promoted on-air and sponsored family and unity days at a county park, along with numerous plays, concerts, dance recitals, and comedy shows. WRDS co-sponsored events hosted by civic organizations, such as the NAACP and the Urban League. In 1999, I was the keynote speaker for the Utica, New York NAACP Annual Awards Banquet.

For three years, I represented WRDS by serving on the board of directors for the Urban League of Onondaga County. WRDS worked closely with the Urban League and the NAACP to discuss on-air events such as voter registration drives, and attempts to find missing persons, such as in the case of April Gregory, a young woman who was missing for a year before being found dead. While I served on the board of directors for the Urban League, WRDS also co-sponsored an urban job fair that led to African-Americans being hired at area companies. WRDS also teamed up with the Urban League to sponsor a family picnic at Kirk Park, which is in the heart of the inner city of Syracuse.

WRDS promoted on-air and sponsored several health fairs in conjunction with the Syracuse Community Health Center and the Veterans Administration Hospital. At the health fairs, WRDS worked with corporate partners to provide free immunizations to low-income individuals and free bicycle helmets for children under sixteen to increase safety during the summer months. WRDS assisted individuals being tested for diabetes, high blood pressure, and gave out information about ways to prevent the spread of HIV and AIDS.

WRDS air personalities regularly promoted on-air and served as masters and mistresses of ceremonies for events such as the Urban League's Harriet Tubman Awards Dinner and nearly every major urban concert or gospel play that came to Syracuse. When, Dr. Jennifer Daniels, an African-American and native Syracusan, had her medical license suspended by the State of New York, WRDS brought the issue before the entire urban community, hosted rallies, and spoke on her behalf. WRDS took the position that Dr. Daniels was the only doctor with a private medical practice in the heart of the inner city, and argued that the State's decision to revoke her license to practice medicine was unjust, given that all charges stemmed from her prescribed treatment to just one patient. We pointed out that she had many inner city patients, all of whom were satisfied with her services. WRDS assisted Dr. Daniels with her appeal that went before Governor George Pataki.

While operating WRDS, I also served on the board of directors for the Inner City Little League. WRDS solicited funds on-air and donated money to the Inner City Little League in order to allow the teams to purchase uniforms and equipment, provide insurance for the players and assist with covering the cost to have league umpires. We did this because many of the youngsters came from families that were unable to pay the required league fees.

We assisted the Inner City Baseball League with letter writing and visits to the Syracuse Commissioner of Parks and Recreation, city counsel members, and ultimately the mayor, in order to get an outfield fence and portable toilets installed at Homer Wheaton Park, the home field for Inner City Little League. I also coached a team in the Inner City League for three years. WRDS has also sponsored the Biddy Basketball League at the Syracuse Boys and Girls Club. Each year WRDS purchased uniforms or trophies for each player. WRDS would also broadcast live from the Syracuse Boys and Girls Club and give away promotional items to the children. WRDS used this opportunity to allow its disc jockeys to talk to the children about the importance of abstinence from drugs, sex and violence. We also encouraged the children at the Syracuse Boys and Girls Club not to drop out of school.

On several occasions, I was invited to speak to students at the Syracuse University Newhouse School of Communications about what will be expected of them upon graduation and their entrance into the broadcast industry. I also spoke at Le Moyne College, of Syracuse, at an Upward Bound Program about how to prepare yourself for college and success.

WRDS also co-promoted on-air Black College Fairs with local African-American sororities. WRDS assisted fraternities such as Kappa Alpha Psi and Omega Psi Phi with scholarship fundraisers. WRDS co-sponsored organizations such as Fire Fighters of Color United in Syracuse with scholarship drives.

5. The Disadvantages Created by Consolidation

Yet, with all of the community success that we experienced, it was difficult for WRDS to survive. Because of all of our hard work to serve the community and develop a connection with the community, WRDS was very successful in the Arbitron ratings. Initially, we usually received approximately about a 3.5 to 4.0 audience share, which would rank us approximately 10th out of the 19 stations Arbitron listed in the market. In our last year of operation, we managed to obtain a 5.1 share. In addition, we ranked number 1 or 2 with adults 18–34 years old in some day-parts, and we usually had the highest time-spent-listening in the market. Nevertheless, WRDS found it very difficult to convert this audience rating success into advertising revenue and financial success.

WRDS was a stand-alone station that was forced to compete against media giants with multiple stations in the Syracuse market. Clear Channel Communications is one of the giants that competed directly against WRDS. Clear Channel had two stations in the Syracuse market that competed for the WRDS audience. These stations were, WWHT, a top forty pop/rhythmic channel that played many of today's young urban artists, and WHCD, now WPHR, which was an urban/smooth jazz station. WHCD played many of the adult urban artists with a blend of contemporary jazz.

As a stand-alone operator, WRDS was always at a huge disadvantage. WRDS could only offer advertisers one audience, and even then, it was fragmented by age groups. WRDS was day-parted to reach different age groups during specific times of the day. This was done in order to serve the entire urban community. In the mornings and middays, WRDS targeted adults, and during the afternoons and evenings, it targeted young adults and teenagers.

WRDS's group owner competitors, particularly Clear Channel, Citadel, and Radio Corporation (now Galaxy), were able to deliver a specific age demographic all of the time by targeting a station to each of their desired target audiences, which was often the same age group as that targeted by WRDS. This allowed WRDS's competition the opportunity to combine the ratings from each of their stations, and then show advertisers how many more listeners they attracted than WRDS.

It is reported that Clear Channel captured more than fifty percent of all radio advertising dollars in Syracuse, and that Citadel brought in at least twenty-five percent. Radio Corporation captured an estimated thirteen percent of the radio ad revenue. Buckley Broadcasting took in an estimated nine percent of the market. This left only a very small amount of ad revenue for the remaining broadcasters, including Short Broadcasting, Salt City (also African-American owned), Crawford Broadcasting, and CRAM Broadcasting.

6. Lack of Access to Station Representation Firms

Radio stations receive their advertising revenue from national, regional and local advertisers. In order to reach national and regional advertisers, radio stations hire

station representation firms, which have offices in the major advertising markets around the country, such as New York City, Los Angeles and Chicago. The rep firms act as the sales agent for the stations in these distant cities to obtain advertising from advertising agencies and national advertisers with offices in these cities. Without a national rep firm, it is virtually impossible for a radio station in Syracuse, or any market, to obtain national advertising.

As a stand-alone operator in Syracuse, it was impossible for WRDS to obtain representation from a national rep firm. There are only two major national rep firms, Interep and Katz. Katz is owned by Clear Channel and, not surprisingly, treats representation of Clear Channel owned stations as its primary business. While Katz represents other non-Clear Channel owned stations, many broadcasters question whether Katz's other clients receive representation equal to that provided to the Clear Channel owned stations. However, this was never a direct problem for WRDS, because, as a standalone station, WRDS was rejected by both Katz and Interep in favor of representation of stations owned by group owners, Clear Channel and Citadel. Interep and Katz would enter into non-compete agreements, preventing them from also representing independents such as Short Broadcasting.

7. Advertising Woes and Promotional Gimmicks

As noted above, usually the larger fortune five hundred companies spend most of their advertising budgets working through national advertising agencies and national rep firms, such as Interep or Katz, to place their buys. With such a system in place, the small independent broadcaster rarely gets significant national ad revenue. Unfortunately, WRDS faced this same problem at both the national and local levels. Locally, most of the ad agencies took an approach similar to that taken by the national ad agencies. The local ad agencies regularly placed ads for the biggest local advertisers on Clear Channel and Citadel stations because they offered a large package of stations.

My sales staff heard that Clear Channel would offer sales packages to advertisers that priced their urban radio station far below what WRDS was charging for advertising. It appears to me that such a practice should be prohibited by the antitrust laws. Unfortunately, Short Broadcasting was not in a financial position to take on Clear Channel, so we were never able to follow-up on these reports. Instead, we attempted to survive on small advertisers. Rarely, did WRDS receive advertising from the large local ad agencies.

In addition to the difficulties that WRDS experienced attracting major national and local advertisers, it was faced with the challenge of offering competitive on air promotions. Clear Channel and the other large broadcasting companies offered listeners chances to win large sums of money. In some cases, the prize advertised in the Syracuse market was up to \$1,000,000. These types of contests are deceptive and often misleading. Generally, big prize contests are tied into a national promotional campaign, with many listeners believing that the contest is local. These tactics often influence listeners and the ratings, because a contestant must listen to the station with the big prize for the clues and the signal in order to win. This hurts independently owned and operated stations such as WRDS, which cannot offer similar big prizes.

8. Denial of Access to Capital

As the owner of WRDS, I experienced many difficulties attracting capital from local and national banks, venture capital firms and private investors. It was very difficult to attract capital from these sources, because operating a stand-alone station was a high-risk investment. Most investors wanted to invest in broadcast companies that owned a significant share of both market revenue and audience. This prevented WRDS from being able to expand like its competition.

9. Joint Sales Agreements

Many of the services that we wanted to add, such as a local talk show, expanded news coverage, etc., could not be added because the capital was not available to do so. At one point, Short Broadcasting entered into Joint Sales Agreements with Salt City Communications and Radio Corporation in an effort to counter the stranglehold Clear Channel and Citadel held on the market. Under both Joint Sales Agreements, WRDS maintained control over its programming, but allowed Salt City Communications and Radio Corporation to sell WRDS's commercial time rate and agreed upon commission rate.

Arbitron requires each station in a Joint Sales Agreement to subscribe to its service if at least one station is an Arbitron subscriber. Because Radio Corporation was a subscriber, WRDS was required to subscribe to Arbitron. This created an additional annual expense of \$55,000 for a period of two years. The net impact of this added expense exceeded the total volume of sales brought in by Radio Corporation

and Salt City combined. This set WRDS further back financially than it was when it entered into the Joint Sales Agreements.

Because of the lack of success of the Joint Sales Agreements, Short Broadcasting was not able to pay Arbitron. Arbitron threatened to force the sale of WRDS if necessary, to recover the money owed to them. WRDS was forced to borrow money from Radio Corporation in order to pay Arbitron. This created a problem with the structure of the Joint Sales Agreement between Short Broadcasting and Radio Corporation. Consequently, because of the debt owed to Radio Corporation, WRDS was forced to let Radio Corporation keep all revenue it generated from the sale of airtime on WRDS until the loan we took out with Radio Corporation to pay off Arbitron was fully repaid. This meant many months passed during which WRDS received no commission from any sales made by Radio Corporation for WRDS. This strategy proved to be a major setback for WRDS and eventually led to the termination of the Joint Sales Agreements.

10. No Room for Stand-Alones to Make any Mistakes

I learned at this point that the greatest reality facing the small independent stand-alone operator is that mistakes can result in having to get out of the business. If the stand-alone operator loses a substantial sum in any given year, that company may be forced to sell the station to avoid experiencing bankruptcy both on the business and personal side. This is especially so if the stand-alone operator does not have a line of credit or access to capital. On the other hand, major companies who are publicly traded are able to absorb tremendous losses and slowdowns in the economy and remain in business. When this happens, there is very little that the stand-alone operator can do to recover.

11. WRDS is Gone

Today, WRDS no longer exists. After nearly five and a half years of being unable to compete from a revenue and operational standpoint, I was forced to sell WRDS to Radio Corporation, now renamed Galaxy Communications. Interestingly, Galaxy, a company that owned six stations in the Syracuse market, felt it needed to purchase WRDS in order for it to compete against Clear Channel and Citadel.

Since purchasing WRDS, Galaxy has changed its call letters to WZUN and has changed its format three times in an unsuccessful effort to capture a sizeable audience. In fact, the WZUN ratings are now among the lowest in the market, significantly lower than when it was WRDS. Now, Galaxy has nine stations in the Syracuse market, none of which caters to the urban community. In addition, none of the four stations owned by Citadel cater to the urban community, and Buckley Broadcasting has two stations in this market and neither of its stations caters to the urban community.

Clear Channel Communications has seven stations in the Syracuse market, one of which, WPHR, has an urban format. With Clear Channel's recent purchase of a television station in Syracuse, the FCC has ruled that Clear Channel has exceeded the ownership limits in the Syracuse market and must divest either one of its radio stations or its Syracuse television station. If Clear Channel divests WPHR, there is a possibility that the new owner would change its format and leave the Syracuse community without an urban station, once again.

12. Short Broadcasting Co., Inc. vs. Clear Channel Communications

When WRDS was African-American owned and urban formatted, it better served the Syracuse community than Clear Channel is currently doing with WPHR. WRDS was much more than a station that simply played hit music. Clear Channel, unlike Short Broadcasting, allows its disc jockey to use profanity on the air. Clear Channel, unlike Short Broadcasting uses on air positioning statements that contain profanity. Additionally, much of the rap music that airs on Clear Channel's urban and top forty stations has profanity in it. These lax standards result in unsuitable programming for children and teens. It is distasteful and degrading to women and self-respecting African-Americans.

In addition, radio in Syracuse is quickly becoming a high tech jukebox with piped in syndicated programs that displace local broadcast professionals. Many of these stations appear to be heavily cluttered with frequent and lengthy clusters of commercials. I believe these factors are being driven by more stringent demands from corporate management and stockholders to generate higher profits and possibly due to heavy debt service obligations with the banks and investors. Certainly, the public at large is not the beneficiary of canned music programming combined with a bombardment of commercials. The broadcasters desire to cut costs and increase profit margin is coming greatly at the public's expense.

13. Conclusion

The Telecommunications Act of 1996 was a terrible change in the law that has resulted in taking the control of the airwaves out of the hands of local residents, and placing control into the hands of a few national media giants. Short Broadcasting, and many other minority owned companies have attempted over the years to serve the minority community. NABOB cited the FCC's own study which concluded that there is "empirical evidence of a link between race or ethnicity of broadcast station owners and contribution to diversity of news and public affairs programming across the broadcast spectrum." The study focused on news and public affairs programming, rather than entertainment programming, because it is news and public affairs programming which is most important to promotion of the Commission's diversity goals. The study provided empirical evidence that minority owned stations: (1) tailored their coverage of national news stories to address minority concerns, (2) covered major news stories their competitors did not cover. Minority owned stations pay special attention in public affairs programming to events or issues of greater concern to ethnic or racial minority audiences. Minority owned stations place greater effort into live coverage of government meetings, and into coverage of issues concerning women, particularly health issues, and to broadcasts in languages other than English. Minority owned stations staff their public affairs programming with minority employees, and use call-in formats, which enhance audience participation. Minority owned stations participate in minority-related events in their communities.

Approximately 11 percent of Americans report that radio is their primary source for news. This is about 24 million Americans. The primary source of news for 24 million Americans should not be in the hands of a small group of companies. Diversity in ownership will bring more local programming back to the airwaves. Diversity of ownership will create healthy business competition among broadcasters that will benefit the public at large.

The Telecommunications Act of 1996 caused nearly half of the country's 12,000 radio stations to change hands by the end of 1998 and led to many African-Americans and other minorities being forced out of the broadcasting industry. Aside from the current loss of service to the public this loss of African-American owners reflects, it also has negative implications for the future of minorities in new technologies. The companies that are leading the way in new technologies are primarily the companies currently in technology businesses. The loss of minority owned companies in the current technologies means that these companies will not be in place to lead the way into the new technologies.

The facts are clear and indisputable. The majority of all radio audiences receive programming provided by a handful of companies. In addition, the majority of all radio ad revenue is controlled by a few companies. Greed, control and power, have landed in the hands of a select few broadcasters at the expense of the American public.

The issue now before the Congress is this. Minorities were virtually shut out of ownership of the broadcast industry until 1978, when, with Congressional approval, the FCC adopted a policy to promote minority ownership of broadcast stations. The Telecommunications Act of 1996, in a few short years, has eliminated many of the gains of the preceding eighteen years. Now, one company, Clear Channel, touts itself as the largest programmer to minority audiences. However, it has done this by driving small, minority and local broadcasters out of the industry. And, it has driven these small broadcasters out of the business using questionable tactics, such as the discounted group sales strategies it used in Syracuse. Congress should not allow one company to dominate the radio industry to the exclusion of small, minority owned companies, and it should not allow the American people to have their programming dictated to them by a single company.

I am pleased to see that Senator Feingold has introduced legislation to slow the continued consolidation in the radio industry. I believe the legislation is long overdue, and I hope that it will be enacted so that other small and minority broadcasters will not be forced out of the business as I was. The First Amendment guarantees all Americans diversity of viewpoint. We need your help to preserve and guarantee that this right exists for all Americans, not just a select few.

Thank you for the opportunity to appear before you today.

The CHAIRMAN. Thank you very much, Mr. Short.
Ms. Toomey, welcome.

**STATEMENT OF JENNY TOOMEY, EXECUTIVE DIRECTOR,
FUTURE OF MUSIC COALITION**

Ms. TOOMEY. Thank you very much.

I, too, must respectfully disagree with Senator Brownback. There are at least three documents on the Future of Music website that are current with the webcasting conflict which explain clearly that we are granted licenses which would protect the rights of small webcasters. And one of our board members is also an active webcaster. So we would not do what Senator Brownback alleges.

Good morning. On behalf of the Future of Music Coalition, I want to thank you for the honor of testifying today. This hearing is much needed and we applaud you for holding it.

My name is Jenny Toomey. I am a rocker, a businesswoman, and an activist. I speak to you today as a working artist and the Executive Director of the Future of Music Coalition, which is a nonprofit think tank that pursues initiatives to benefit citizens and musicians.

Most working musicians are not superstars. Rather, they are independent and local. For the past 3 years, FMC has worked with musicians and citizens groups on issues from webcasting to health care, but one issue unites our entire constituency and that is access to commercial radio.

Given these concerns, last February we began an 8-month research project to examine the problem. In the study we asked the basic questions. How has ownership of commercial radio changed and does the radio still serve the essential regulatory principles of localism, competition, and diversity?

The radio study is over 150 pages, and we have entered it in the record today and filed it as public comment with the FCC. And it is available on our website at www.futureofmusic.org for all to see. The lead authors of the study, Kristin Thomson and Peter DiCola, are here to clarify any questions you might have. And I cannot summarize this in 5 minutes, so I am going to confine my comments to three themes that must alter the focus of future debate on radio concentration.

First, the broadcast industry defends the radical restructuring of the radio by pointing at the other entertainment industries and saying, "hey, we are not as bad as those guys." But they are not those guys. Radio is not private property. It is a public resource regulated by the government on behalf of citizens. For decades it was based on a model of local ownership. In 1996, the national cap was 40 stations per conglomerate. So it is distressing that in only 6 years, Clear Channel owns 1,240 and five other groups each own over 100 stations. At the same time, we have also lost 1,700 radio station owners since 1996.

But the more distressing numbers are those of local concentration. In New York City, 79 percent of revenue is controlled by four companies. In Washington, D.C., 79 percent. In New Orleans, 90 percent. In Austin, 92 percent. In virtually every local market of the country, four companies or fewer control 70 percent of the market. In many cases these owners are not locally based. This means we have less competition since deregulation, not more.

Second, the broadcast industry claims that deregulation has brought us more formats and thus more diversity. But formats are

a poor measure of diversity. Measuring music diversity by counting the number of radio formats is like measuring the variety of food in your pantry by counting the number of cans without looking at what is inside them.

We found substantial overlap between supposedly distinct formats. In the most extreme case, in the week of August 2, 2002, the national charts for two distinct formats overlapped at a 76 percent level, which means that 38 of the 50 songs on both formats were the same.

Third, the broadcast industry claims that fewer owners in a market leads to more diversity. They say that radio companies will avoid competing against themselves in a single format.

On the surface, this makes sense. Why would a company that owns seven stations in a market want to compete with themselves? But this misses the fundamental logic of the value of a station group. The primary goals of a radio group are: one, to attract the largest number of listeners in the most attractive demographics; and two, to ensure that if a listener changes the station, they will change to another station owned by the parent company.

The economic incentive is not to provide diversity of programming. Rather, radio companies seek to assemble overlapping and economically lucrative audiences that will generate the most revenue. On the expense side, the incentive for radio companies is to centralize operations using more syndicated programming and apply new technologies like voice tracking to cut costs.

For example, in Denver, Colorado, Clear Channel owns seven stations. Instead of offering blues, classical, jazz, folk, bluegrass, zydeco, or other formats, this is what they program: talk, news/talk, rock, classic rock, modern rock, contemporary hit radio, and adult alternative.

We know that radio companies spend enormous resources to draw the largest possible audience in preferred demographics. But is that really how we define the public interest?

We have heard concern about radio consolidation expressed by musicians, unions, record labels, consumer and religious groups, small broadcasters, industry employees, and elected officials. There has been concern about the loss of local voices, concern that stations are burying public service announcements in off hours, allegations of pay-for-play, concern about increased advertising time, concern that public officials have fewer outlets to reach citizens, allegations that talk shows will not allow questions from callers who sound old because it alienates young listeners, concern that community-based low power radio licenses were scaled back because of a powerful broadcast lobby, and concern that musicians who publicly criticize the industry might be blackballed.

But the burden of proof should fall on the broadcast industry who pushed for these changes and now they must explain how these changes serve localism, competition, and diversity.

I want to thank Chairman McCain and the Committee. Mr. Chairman, we can do better. I hope today's hearing inspires citizens around the country to contact Members of this Committee and explain that our communities need access to the radio. There are hundreds of thousands of musicians in this country, and while they may not all have a hit record in them, each of them has a vote.

And while they disagree about many things, they agree that something is tragically wrong with what has happened to radio and they agree it has to change.

Thank you again for inviting me to testify today. I look forward to answering your questions.

[The prepared statements of Ms. Toomey and Mr. Lee follow:]

PREPARED STATEMENT OF JENNY TOOMEY, EXECUTIVE DIRECTOR, FUTURE OF MUSIC COALITION

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 in 1996 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.

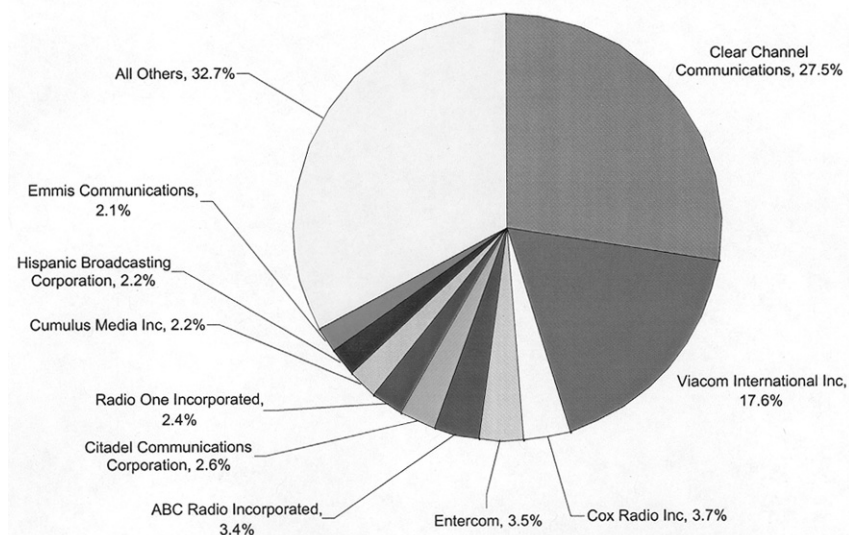
The Results of the Telecommunications Act

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



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

You can see from the revenue pie chart 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:

Top 10 Parents, Listeners and Listener Share, Winter 2002

Listener rank	Parent company	Arbitron listeners (in millions)	Nationwide share of listeners (in percent)
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 Brdstg.	8.7	2.3
10	Cumulus	7.2	1.9

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.

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

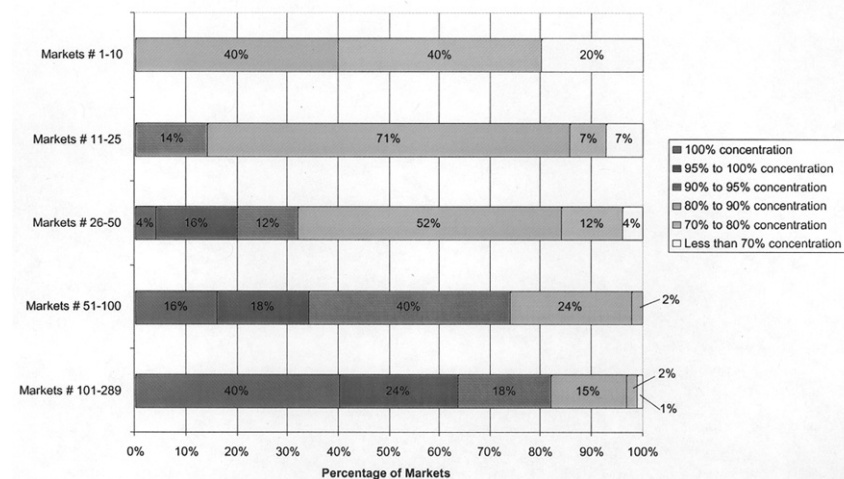
of Clear Channel stations. With over 100 million listeners, Clear Channel reaches over one-third of the U.S. population. These two firms tower over the radio industry, and even over the other consolidators. Both own businesses in other media and advertising-based industries, such as network television, cable television, concert venues, and billboards.

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 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. Twenty-four percent of the markets have four companies controlling 95 to 100 percent. Eighteen percent of the markets have four companies controlling 90 to 95 percent. Fifteen percent of the markets have four companies controlling 80 to 90 percent, and so on. Clearly consolidation is most extensive in the smallest markets.

Chart 3-5: Concentration by Market Size Category



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.¹

¹ 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*

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 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 *reduced* 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 2002.² 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.³

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.

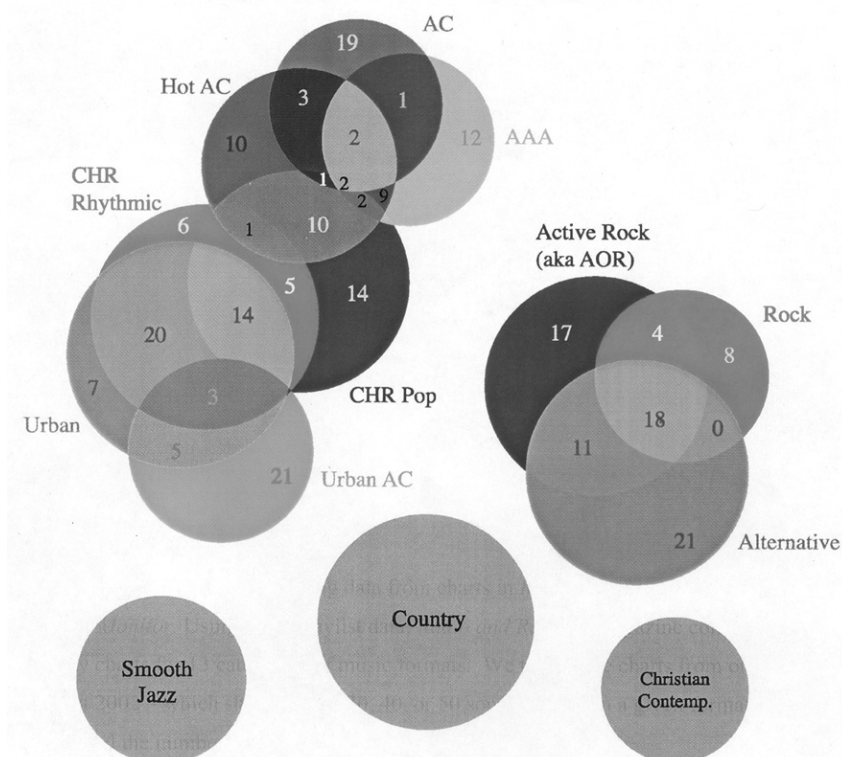
We tested this theory by analyzing data from charts in *Radio and Records* and Billboard's *Airplay Monitor*. Using radio playlist data, *Radio and Records* magazine computes weekly charts for 13 categories of music formats. We took these charts from one week in August 2002—which show the top 30, 40,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

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.

²Source data: Media Access Pro, BIA Financial Networks, data as of May 16, 2002.

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

Diagram 4-1: Overlap of the 13 Radio and Records Formats



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. Thirty-eight 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, every format is controlled by four companies with a 50 percent market share or greater.

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 (in percent)
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

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

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.⁴ 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 noncommercial means. Thanks in great deal to the efforts of Chairman McCain, roughly 1,000 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.

PREPARED STATEMENT OF THOMAS F. LEE, PRESIDENT, AMERICAN FEDERATION OF MUSICIANS OF THE UNITED STATES AND CANADA

On behalf of over 110,000 members of the American Federation of Musicians of the United States and Canada, I would like to thank Chairman McCain and the Committee for focusing on the issues that have arisen out of the increasing consolidation of radio ownership in this country. This hearing is an important milestone for musicians, artists, consumers and citizens who are adversely affected by consolidation in radio ownership. I also would like to thank Senator Russ Feingold (and his original co-sponsor, Senator Zell Miller) for introducing the Competition in Radio

⁴“12+ Radio Listening At 27-Year Low” *Radio and Records* website, September 4, 2002.

and Concert Industries Act in the 107th Congress, and reintroducing it in the 108th Congress. The AFM believes that enactment of Senator Feingold's legislation will help to ameliorate the problems our members have seen and experienced.

The American Federation of Musicians is an international labor organization composed of over 250 affiliated local unions across the United States and Canada. It represents professional musicians across the full spectrum of industries and genres. AFM members perform live musical engagements in every size and type of venue and consisting of every kind of music, from classical to hip-hop, from major symphony orchestra concerts to Broadway and traveling theater to local lounges and bars—and everything in-between. Our members also record music for the recording, motion picture, television, radio and jingles industries. Our members include successful celebrities, struggling young artists, and performers at every economic level. And, of course, our members also are residents of their local communities—and music consumers who buy tickets, attend concerts and listen to the radio.

Senator Feingold has said that when he introduced his legislation last summer, he saw a groundswell of interest among artists, consumers and local promoters. From my vantage point as the International President of the AFM, I can affirm the existence of tremendous grassroots concerns about radio, as well as support for radio reform. I hear these concerns when I talk to local union leaders and AFM members across the country. The unfortunate fact is that radio deregulation has not fostered innovation, competition or programming diversity. Instead, it has reduced the number of radio station owners across the Nation and in each geographical market. And, it has enabled those stations to flood the airwaves with the same few "hit" songs that are well-funded and heavily marketed. What gets left off the airwaves is everything else—music that is varied, innovative, independent, less well-funded or local. There is almost no place left on the radio dial for jazz musicians, symphony orchestra musicians, local acts, and the wide range of diverse music that falls outside the "boxes" established by centralized playlists. This hurts our members artistically and economically—and it also hurts the American public by depriving it of rich and varied musical offerings. The development of new forms of de facto payola systems raises the financial bar to radio airplay so high that even established artists suffer economically and many new artists have little hope of ever reaching a radio audience. Again, both creators and "consumers" of music suffer as a result.

Our members also are harmed by the fact that large radio ownership groups have the ability to lock up huge portions of the live music business when they also own concert promoters and live performance venues. AFM members have experienced a variety of horror stories across the country—including bands that are pressured to play only in venues or to hire only promoters that are connected with the radio station group from which they hope to get, and desperately need, airplay, and local musicians who see higher theater ticket prices and diminished competition (and thus diminished live theater performance work) when the same entity has ownership stakes in the theaters in town, the shows that will come to town, and the radio stations whose promotion is necessary for a successful run.

It is extremely difficult for individual musicians in need of radio audiences to speak out on these issues. But their organizations—including their labor unions, the AFM and AFTRA, as well as other organizations including the Future of Music Coalition, the Recording Academy, the Music Managers Forum, the Recording Artists Coalition, Just Plain Folks, the Nashville Songwriters Association International and other music industry organizations joined together on May 24, 2002 to issue an analysis of the problem in a "Joint Statement on Current Issues in Radio." In addition, the Future of Music Coalition's important study of radio deregulation does a superb job of documenting what struggling musicians have seen over the last several years.

Much about the contemporary radio industry is bad for recording musicians and live-engagement musicians. It also is bad for American society, and, moreover, consumers don't like it and want it to end. Musicians and consumers deserve a radio industry that serves the public better. The AFM looks forward to working with our fellow artist and other music industry groups, and with this Congress, to bring about positive change.

The CHAIRMAN. Thank you, Ms. Toomey.

Mr. Fritts, in your written testimony you state that NAB believes that the payola laws in 1960 remain effective today and that no Congressional intervention is needed. The system of independent promoters is largely the record companies' creation and the record

companies should be responsible for ending the practice. That is your written testimony.

Do your member companies take cash and/or gifts in exchange for airplay?

Mr. FRITTS. Not that I am aware of. All of them would be subject to severe FCC sanctions if they did.

The CHAIRMAN. So they do not.

Mr. FRITTS. They do not as far as I am aware.

The CHAIRMAN. In your written testimony, you state that deregulation has allowed radio stations to maintain financial stability while giving it the ability to "prosper in the face of new competitors." Yet, the NAB opposes the relaxation of other media ownership regulations such as the 35 percent national television station ownership cap. Is that not some kind of a contradiction there?

Mr. FRITTS. Well, I appreciate your asking that question, Mr. Chairman. Indeed, we do oppose the increase of the 35 percent cap. As you will recall, the 1996 Act increased the cap for network ownership of local stations from 25 percent to 35 percent. There are currently 1,300 television stations. There are currently 13,000 radio stations. And while they are both regulated by the FCC, they clearly are two different mediums. And as a result, broadcasters have taken a look at the horizontal and vertical concentration by the networks and concluded that 35 percent is an appropriate level for network ownership.

The CHAIRMAN. I am very interested in your statement that your Members do not take cash or gifts in exchange for airplay.

Mr. Mays, does Clear Channel have any plans to obtain more radio stations?

Mr. MAYS. We do not have any stations pending at this time.

The CHAIRMAN. Do you have any plans to obtain more radio stations?

Mr. MAYS. I would suggest to you that if we felt that there was—

The CHAIRMAN. Do you have any plans to obtain more radio stations? I would like to ask the question for the third time.

Mr. MAYS. If we can serve the local community better and we see an opportunity, yes.

The CHAIRMAN. Do you believe there is any limit to the number of radio stations that a company should be permitted to own?

Mr. MAYS. I think the 1996 Telecom Act established those limits by limiting the number of stations in each local market.

The CHAIRMAN. I will repeat my question again, and I have not got a lot of time and I would like you to try to answer the question directly. Do you believe there is any limit to the number of radio stations that a company should be permitted to own?

Mr. MAYS. I do not think there should be a limit within the Telecom Act of 1996.

The CHAIRMAN. Have you ever instructed Clear Channel employees to use the threat of withholding air time from artists to negotiate exclusive promotional concerts or any other concession from artists?

Mr. MAYS. No, sir. We never have. Let me explain why we do not do that. Radio is our principal business. The concert promotion business is less than 7 percent of our income. Our business is in

servicing what our audiences want to hear in all of our different markets. We see ourselves as an aggregation of a number of small businesses throughout this country that serve those local communities and play what our audience wants to hear and inform them with news and information. And as long as our audience wants to hear Mr. Henley's music, he has no threat of retribution from what he said, even though he said, Mr. Chairman, some things that were very untrue.

And for the record, I would like to say that two companies do not control 52 percent. As I said, the top 10 control 44 percent. We have nowhere near 82 percent of the pop market that he suggested. And I hope that he files our letter within this record which states that the San Francisco matter was absolutely false. Whether that was colored by his manager being a principal in one of our major competitors, I do not know, but what he said was false.

The CHAIRMAN. Thank you.

To your knowledge, has any other member of Clear Channel senior management given this instruction to Clear Channel employees?

Mr. MAYS. No, sir.

The CHAIRMAN. Does Clear Channel have a policy to refuse to play songs from artists who are not on a Clear Channel tour or use non-Clear Channel venues?

Mr. MAYS. No, sir, we do not. I will give an example of one such incident. When the manager of Britney Spears alleged that we had less airplay during the tour that she did with a competitor, Concerts West, who I think Mr. Henley tours with, we did an exhaustive research study and found that her airplay went up 73 percent when she was touring with Concerts West than when she was touring with Clear Channel the year before.

The CHAIRMAN. Does Clear Channel accept payments or gifts from independent promoters in exchange for radio airplay?

Mr. MAYS. Absolutely not, Mr. Chairman. We have a zero tolerance to pay-for-play.

The CHAIRMAN. Does Clear Channel require its employees to sign affidavits or to otherwise certify that they will not accept cash and/or gifts in exchange for airplay?

Mr. MAYS. Every single air talent, every single program manager in our company, which numbers maybe 5,000 people, every year sign an affidavit that forbids them to accept any pay for play.

The CHAIRMAN. The *Los Angeles Times* recently wrote—and I quote—“Clear Channel Communications has figured out a way around the rules that has left its smaller competitors fuming. By cutting deals to take over programming of five Mexican stations, Clear Channel has grabbed 50 percent of the San Diego's market radio advertising dollars. Since the FCC exempts foreign-owned stations from being counted toward the maximum number of eight, loopholes have allowed Clear Channel to take control of 13 stations in San Diego. While it may be within the letter of the law, many would probably argue that this was not the intent of the law.”

Is this true? And if so, are there other markets that Clear Channel engages in misbehavior?

Mr. MAYS. Mr. Chairman, let me say that Clear Channel is in partnership with and is the largest broadcaster in Mexico, so we

have great ties to the Mexican broadcasting market. It is true that we own eight stations in San Diego. We also program another five in Mexico. And I think those 13 stations represent 13 of the 36 to 40 that are in that San Diego market.

We think that encourages additional benefits to the community simply because whether it is the Mexican side of the border or the English-speaking side of the border, the diversity of formats that we have provided the San Diego market benefits that community.

The CHAIRMAN. But it is clearly in violation of the intent of the law if you have 13 stations when 8 was the maximum.

Does Clear Channel use voice tracking?

Mr. MAYS. Yes, we do in a small way. I think it is some 15 percent or less of our programming. We export some of our larger market talent to some small markets basically because the smaller markets cannot afford it. Most of that is done overnight or on the weekends. It is not a significant part of our programming.

The CHAIRMAN. Do you allow non-Clear Channel radio stations to advertise on the 770,000 billboards owned by Clear Channel?

Mr. MAYS. I am sorry, Mr. Chairman?

The CHAIRMAN. Do you allow non-Clear Channel radio stations to advertise on the 770,000 billboards owned by Clear Channel?

Mr. MAYS. Yes, sir. They are very, very good customers of ours in all of our markets.

The CHAIRMAN. Mr. Short, did you and your station ever encounter any anticompetitive behavior from larger stations in your market?

Mr. SHORT. None that we could actually prove as hard evidence.

The CHAIRMAN. Thank you.

Senator Dorgan.

Senator DORGAN. Thank you, Mr. Chairman.

I do not have the foggiest idea where to start with these questions. This is the most interesting set of testimony we have received.

Mr. Fritts, let me start with you, if I might. Was Mr. Short a member of the National Association of Broadcasters at one point?

Mr. FRITTS. I do not know. Were you?

[Laughter.]

Mr. SHORT. No.

Senator DORGAN. Shoot. I was going to ask how you reconcile this if you have two members saying what Mr. Mays and Mr. Short said.

Let me go to the point you made, Mr. Short. You talked about the methods by which national accounts would advertise, and I do not quite remember the terminology, but they bundled advertising packages and promotional packages?

Mr. SHORT. Yes. For instance, if you own seven stations in the market and the competitor owns one, even if the competitor is doing well, you can offset all of that success by going to the advertisers and saying, so what if he has 5 or 10 percent of the market share. Add up the seven stations that we have and you get 35 percent. Therefore, you have over one-third of the market, and you do not need this guy at all. Just do business with us.

Senator DORGAN. So they are saying with this package you can get the same reach with our stations—

Mr. SHORT. Absolutely.

And then going further, they take similarities in format. For instance, let us say I am an urban format, and they are a top 40. They will say, well, some of the same songs are being played on our station Bob is playing. So you are really not getting anything unique by doing business with Bob. Come do business with us on that station that plays a similar format as Bob, we will even give you a discount, if necessary, to get you to do business with us.

Senator DORGAN. Mr. Mays, let me ask you about localism just a moment. I mentioned to you when we talked last in Minot, North Dakota, there was a train carrying anhydrous ammonia that derailed at 1:39 in the morning, sending a cloud of anhydrous ammonia over nearly the entire City of Minot. A pretty dangerous situation early in the morning in Minot, North Dakota. Much to everybody's surprise, the emergency alert system that the authorities were supposed to use to put emergency information on the air immediately malfunctioned. I do not quite know why that happened, but it did.

So they attempted to call the radio stations and they could not get anybody there. Apparently they were playing piped-in music from somewhere else. There was one person there who would not answer the phone I guess because he was a maintenance person.

But in any event, the point is this. When you have large broadcasting enterprises and you pump in homogenized programming from central locations—and I know that happens around the country—and you do not have people working the boards like you used to have, is that not troubling in terms of localism and service to community and so on?

Mr. MAYS. Senator, let me say that the stations were manned that evening and let me explain to you what happened. There was a switch from the emergency broadcasting system to the emergency alert system. Our air staff person there on that station said that apparently they called the wrong number, the hot line, and they did not understand the technology of how to interact with the EAS system. Every station across our whole company has that technology that allows the police department, the fire department to immediately go into those stations, including the one in Minot, to broadcast emergencies.

And what I am told happened that night was that listeners started calling. The lines got jammed. The sales people and the administration that were not at the station at 2:00 a.m. in the morning, although there were people there, came to the station to help answer the questions.

In addition to that, we had our Minneapolis engineers come and do individual seminars and instructions with the Minot police department, fire department on how to access the technology that they could not access for some reason that evening.

So I think that was an anomaly and I am sorry that that happened, but the station was staffed.

Senator DORGAN. Would you provide for the record for this hearing what you just described from your perspective?

Let me just also say in the old days I suspect those engineers would have been Minot engineers rather than Minneapolis engi-

neers coming in later. I am very concerned about this issue of localism.

Mr. MAYS. We have a very strong staff of engineers in Minot.

Senator DORGAN. Let me put a chart up and ask several of you for your comments. This chart is actually a chart that shows concentration. It shows five very large companies and it shows their holdings in broadcasting and other areas. You cannot read it, but—

[Laughter.]

Senator DORGAN. Well, yes, that is the point.

[Laughter.]

Senator DORGAN. But it is pretty obvious. I do not have room. If I were going to put all these names on a chart that you could read, it would consume most of the room. But most of these are companies that have accumulated a substantial amount of broadcasting properties and we have very substantial concentration in the hands of just a few. The question I think this Committee asks is, what does that do to competition? What does it do to localism? What does it do to diversity?

Mr. Mays, you have heard some very serious charges leveled today by other members of the panel with respect to your company, how large it is and its practices. I would hope that you will submit for the record—and I expect you will—specific responses to each and all of the charges.

Let me ask the question that I was thinking about as these charges were made. Do you have specific procedures, written procedures, in your company that respond to the questions have been raised, the allegations that have been made about conflicts of interest and promotional deals that seem untoward to me? Are you confident that you have in place specific procedures to prevent that? Are you confident that what they are saying has never happened?

Mr. MAYS. Well, I am not going to say anything never happened, but yes, and we will provide that for the record, policies and procedures. But just the simple fact of how we run our business and how we localize our business, we would never tie airplay into performances or into concert tours. It just does not make sense that we would penalize the major part of our business and risk the ratings that would have a dramatic effect on our revenues to enhance some promotion or some tour.

You speak of competition, and this chart which you cannot see now because—

Senator DORGAN. I did see the chart earlier.

Mr. MAYS. I am sorry?

Senator DORGAN. I saw that chart earlier. It was up.

Mr. MAYS. It is basically who we compete with right here in this Washington market. There are 56 radio stations here with some 30 to 35 different formats. We do own 8 of those 56. But those are not our only competitors for audience. There are six or seven cable companies that offer hundreds of channels of programming. There are 9 daily newspapers and 20 weekly newspapers in this market. There is satellite radio that offers 200 channels of radio stations into this market. The cable companies that I talked about have 50 channels each of audio in their cable services.

So the competition is robust. I heard that it should be, and we think it is robust and we compete as hard as we can. But certainly our eight radio stations within this large media pie here in Washington is not a concentration of power or a consolidation that affects competition.

Senator DORGAN. If I might ask one more question, Mr. Chairman. I asked last week, when it was alleged that there were many voices, whether it was many voices from one ventriloquist or a few ventriloquists.

I guess the question the Chairman asked at the start of this is very important. How much further? If we have another hearing 5 years from now, will we see the largest radio group owning 3,000 stations, 2,000 stations? What will we see with respect to television? Will we see similar galloping concentration that already existed? Where do you think this stops, and where do you think there ought to be legitimate concern about those of us who care about free markets and the market system and competition?

Mr. MAYS. Well, as I mentioned to the Chairman, I think that certainly there are limits that are within the 1996 bill, and I think that is certainly a restriction that prevents us from owning any more than 8 of those 56 radio stations here in Washington.

But I would like to—

Senator DORGAN. Except, Mr. Mays, if I might just interrupt just for a moment to say that in Minot, North Dakota, you own all six commercial radio stations. So what has happened, of course, in some circumstances, the FCC, through its own incompetence and definitional exercises has allowed you, at least in my state, to own all the commercial stations in one city, just to give you an example.

Mr. MAYS. Well, and that is because of the definition of market rule, which we are making comments with the FCC which is looking at that. And I believe Minot is considered part of the Bismarck as well as other surrounding cities around Minot, and it is a definition of market.

But I think it is a perfect case for deregulation because when we bought those stations from the previous owner, there were three formats in Minot. There were two country stations. There were two adult contemporary stations. There was a news talk station and a station that simulcast one of the country stations. Today there is a classic rock station. There is a country station. There is a hit station. There is an adult contemporary station. There is an oldies station, and there is a news talk station. Much, much more diversity in Minot than prior to deregulation.

Senator DORGAN. I have questions for other panel members, but I will wait until the second round.

Mr. MAYS. Could I also, Senator, touch on one other thing that you alluded to in consolidation? Mr. Short said that he could not compete as a "stand-alone" station, so he sold his station for millions of dollars to another party. Since that format in that community was denied the urban format, principally because the owner which he sold it to changed the format, we established a format that would appeal to that audience.

In Philadelphia, where we have a number of stations as well, there is a broadcaster that owns one station in Philadelphia. That is all he owns. It is the number one station in Philadelphia. He is

very, very profitable, much more profitable than we are. So I think throughout this country, all of those who own one station, if they do it right, can make money.

The CHAIRMAN. Mr. Short, you deserve the opportunity to respond to that.

Mr. SHORT. Absolutely. I look at it this way. I would call it you have a lot of audacity. You put someone out of business using tactics that are basically strong-arm tactics, and then after you put them out of business, you rebuild what they built, and then you say, look what a great thing we did and look what a great service we provide to the community. The great service was already being provided. There were no complaints. You can check the FCC's records. There is nobody saying we have got to get Mr. Short out of there other than maybe Mr. Clear Channel or maybe Mr. Citadel so that we can own everything that Mr. Short was getting.

The CHAIRMAN. Senator Lott.

**STATEMENT OF HON. TRENT LOTT,
U.S. SENATOR FROM MISSISSIPPI**

Senator LOTT. Well, thank you very much, Mr. Chairman. Obviously, this has been an interesting hearing and I think an important one as we try to make sure we understand how the 1996 Act is being carried out and the impact that it is having in all of our media and that does have to include radio.

I am sorry I did not hear all of the witnesses' testimony. I have tried to glance over it quickly while I have been listening to some of the questions.

Over the years I have been concerned about radio broadcasting because it is such an important part of America and our media outlets. It means a great deal in terms of entertainment, obviously, the way we get news, and we want to make sure that our policies encourage a strong and healthy radio ownership, as well as the other segments of the media.

That is one of the reasons why in the 1996 Act I thought we should pay particular attention to the radio broadcast industry and see if we could do some things that would help the industry which was struggling at the time. It was weak, I think, economically. I must say I was hearing a lot of complaints from the people at the local level and the people who were trying to make the radio stations a success.

My chief concern in evaluating media ownership is always to make certain that local communities are being properly served and they are not being adversely affected. Certainly I take a look at what is happening in my own state.

I think as a result of the Act, the industry is stronger than it was. It has actually been revived. Is it a perfect revolution or improvement? No, but I think it is healthier today than it was just a few years ago, and I want to make sure that we do not stop that strengthening and turn the tables back.

It sounds to me like what I have heard the time I have been here and from the testimony I have read that part of the problem here is not really about levels of competition. It is this other issue of how the concerts are handled. I think that may be what prompted the legislation that has been offered today or by Senator Feingold

and the Congressman that testified and what has contributed a lot to this hearing itself. So I think maybe these two should be treated separately. If there are concerns over here in the other area, then let us take a look at that.

With regard to ownership rules, I should note—I presume others have noted—the FCC is reviewing this right now. I do not know when they would make any recommendations or if they would act, but they are looking at their ongoing, comprehensive media ownership proceedings, and I think we would be precipitous at this time if we moved out and started to advance some legislation that would preempt that.

Let me just ask two or three questions of the witnesses then.

Mr. Fritts, is there a distinction in your mind in your position at NAB between ownership consolidation in the radio industry and other media and entertainment industries? In my mind there is, but I would like to hear how you would describe that.

Mr. FRITTS. Certainly, Senator, I would agree with you that there is indeed, just by virtue of sheer numbers. There are 13,000 radio stations, 1,300 television stations. There are almost 4,000 separate owners. I think what the overview, if you will, or the 35,000-foot review of what is taking place here today is really the question, has the 1996 Act worked? And we believe it has. It has provided more diversity. It has provided more diverse formats. It has continued to allow radio to be strong at the local level. I think that is the strength of broadcasting today.

There are now 200 new competitors in the sky coming to every single market in the United States through direct satellite radio. So if local broadcasters are not local, we will soon be out of business. So the important thing for us to do is to be local, to serve the local community.

And I think that is reflected by the surveys that show that 95 percent of the American public listens to radio every single week. That is an extraordinarily high number, and 75 percent indicate that they believe that radio is doing a good job. So we are very pleased with those numbers. We would like for them to be slightly higher, obviously, but we believe the 1996 Act has worked and worked well.

Senator LOTT. Well, we specifically permitted unlimited national ownership of radio stations by a single company in that Act, but there was a sliding scale of limits for individual markets. I presume you all talked a little bit about that in my absence. I think that is a critical point to make, though, is it not?

Mr. FRITTS. And those limits remain today. What the FCC is doing—and I think all of us recognize that this hearing is certainly appropriate because the FCC every 2 years is required by the statute which you enacted, the Congress enacted, to review the bidding, if you will, to look at the landscape and to see what the ownership limits should be and is it working well. And they are in that process right now. Presuming that they make some modifications in this biennial report, there will be another biennial report 2 years from now where they will review the same thing. I am sure that if the system warrants it, that Members of Congress will hear about it and will ask the FCC or certainly provide comments to the FCC along these lines.

Senator LOTT. Mr. Mays, just again from glancing over the testimony, I kind of have the impression it has been inferred that since you do have these 1,200 radio stations that maybe you have not been meeting the need for public service activities or programs that would benefit the communities, that you do address the local needs. How do you respond to that?

Mr. MAYS. Well, as Mr. Fritts said, Senator, our local involvement with the community is the lifeblood of our radio stations. As I said earlier when you were out of the room, we consider ourselves an aggregation of a few hundred small businesses that serve their local community. And if we do not do extensive research in every market like we do and determine what the audience wants to hear, whether it is music genre or news and information and weather and public service work, we are absolutely not going to be able to sustain our business.

You brought up an interesting point about the music tie to our company. Let me address that, if you will, just for a moment, as far as what we think the record companies are insufficient at and that is producing new music. So we have taken a number of our stations that concentrate on new artists only. In addition to this because of those five record companies not producing enough new artists, we provided a website where new artists could uplink their music and then we could draw it down and play on our radio stations, and we play new music on—I think 70 or so of our stations have new music only programs. Right here in D.C. on DC101. In Detroit every night at 9 o'clock they play only new music.

We have 1,000 bands. This uplink has only been there for 4 or 5 months. We have 1,000 bands up until 2 weeks ago of new artists sending their music up so we could download it, and every other radio station in the world could download it. Within the past 2 weeks, we have 1,000 more bands, and we are only promoting this because we are trying to roll it out slowly on our radio stations in 20 markets. Basically what they say is new artists, we are going to play you, upload your music to the website. And it has moved to 2,000 new artists in the past 6 months.

Senator LOTT. Let me apologize. The red light is on here. But I would like just a couple of brief questions, if the Chairman would allow me a little latitude.

The CHAIRMAN. Yes. Just let me add for the record. Mr. Fritts mentioned there are 4,000 owners. One owner gets 27 percent of the revenue. I think that completes the picture a little bit more accurately.

Senator LOTT. Mr. Short, I take it that you feel like we have lost some of the local focus and the public service programming and that sort of thing, and maybe you have already touched on it. I apologize to ask you to repeat, but it directly relates to the question I just asked Mr. Mays. Do you feel like we are losing some focus there?

Mr. SHORT. Yes, I do feel that. I am a Syracusean. I have been in Syracuse since 1968. I grew up in a town that hardly played any R&B on the radio. That is what got me into the radio business. I was so frustrated that there was no diversity. I kept asking why do we not have a—at that time it was called a soul station. It just dawned on me no one is going to do it, so I did it.

All right. Now you got a guy who has been there for 30-plus years. I know people if I walk in the grocery store, the church, or the schools. They will hand you an announcement saying, can you get this on radio? I need to come by and see you, Mr. Short. Call Bob up. He will get this on the radio for you. And it is almost small town radio, even though a lot of Syracuseans do not like to think of themselves as small town, but it really is small town.

And now you have a situation where everything is programmed and regimented. A program director from Texas says, no, we play 18 songs per hour. Who is Willy? We do not have time for Joe. What is this? How much money does he have? What kind of a schedule is he willing to pay? Well, maybe it is the NAACP. Maybe it is the Urban League. Maybe it is the little Boy Scout troop or something.

And it takes someone that is sensitive to that community that says, okay, I know this guy, I know the family. Sure I would like to sell him a \$5,000 schedule or a \$20,000 schedule. But he is not Coca-Cola. He is not McDonald's. He is Joe. Let him come on the air. We will make something work. We will bring him in, sit him in the studio, and we will talk about the issues for that particular situation. So that is an element that I think is completely gone, especially in Syracuse.

And he talked about voice tracking. I would question that 15 percent voice tracking. I think if you could just simultaneously listen to every station in the country that they program, you will hear that same voice all over. I mean, this guy is in Texas. He is in Syracuse. He is in Alabama. I do not know who the guy is, but it is the same voice. So I find it hard to believe that he is doing 15 percent of his time in Syracuse and he has got—

Senator LOTT. He must have a great voice is all I can say.

Mr. SHORT. Yes. It is the voice, the voice of the station.

Senator LOTT. Well, I understand what you are saying. I do think times have changed, though. One of the first jobs I ever had was with the local radio station, WPMP-WPMO Pascagoula, Moss Point.

The CHAIRMAN. Great place.

[Laughter.]

Senator LOTT. Yes. You get a whole different voice. My mother did the logs. In fact, I think the first woman's voice I ever heard on radio was my mother's voice, and she was working before mothers worked quite that much.

And it was different. Those days you had a local furniture store open. They went down and did a simulcast right there at the local radio station, and they would interview people as they walked by and tell what the price of the living room suit was.

I think people now are looking for something a little different. That was nice, but I am not sure that that is what the market needs or what the people want now. I am looking now and I think most of my neighbors are—frankly I want heavy news. I want all news. I listen every morning to an all news station here in Washington, D.C., and when I listen to music, I listen to a station out of New Orleans. I listen to WWL, a powerful station out of New Orleans, even though I live 90 miles away. Times have changed and I think we have to allow the radio industry to reflect the de-

mands of the times and, by the way, be able to make a profit so they can stay in business.

Let me ask Mr. Henley a question, if I could.

The CHAIRMAN. I think Mr. Short wanted—

Senator LOTT. Oh, you want to add another comment?

Mr. SHORT. Yes, I do.

Your implication is that times have changed for the better. It is a presumption. First of all, they have never in Syracuse, since they have changed to urban, gotten the ratings that I had with my back woods' approach of just bringing Willy on. They have got all the research. They have got the voice. They have got all the connections. They subscribe to Arbitron. They have got billboards all over the place. They have got everything that supposedly makes you a new millennium professional radio station. But they do not know the format, not in Syracuse. They may understand what Billboard says on the top 40 and somebody says that DMX or Ja Rule or whoever is a good artist—play them 72 times. Do not ask me any questions.

Whereas I am answering the phone. Sometimes it is because I do not have a huge staff, so you get lucky and you get the general manager to answer the phone, and it is some guy who is saying, hey, you played a record. It goes something like this, and he starts singing it. And you say, I know that record. Hey, can you get that on for me? And you know what? When you do that, you are the greatest station. You know why? Because you cannot get that done over here. You have got to go through on levels of management, and it is considered unprofessional.

But, hey, what is the difference in that and a regular call-in sophisticated talk show? You said the number is 1-800-whatever. Call Rush Limbaugh. The listener is participating. So I really question that particularly since they cannot achieve the ratings that we have had.

Senator LOTT. I apologize to all of you and I thank you all for being here. This is extremely interesting. It is an important subject.

Mr. Henley, I made an observation at the beginning and maybe you addressed this. But is this really about ownership caps and limits of competition, or is this about the problem with concerts and how that is handled?

Mr. HENLEY. Well, I think it is about both, Senator. I think they are both very real problems. In 1996 there were 5,133 owners of radio stations. And today, for the contemporary hit radio format, which is again the "make it break it" format, only four radio companies, Clear Channel, Viacom, Cox and Citadel, control access to 69 percent of that format's 51 million listeners nationwide. And for the country music format, the same four firms control access to 53 percent of that format's 34 million listeners.

Now, I remember back when I first got in the business, professionally that is, back in the late 1960s, early 1970s, there was a thing called the seven-and-seven rule. No one company could own more than seven radio stations and seven TV stations. Period. And then somewhere along in the 1980s—I believe it was during the Reagan administration—those rules were relaxed to allow each company to own two radio stations in a given market but no more than 40 radio stations total. But after the 1996 Telecom Act, this

thing has just jumped exponentially. I do not see the wisdom in letting it go that far.

And from an artist's point of view, I think it has really harmed music. I think it has really made it very difficult, again because of the millions of dollars it costs to get a record on the radio. And I know that there is payola because I get billed for it. My record company bills me back for the independent promotion monies that they have to give to the independent promoter. And they have worked out a very sophisticated system to skirt the current payola laws, a very sophisticated system where the money is paid to a middleman. And what happens after that is very privileged information. But I know that these things exist.

So Mr. Mays alleged in his testimony that they are really in the radio business, that the concert business is not really that big a deal for them. But I want you to understand that before another company called Concerts West was formed in which I am a minority—a small minority shareholder—and I will probably never see a dividend. We formed Concerts West in order to provide a viable alternative to the Clear Channel monopoly. We wanted to give artists a choice and have another place to go to promote their concerts. Before we formed Concerts West, Clear Channel Entertainment, according to Poll Star's reported concerts—Poll Star is an entity that reports on all the concerts and the revenues that happen in the industry. According to Poll Star, Clear Channel Entertainment had a 95 percent market share of all reported concerts. So they are in the concert business big time.

Mr. FRITTS. Mr. Chairman, I really have to respond to what Mr. Henley said about payola at this point in time. The record industry is controlled by five record companies. His beef is with the record companies. His beef is not really with the broadcasters.

The CHAIRMAN. I guess he could speak for himself.

Mr. FRITTS. Fine, but I wanted to—

The CHAIRMAN. Thank you.

[Laughter.]

Mr. HENLEY. My beef is with both.

The CHAIRMAN. Mr. Mays, this is an equal opportunity Committee. You have heard some comments by both Mr. Short and Mr. Henley, and before we move to Senator Wyden, we would be glad to have your response if you would like to.

Mr. MAYS. Well, I think I have covered most of the points.

In all due respect, Mr. Chairman, we have about 20 percent of the radio revenues rather than 27 percent.

The CHAIRMAN. Only how much?

Mr. MAYS. I am sorry?

The CHAIRMAN. Only 20? Excuse me.

Mr. MAYS. I understand we are a big company, sir.

Let me also say that we are here again only sustainable as it relates to the community service that we deliver. In Syracuse in our urban format, we have an African-American program director that picks every single thing that goes on the air. We make absolutely no Syracuse decisions in San Antonio. We make no Phoenix decision in San Antonio. We certainly make no New Orleans decisions in San Antonio. And that African-American has a feel for the market, just like Mr. Short does, and he is intertwined with that Afri-

can-American community, just like Mr. Short was. And we feel that he is doing a great job.

As it relates to the tour business, as I said, it is less than 7 percent of our income.

The CHAIRMAN. Which is how much?

Mr. MAYS. I am sorry?

The CHAIRMAN. Seven percent of your income is how much? \$5 million, \$10 million, \$50 million?

Mr. MAYS. Maybe \$100 million or so.

The CHAIRMAN. Go ahead, please.

Mr. MAYS. Our radio income is substantially higher than that. I am not arguing that we are not a big company, and I am happy that Senator Dorgan said he did not feel that big was necessarily bad.

But I think that if you put things in perspective, that we would never, never jeopardize our radio local roots to play or not play an artist because he is or is not touring with us. As I mentioned, the Britney Spears situation is absolutely to that point, where when she toured with Mr. Henley's company, she got 73 percent more airplay on Clear Channel radio stations than she did when she toured with Clear Channel Entertainment. And that is true with every artist because we are not going to jeopardize our principal business and ignore what our audience wants to hear for the benefit of a concert artist. We are just not going to do that, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Mays, and as a father of teenage children, I will not comment on whether you should be airing Britney Spears or not.

[Laughter.]

The CHAIRMAN. And I apologize to my colleagues, but I think it is important, when serious comments are made, that other witnesses be allowed to respond to those comments so that we can get a full story.

Senator WYDEN.

Senator HUTCHISON. Mr. Chairman, could I just say I am going to have to leave.

The CHAIRMAN. I am sorry, Senator Hutchison. I apologize.

Senator HUTCHISON. No, no. I agree that it is good to have the ebb and flow. I have certainly learned a lot from the hearings. I will have to go before I can ask any questions.

The CHAIRMAN. Could we indulge Senator Hutchison to make at least a brief comment, Senator Wyden?

Senator WYDEN. Sure.

**STATEMENT OF HON. KAY BAILEY HUTCHISON,
U.S. SENATOR FROM TEXAS**

Senator HUTCHISON. I did not intend to do that.

But let me just say that I do have two constituents here who are saying exactly the opposite things. And I would like to know more about the payola. Mr. Mays says there just isn't any. Mr. Fritts agrees with that. Mr. Henley and other artists say it is absolutely there. It appears to me that there is some sophisticated way that an artist is required to pay money to be on a major station.

My question is, how does this occur, and should we be looking at the laws on payola maybe separate from any issue of ownership?

And my second question would be, how does a new artist get into the market? Now, Mr. Mays says that there are a lot of just new market programs which appears to make sense. So I would ask Mr. Henley why doesn't a new market program that is pretty widely dispersed make a difference.

And then I would ask Mr. Mays how can you say there is no payola when artists have to pay.

Those would be my two questions, and if you would prefer those to be for the record—

The CHAIRMAN. If Senator Wyden does not mind, I would like to have a response to those questions.

Senator HUTCHISON. Thank you.

The CHAIRMAN. Please. Who do you want to answer first? Mr. Henley or—

Senator HUTCHISON. Let me just ask first Mr. Mays. It just seems to me that there is some form of payola. Maybe it is not called payola. Maybe it does not violate present laws. But if an artist has to pay to be on the air in a major station, I think that there is a problem. I would ask that question of Mr. Mays first.

Mr. MAYS. And I would be happy to address that, Senator Hutchison. I understand the record companies have come to Senator Feingold and to possibly people on this panel with a plea to save them from themselves. In other words, they write the checks to these independent promoters, and they do not like to do that, but they are not willing to stop doing that because they are afraid I guess some other record company will continue to do it.

We have, as I said, a zero tolerance to pay for play. Absolutely a zero tolerance for pay-for-play. We have our 5,000 disc jockeys sign affidavits every single year. We have our program directors in every single market sign affidavits every year that they will not accept any pay for play or they will be fired.

Independent promoters do interact with the corporate office in terms of actually buying our research and information, and they pay us for that. We do research every night in every single market, and that is valuable information to them because of what it means the audience wants to hear.

As far as the new artists are concerned—and I think you were here when I talked about our uplink, but something you might be interested in—I was at a meeting in New Orleans night before last, and I asked our manager of our Austin radio station KVET why he has been so wildly successful. And he said, well, gee, we have two country stations in that market. One is an up-tempo country station and his is one that plays new artists, the Texas, kind of the Willy Nelson, Waylon Jennings genre of music.

The CHAIRMAN. What you are saying, Mr. Mays, is that there is no payola. In response to her question, there is no payola.

Mr. MAYS. Absolutely none.

The CHAIRMAN. Thank you.

Mr. Henley.

Senator HUTCHISON. Mr. Henley.

Mr. HENLEY. Thank you.

The new payola practices take two primary forms. Radio consolidation has created the first type. Radio station group owners establish an exclusive arrangement with an independent promoter who then guarantees a fixed annual monthly sum of money to the radio station group or the individual station. In fact, some stations rely solely on that as a majority of their budget for the year in some cases. In exchange for this payment, the radio station group agrees to give the independent promoter first notice of new songs added to the playlists each week. And there is some implication in there. Stations in the group also tend to play mostly records that have been "suggested" by the independent promoter, by the way. And as a result of the standardization of this practice, record companies and artists generally must pay the radio station through independent promoters if they want to be considered for airplay on those stations.

I mean, the record companies do not like this either, and I wish they would stop doing it, but until all of them stop doing it, none of them are going to stop doing it because if one guy breaks ranks, then he gets an unfair advantage. However, none of the independent promoters and none of the radio stations are sending the checks back. So I have got a beef with both the record companies and the independent promoters and the radio stations. I have got a beef with all of them.

The second payola practice occurs after the music labels hire an independent promoter to legitimately promote their records to a specific station for a fee. And reportedly, certain independent promoters use the label's money to pay the stations for playing the songs on the air. I do not have any proof of that. I have never been involved in it, but I know that I get billed back by my record company for a certain amount of independent promotion.

Furthermore, this new form of independent promotion which are these concerts that the artists are asked to do for radio stations is simply another form of payola. Now, Mr. Mays has characterized these concerts as charity concerts and interaction with the local community. The radio stations ask an artist to come and play a concert, and they give a relatively meager sum to a local charity, but somebody should ask Mr. Mays and other radio conglomerate owners how much they make a year on these concerts where artists are forced to play for free.

The CHAIRMAN. Go ahead.

Mr. MAYS. I would be happy to address that, Senator. And thank you for bringing that up, Mr. Henley.

Yes, we do ask and we have hundreds of people coming to events like Wango Tango in Dodgers Stadium. 76,000 people are into the Meadowlands at what we call Zootopia where we ask a whole range of artists to come for all day long, most of which are new artists, but those that complain about going are those who do not get to go because there are only so many that we can have within that venue during those many hours. So the ones that go love it because they get exposure to thousands of people in the Meadowlands Stadium or Dodgers Stadium, and the new artists love it because they are on what we call the side bands and they love to do it for the exposure and what money we pay them. But we have never had a complaint from those that gain the exposure and the promotion

on the radio. We are sorry we cannot put all of the artists there that would like to, but we just cannot.

Mr. HENLEY. I am sorry. My point was that some of the money from those concerts goes to the radio station and not all of it goes to charity. That was the point I was trying to make.

If I might just comment on the new music program. Mr. Mays said they have a program that comes on at 9 o'clock at night. I would bet that that program only lasts for an hour, and I would bet that it goes one night a week.

Mr. MAYS. In Detroit, it goes every night a week.

Mr. HENLEY. Okay, in Detroit.

Senator HUTCHISON. Thank you very much, Mr. Chairman. I really appreciate the indulgence. Thank you, Mr. Wyden.

The CHAIRMAN. Thank you.

Senator WYDEN. Thank you, Mr. Chairman.

Mr. Mays, the *Wall Street Journal* ran a front page article not too long ago, and in the headline it said, perfecting the art of seeming local. And it essentially is about your company. You have described in discussions with several of my colleagues that your view is that it does not go on very often. You do not have these virtual radio stations where the deejays are located out of town, but the program looks, of course, like it is appearing locally. And that is certainly not what the *Wall Street Journal* is talking about in its front page article.

In fact, Mr. Chairman, I would like to ask unanimous consent that this article be made a part of the record.

The CHAIRMAN. Yes.

[The information referred to follows:]

The Wall Street Journal, February 25, 2002

FROM A DISTANCE: A GIANT RADIO CHAIN IS PERFECTING THE ART OF SEEMING LOCAL

By Anna Wilde Mathews

On Feb. 15, disc jockey "Cabana Boy Geoff" Alan offered up a special treat for listeners of KISS FM in Boise, Idaho: an interview with pop duo Evan and Jaron Lowenstein. "In the studio with Evan and Jaron," Mr. Alan began. "How're you guys doing?"

The artists reported that they had just come from skiing at nearby Sun Valley, then praised the local scene. "Boise's always a nice place to stop by on the way out," Evan Lowenstein said, adding that the city "is actually far more beautiful than I expected it to be. It's actually really nice, so happy to be here." Mr. Alan chimed in: "Yeah, we've got some good people here." Later, he asked Boise fans to e-mail or call the station with questions for the performers.

But even the most ardent fan never got through to the brothers that day. The singers had actually done the interview in San Diego a few weeks earlier. Mr. Alan himself has never been to Boise, though he offers a flurry of local touches on the show he hosts each weekday from 10 a.m. to 3 p.m. on the city's leading pop station.

This may be the future of radio. The Boise station's owner, industry giant Clear Channel Communications Inc., is using technology and its enormous reach to transform one of the most local forms of media into a national business. In fact, Boise's KISS 103.3—its actual call letters are KSAS-FM—is one of 47 Clear Channel stations using the "KISS" name around the country. It's part of an effort to create a national KISS brand in which stations share not just logos and promotional bits but also draw from the same pool of on-air talent. Via a practice called "voice-tracking," Clear Channel pipes popular out-of-town personalities from bigger markets to smaller ones, customizing their programs to make it sound as if the DJs are actually local residents.

“We can produce higher-quality programming at a lower cost in markets where we could never afford the talent,” says Randy Michaels, the chief executive of the company’s radio unit. “That’s a huge benefit to the audience.”

It’s also a huge benefit to Clear Channel, which can boast of a national reach and economies of scale to advertisers and shareholders. The voice-tracking system allows a smaller station in Boise to typically pay around \$4,000 to \$6,000 a year for a weekday on-air personality, while a local DJ in a market of Boise’s size would have to be paid salary and benefits that might run five times as much. That’s why Clear Channel is developing multiple identities for a battalion of DJs like the 29-year-old Mr. Alan, who is based at KHTS-FM in San Diego, but also does “local” shows in Boise, Medford, Ore., and Santa Barbara, Calif. Mr. Alan does research to offer up news items and other details unique to each city.

The new sound of radio is tied to big changes in the industry brought on by a 1996 law that got rid of the nationwide ownership cap of 40 stations. The law also allowed companies to own as many as eight stations in the largest markets, double the previous limit. The shift sent broadcasters into a frenzy of deal-making, as stations rapidly changed hands. A fragmented business once made up mainly of mom-and-pop operators evolved quickly into one dominated by large publicly traded companies that controlled stations around the country.

No one took advantage of the new law more aggressively, or successfully, than Clear Channel. The company started out with one FM station in San Antonio. A relatively little-known firm before 1996, it rapidly grew into by far the biggest player on the airwaves. Today, it operates more than 1,200 U.S. stations, compared with 186 stations owned by its biggest publicly traded rival, Viacom Inc. Privately held Citadel Communications Corp. has 205 stations, mostly in midsize markets. Clear Channel has combined its radio clout with a growing array of other media assets, including the nation’s leading concert-promotion company and a major outdoor-advertising operation.

Now Clear Channel is moving to exploit its size by linking up its different businesses and wooing major advertisers with the promise that it can deliver nearly any combination of geography, demographics and radio format. Part of that effort is the move to create national brands such as KISS, which can become familiar touchstones for big national advertisers and, eventually, listeners. While voice-tracking is not a new practice in radio, Clear Channel is pushing the concept on a far grander scale than ever before, extending well beyond the 47 KISS stations to encompass most of its empire.

Mr. Michaels compares his model to McDonald’s Corp.’s franchise system. “A McDonald’s manager may get his arms around the local community, but there are certain elements of the product that are constant,” he says. “You may in some parts of the country get pizza and in some parts of the country get chicken, but the Big Mac is the Big Mac. How we apply those principles to radio we’re still figuring out.”

Indeed, as Clear Channel has moved to take advantage of its reach, it has run up against traditional ways of doing things in radio. To create a national brand based on a Federal trademark, for instance, it has had to mount legal challenges in several markets, chasing off stations that had been using versions of the KISS name locally. (The U.S. station that actually has the call letters KISS-FM is an album-rock station based in Clear Channel’s corporate hometown of San Antonio, owned by rival Cox Radio Inc.) Clear Channel is facing objections from union locals representing on-air talent, which likely stand to lose jobs as the company phases in more virtual programming.

The company also drew an investigation by the Florida Attorney General’s office into whether it was portraying national call-in contests to listeners as local. Clear Channel admitted no wrongdoing, but in 2000 it paid the state an \$80,000 contribution to the Consumer Frauds Trust Fund and agreed not to “make any representation or omission that would cause a reasonable person to believe” that contests involving numerous stations around the country were actually limited to local listeners.

Mr. Michaels argues that much of the static his company hears, particularly from competitors, is simply a battle against progress. He compares it with another point in radio’s history: when the industry began phasing out live orchestras and in-studio sound-effects experts in favor of recorded music. “The guy making buggy whips and installing horse shoes should have gotten into making tires,” he says. Change, he says, is “inevitable. All we can do is exploit it.”

Nothing better illustrates Clear Channel’s efforts to do that than its drive to develop the KISS brand. It’s derived from Clear Channel pop powerhouse KIIS-FM in Los Angeles. The wider rollout was begun by Mr. Michaels’ Jacor Communications Inc. before Clear Channel bought it in 1999. It kicked off by introducing the

KISS format in Cincinnati, among other cities. Each had its own frequency and call letters, usually something as close as possible to KISS.

At the same time, radio technology was changing rapidly. In the mid-1990s, stations began buying software and hardware that allowed them to run their on-air programming with computers that contained entire catalogues of digital songs. Using such systems, DJs could also digitally record voice bits and drop them into a preformulated schedule of songs and commercials. Stations had long been able to prerecord some materials, using tape setups. But now a disc jockey could put together a perfect five-hour shift in less than an hour, using a computerized system that lets the DJ hear just the end of one song and the beginning of the next.

Clear Channel and its predecessor companies began installing the technology in all its stations in the late 1990s, and linking them together into a giant high-speed digital network to move digital recordings around seamlessly. Gradually, the company started piping major-market DJs into smaller cities. It even did the same with some news stations, which used local reporters feeding information to announcers in different cities, who would then send back their newscasts digitally to be put on the air.

An early indication of the impact came in Dayton, Ohio, in 1999. Dozens of teenagers showed up at a Clear Channel pop station early one morning looking for the Backstreet Boys, after hearing an interview with the band that morning. The teenagers were politely told that the band wasn't available and given promotional items. The interview was actually done earlier in Los Angeles.

"That's when we knew this could be huge," says Sean Compton, Clear Channel vice president and national program coordinator.

Boise's 103.3 was one of the early KISS converts. KARO, as it was called, had been playing classic rock. But it was competing in a crowded niche and ratings were lagging. So, in early March 2000, Clear Channel decided to switch it to a pop format and use the KISS brand.

It took only about two weeks to create an entirely new station. The logo came from a KISS station in Las Vegas, with a Boise artist simply replacing the Las Vegas station's frequency with the local one. Clear Channel pop stations in other cities digitally imported their own song catalogues to Boise's hard drive. A programmer in Dallas helped prepare the first song list.

Before the format change, the station was using one voice-tracked show from Salt Lake City on weekdays, as well as some national programming. After the station went KISS on March 13, 2000, it began importing all of its DJs. Weekday mornings came from Los Angeles, middays from Cincinnati, afternoons from San Diego and evenings from Tampa, Fla. Two of the old rock station's DJs were laid off. Later, one out-of-town KISS DJ moved to Boise to do a live afternoon show. As costs went down, ratings went up.

"You can deliver a better product than a live station," says Hoss Grigg, who was an on-air personality under the old format before becoming the program director for Boise's KISS. "If they get it, they get it, no matter where it comes from."

Indeed, Mr. Grigg, who comes from the area and has worked in Boise radio on and off for a decade, quickly learned how to operate a virtual station. The station hired a Boise State University student, who it dubbed "Smooch," sending him to local KISS events because the real DJs weren't available. To handle phone calls that came in for the out-of-towners, the station first tried to maintain separate voice-mail boxes for each. But Mr. Grigg eventually gave up and just set the studio line to ring busy unless he or another station employee was actually in the studio.

Mr. Grigg also devised ways to keep his air talent up to date on events in Boise. He created a guide with helpful pronunciation tips ("BOY-see . . . no Z") and descriptions of "Boise Hot Spots," like the Fort Boise skateboard park featuring a "sweet bowl." Major thoroughfares, local sports teams and the names of area high schools were also included. Mr. Grigg created a special Web site, which he updated constantly, to inform his outlying DJs about coming concerts and station promotions.

But even as he works to keep the station sounding local, Mr. Grigg draws much of his station's identity from around Clear Channel. Many of the contests he runs are national. The remixes of big songs to promote KISS come from Chicago, as does the voice used on most promotional messages.

The music selections for Boise's KISS are made in San Diego by brand manager Diana Laird, who also programs other stations as well, including ones in San Diego and Santa Barbara. Mr. Grigg advises her on what's popular with call-in listeners, but Ms. Laird says she always takes such requests with "a grain of salt, considering maybe 1 percent" of listeners call in. She instead relies on instinct, national tastes and research in markets with demographics similar to Boise. She says the Santa Barbara station gets far more hip hop and dance music than the mainstream pop

that is heard in Boise. But KISS listeners in Boise and Medford hear identical playlists, because their demographics are similar, Ms. Laird says.

It was Ms. Laird who helped connect “Cabana Boy Geoff” to Boise. Mr. Alan, who works long hours as promotions coordinator at KHTS in San Diego as well as being an on-air personality, wanted to raise his profile and earn the extra money that voice-tracking a few stations can provide. To squeeze it all in, he typically arrives at Clear Channel’s meticulously landscaped San Diego office before 7 a.m., not long after his 2 a.m. sign-off from a live air shift. A recent day began even earlier with a cellphone call from Mr. Grigg, who told him of a Boise-area Olympic hopeful and recapped a station-sponsored party the night before at a Boise restaurant.

Sipping a large cup of coffee, Mr. Alan tried to convince himself it was 10 a.m., the time his show would air. With Mr. Grigg’s briefing in mind, he told the Boise audience that last night’s event was “a wild and crazy party,” though of course he hadn’t attended. “I personally saw a number of you hook up with people you had never hooked up with before.” Then came the Evan and Jaron interview. (A spokeswoman for the singers said they couldn’t be reached for comment.)

Mr. Alan wrapped up his five-hour shift in just an hour, but he returned later that afternoon to do a Boise show for the next Monday, when he would be out of the office for the President’s Day holiday. This one was harder, since it took place three days in advance. Mr. Alan also had to make a convincing on-air handoff to a live person—Smooch, the station’s street promoter, who would be doing a live appearance during Mr. Alan’s show.

Again, a phone call helped. Smooch, whose real name is Troy DeVries, reported that he would likely be hanging out at a nightclub called The Big Easy sometime that weekend. So, Mr. Alan, who has never met Mr. DeVries in person, riffed a bit: “On Saturday night, me and Smooch, we were hanging out at The Big Easy,” he said, launching into a bit that made fun of Mr. DeVries’s dancing. “Just thinking about it, I’m cracking up.” (As it turned out, Mr. DeVries went to the nightclub on Friday instead.)

Mr. Alan also used phone calls he had recorded during his live show in San Diego, editing out local references to make them usable in Boise. He typically greets Boise listeners by using names taken from e-mails he gets from Boise, or sometimes from San Diego callers. Then, he puts them in a situation using a real local place drawn from his research. Sometimes he does a bit less, though. After greeting “Dawn,” who “is stuck at work today,” he admitted off the air that she was “somebody I just made up right now.”

Mr. Alan says his voice-tracked shows sound just as good as his live ones, and listeners “don’t get cheated out.” Still, he admits that he was concerned when his fiancée told him that if she had a crush on a DJ and found out that he wasn’t really in her city, “she’d be so disappointed, she’d be heartbroken and stuff.”

Indeed, several Boise KISS listeners said they couldn’t tell that many of the station’s on-air personalities weren’t in town. “If you can’t tell, it’s not that big a deal,” says Jennifer Hardy, 24, who has gone to KISS events with her five-year-old son. “They are involved with the public.” But Hope Brophy, a manager at a local hair salon, said that, even though she couldn’t tell the difference, the idea “irritates me. . . . I think if you don’t live here, you don’t understand it.”

In Boise, KISS’s pop rival, KZMG-M, “Magic 93.1,” is gambling that there is an advantage in having more live presence. The station, which is owned by another big company, Forstmann Little & Co.’s Citadel, has live DJs on nearly all the time on weekdays, except for midnight to 5:30 a.m. KZMG promotes itself as the “live and local” station that always takes calls from listeners, but KISS is still ahead in the ratings.

Mr. Michaels, the Clear Channel radio chief, says he’s not aware of the details of Mr. Alan’s situation, but that it sounds like “this would be an example of a personality being a little too creative.”

Mr. Michaels says that he himself usually can’t tell when a show is voice-tracked from another city and when it’s live. “I don’t think it’s at all wrong or deceptive to put together terrific programs that reflect local communities and sometimes use talent who may physically be somewhere else,” he says. He compares the radio shows to films, which wouldn’t be “nearly as much fun if the camera kept turning around to show you it was just a set. I don’t know that the radio experience would be as good if we said every five minutes, ‘By the way, I’m not really here and I taped this 20 minutes ago.’ But that’s all part of the magic of creating entertainment.”

Senator WYDEN. This article goes into considerable detail, Mr. Mays, in effect on how you deceive the listeners. I will talk briefly about a station in Boise. It says they handle the phone calls by set-

ting up separate voice mail boxes so that people cannot tell the deejays are out-of-towners. Then at one point they set up a studio line to ring busy, and finally if somebody came in, they would free up the line.

I guess my question to you is—whether you think it is 15 or 20 percent or whatever is not the important question. To me it is going up, number one. And number two, I would just be curious about whether your stations disclose this to people locally. I mean, do people locally know that the deejays are not from there?

Mr. MAYS. Let me say, Senator, that I agree with I think what you are getting at. Even though that article in the *Wall Street Journal* had many inaccuracies and it was not all correct, the fact is that it appears that we were in that one case deceiving our listeners by leading them to believe that that talent was in Boise instead of San Diego. No, we do not attempt nor would we allow by company policy, since we heard of that particular incident, to deceive any listener.

If a voice track is done and if it is done overnight, say, and the talent is in Denver and it goes to Fort Collins or whatever, we ensure that every piece of information, the news, weather, sports, is done correctly in order that we can have all of the local information there for the public.

Senator WYDEN. That is not what I am asking.

Mr. MAYS. Now, whether or not they know that that talent is in Denver rather than Fort Collins, possibly not. But it is company policy not to try to deceive the person by suggesting that the Denver talent that is doing the news in Fort Collins at 2:00 a.m. in the morning is actually in Fort Collins. That is against company policy.

Senator WYDEN. But you are not telling me that you have a policy to disclose to the local listener that the deejays are not there locally. Do you have a company policy on that point?

Mr. MAYS. No, we do not.

Senator WYDEN. Thank you.

Question 2 is you said in response to the Chairman with respect to ownership limits and cited the 1996 law that you would respect those limits. And of course, that is the law and acquisitions continue. I am just curious whether you think as a policy, if three or four companies end up owning the majority of radio stations in this country, is there any down side in that?

Mr. MAYS. I would say that as long as those companies—certainly I do not think the other concentrated companies in the entertainment business like the record companies are serving their customers and their audiences. But I would say that if those individual radio stations throughout this Nation are aggregations of small businesses dedicated to their community and as long as there is robust competition with other media, which there is in every market, then it really does not matter who the ownership of those individual stations are if they are run locally for the benefit of the community. So if you had the top 10 owning 80 percent instead of 44 percent, I do not think that would be bad public policy.

I think deregulation has been a huge benefit to the diversity and to the audiences in all of our markets. If you go to the audiences in Medford, Oregon and do a survey—and we would be happy to do it for you—of how they enjoy radio and the diversity in that

market, it is going to be very positive. And that is market after market because, as I said, we do that because it is our lifeblood to keep our customers, your constituents, happy whether those be the audience or whether they be the advertisers.

Senator WYDEN. I have a question for the panel. The reason I asked Mr. Mays that question is I think that that is a relevant question for radio, but it is a relevant question for the communications business generally. And Mr. Mays just said in his opinion there were not any down sides if you had three or four companies owning the vast majority of radio stations.

Well, we are on the eve of the Federal Communications Commission looking at changing the concentration rules generally for a whole host of media, and I am very troubled about the prospect that in a lot of communities in this country, you are going to have one or two people owning virtually everything in sight. They are going to own the radio station. They are going to own the newspapers. They are going to own the TV. They are going to own the Internet networks. And I find this very troubling, contrary to what Mr. Mays has talked about.

I would just like to go down the row for this panel and say what are the lessons radio that the Federal Communications Commission ought to pick up as it deals with media concentration generally because I for one think that this country ought to be pretty reluctant to repeat the radio experiment in other areas of communications policy. Why do we not just go down the row and begin with you, Ms. Toomey.

Ms. TOOMEY. Thank you very much, Senator.

First of all, I want to emphasize that I think we are closer to that three and four company ownership than you think. When you count the number of stations nationally, it looks like a really big number. But when you cut it down to local markets, as I did in my testimony, we are looking at four companies owning over 70 percent of listeners nationally in all markets. And then when we get to smaller markets, it is more and more. And then we get to the case of something like Minot where all of them are owned by one company. So I think this is the direction we are moving in, and we should begin to look at concentration instead of numbers of owners because that is when we can see where the damage is taking place.

Next, I need to say that radio is different than other forms of media, and we need to always keep that in mind because it is the easiest and cheapest to produce. It is licensed at a local level, which means that it is one of the final media forms that is specifically programmed locally. So if we lose this one, as there are large concentrations in all the other media forms, we are just concentrating the problems. And if you looked at that really beautiful chart behind there, we already see that happening incredibly.

And these recent trends also have made it harder and harder for grassroots folks to compete, as we have seen from the table, and mom and pops sell out. We have less minority ownership. We have fewer women running stations. We have less local news and, as our study illustrates, fewer musical choices.

I think the most frightening thing for the Senators would be a quote that Congressman Foley said at Future of Music's summit conference just a couple of weeks ago where he said in his own

market there used to be five stations he could go to to get some policy news on the air, and now that has been reduced to one. So within 6 years, he has lost 80 percent of access to his own local radio stations. And that makes a really damning picture for people who want to know what our public representatives stand for.

Senator WYDEN. Mr. Fritts.

Mr. FRITTS. Thank you, Senator. I had not planned to do this but I think because of Ms. Toomey's comments, I need to, for the record, state that there are numerous studies that contravene the FMC's conclusions, including a November 2002 report by Bear Stearns, a September 2002 Federal Communications Commission white paper, and a July 2002 Arbitron-Edison Media survey. In addition, there was a poll in December conducted by the Mellman Group that found very wide listener satisfaction with what was taking place in radio.

Having said that, what I would focus on to your question quite frankly is that the NAB has never asked for wholesale deregulation. We have never asked for deregulations like the truckers or the airlines or the banks. What we have said is that the FCC has appropriate jurisdiction and oversight and that they should and do review these limits on a regular basis. Obviously, recently they have reported to you and to this panel.

We believe that the safeguard for you as a Senator and for you as Members of Congress is that the FCC, the oversight of jurisdiction for radio and television, has appropriate abilities and safeguards in all of these areas to regulate and to oversee the expansion or the contraction of radio or other markets in this process.

So we are comfortable that the FCC, with its now five commissioners led by Chairman Powell—and we are comfortable that this oversight Committee, as well as one in the House, will continue to monitor these progressions and to make sure that the American public is well served.

Senator WYDEN. Mr. Henley.

Mr. HENLEY. First of all, I think the FCC needs to take another look at how it defines a particular market. As was stated before, when Minot is included in the same market as Bismarck and those two in combination are considered to be one of the largest radio markets in the Nation, something is wrong with all due respect to Minot and Bismarck. I think the FCC needs to reevaluate and take another look at how it defines a market and delineates a market.

I still have some things I want to say about localism, but in the interest of time I am just going to skip it. I want to say one thing. There has been a lot of talk today about localism and how radio stations are locally programmed to serve the interest of local people. There have been intimations that local program directors actually decide what is played on a local radio station. There has even been the implication that deejays have a say in what is played on a local radio station.

I can tell you from experience that all the deejays I have talked to are worried about two things primarily. They are worried about their severance and they are worried about their noncompete clauses. They get nothing whatsoever to say about what is played on the radio.

And despite the examples that Mr. Mays has cited about individual programming, if you could compare a cross section of the Clear Channel playlists from a cross section of their stations across the country in the same format, you would find that that playlist is virtually identical from station to station to station, with maybe a few aberrations here and there. But the playlists are virtually identical. Everybody gets the same McDonald's hamburger. And if you like hamburgers, then you should just eat hamburgers, I guess.

I just want to read one thing in conclusion. The FCC is charged with protecting what the Supreme Court referred to as an uninhibited marketplace of ideas. And I want to read from the seminal First Amendment decision which says, "it is the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged by either Congress or by the FCC." And I think it is being abridged.

Senator WYDEN. Mr. Short.

Mr. SHORT. Thank you.

In response to your question, Senator, I genuinely believe that if Clear Channel could press a button and program all radio stations at the press of that button, they would just for the sake of getting rid of the labor costs, driving up profit margin and making more money than they are already making.

Enough is enough. I mean, there is no limit here. We are seeing stations become eliminated and replaced with jukeboxes, sophisticated computers. For some reason, they feel they have to go to every city and serve that city as though the city was advertising nationally saying, come, serve us, we need your help. So what is happening now is you have this audacity that says, we can own as many as we want and we can lay off as many people as we so desire because we can control these stations from anywhere.

Syracuse is a market that Clear Channel is currently basically over the limit in terms of ownership. I think they have gotten a waiver to allow them time to spin off one of these stations. But I question whether or not they really are looking for the time to spin one off versus looking for time for that cap to be lifted so that there is no need to spin one off and you just keep owning.

And then what you do is you put all stations in one building. You call it economies to scale, if you will. And you have one secretary, one telephone expense, one market manager, and you run 9 or 10 or whatever they let you run—7 legally—and then you run 2 by redefining what is in your market, as Mr. Henley said, and what is really outside of the market. For instance, you can put a station 20, 30 miles out of your city of license and through sophisticated technology with repeaters and things like that, you could actually hear it where it initially was not intended to reach and then that makes it usable in that market.

So what you are seeing is economies to scale for the benefit of profitability more so than the benefit or serving the public needs. And I am not saying you should never use automation, but I think what the intent is, go buy this station, lay off seven or eight of the people, or more, and just replace it with the one program manager.

Mr. Mays mentioned the gentleman that is doing a good job of programming in Syracuse. What about the sales staff that they

brought in? What happened is the sales manager for the urban station is no longer there because there is no need for him. They can use their other station sales managers to sell that urban station. So they are taking out and not necessarily putting back, but making it appear that whatever they replace it with was needed and is of the public interest, which I do not think it is.

And then on top of that, I think you really risk the danger of not really having diversity. You have Mr. Lowry Mays' viewpoint of the world, and I am not sure that everybody is ready for that.

I do not want to go from the plantation to the ranch just to say, well, I have a place to live. I would like to own. And that is the issue here. You have Americans who actually believe in the American dream, that if you do certain things, own your business, serve the public, stay out of trouble, educate yourself, that there will be a reward, not a penalty, not some guy coming in and saying, eliminate all little guys. Or he may not say it exactly that way, but implementing tactics that result in the elimination of independent operators.

So now you have no diversity. You have answering machines sitting there running busy instead of an individual providing customer service. How many of you have dialed a 1-800 number and it is frustrating. You say, where are the people that work at this place? We do not want to leave a message and have them get back to us. They are not going to get back to us unless you leave a number saying I am willing to buy some commercials, please call me. Then someone will get back to you.

So I think it is a tragedy to have diversity of ownership suffer by eliminating these owners, putting Mr. Mays' opinion of what that community should have in that market for the benefit of basically Mr. Mays and his shareholders. It is all bottom line, and if you, the lawmakers, allow Clear Channel to own 3,000, you will be sitting here 5 years from now, again with Mr. Mays, and he will have 3,000 stations probably.

Senator WYDEN. Mr. Mays, I am sure you want to respond.

Mr. MAYS. Well, I think I have covered the point that Mr. Short has accused us of running some automated jukeboxes around the country which could not be further from the truth. Certainly we have a sales manager in that station in Syracuse.

I would just say that it is just common sense that each one of our radio stations has to be independently serving their local communities or there would be no reason why we would have your constituents listen to our radio station and like the information and the entertainment that they are receiving and our advertisers who use that audience to sell products to. It is just inconceivable to me why anyone would think that we would tear down that commitment to the local community for every single one of our radio stations and not do the research in every single market to support the information, news, and entertainment that we put on each individual radio station. Whether it is in Illinois, Oregon, or Arizona, it is all the same. It is a commitment to the local community and we are not in business unless we adhere to that.

We do not run automated answering machines. We have huge staffs in every one of our markets. Smaller markets are somewhat smaller than here in Washington.

But let me just say that when you are at the maximum limit in Washington, D.C. with 8 out of the 56 radio stations and you have 200 satellite radio stations, 9 daily newspapers, 20 weekly newspapers, 13 television stations, and you are trying to compete to sell your customers' products, which is our business—we are in the business of selling our customers' products and through our audiences, the advertising that we sell, we hope that we do accomplish that. It is our absolute commitment to be a public service conduit to every single market that we are in, which we do achieve in every single market that we are in.

But to be accused of playing some homogenized McDonald's format on every one of our stations would be a way to the road to disaster. We just cannot do that, and I do not understand why people at this table assume that we can.

Senator WYDEN. My time is up. I would just say, Mr. Mays, we know that you do your homework, that you do research on various communities. What concerns me is whether or not the industry is going to be straight with the listeners, and that is why I asked whether your station had a policy of disclosing when the deejays were not there locally. You were candid, which is to your credit, that you do not have the policy. That is the kind of thing that I want to see in the future because I think the public has got a right to know.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Smith, thank you for your patience.

**STATEMENT OF HON. GORDON SMITH,
U.S. SENATOR FROM OREGON**

Senator SMITH. Thank you, Mr. Chairman. I have been in and out this morning trying to cover commitments in three different committees, but I particularly appreciate your holding this hearing because I think it is so interesting and it is an area I am trying to get up to speed on.

But it frankly strikes me that if it was not this industry, we could bring the airlines in here and have the same discussion. We could bring the banks and the credit unions in here and have the same discussion. We could bring the farmers in who complain about packer concentration. Then we could bring the packers in to complain about retail store competition. This is called the marketplace and it seems to be working.

This area is new to me and it is fascinating to me. I earned my living growing and processing peas. I remember when I first got into my business, there was Green Giant and there was Bird's Eye, and they dominated everything. Now they are just labels. They do not even produce anymore because some of us figured out how to pick up the crumbs falling from their table, and little businesses want to become big businesses.

It does seem to me what I want to focus on, is there anything in this system that prevents little guys from becoming big guys like Clear? That I think is the real central question we have to ask because right now United is bankrupt and JetBlue and Southwest are prospering. They figured out how to undercut those guys to provide customers quality service and price.

I just think it is impossible for us as U.S. Senators to figure out the intricacies of every industry. What we have to make sure of is that the door is open to newcomers, that monopolies do not exist, or at least there are the abilities to stop illegal activities which prevent newcomers and new capital from coming in. I guess that is really my central question.

I think the proposal here is that we have ownership caps. My question is, how do ownership caps actually translate into getting more local people on local stations? I am not sure I understand that nexus.

I also think, Mr. Chairman, one of the benefits of your having this hearing is that Mr. Henley, whose music I have loved since I was a little boy—

[Laughter.]

Senator SMITH. Actually we are probably the same age. But he has the ability to come here and complain and express the fear that he might have retribution. I bet you will not because we are going to be watching to make sure you do not. So I thank you for your courage to come here.

I frankly plead with the industry generally to make sure that if there are features in how you do your business that look like payola, look like a bribe, that you purge yourself of those things.

But I guess my question is, is there a proposal here like ownership caps that actually makes sense to help local artists? And what is the nexus there? I ask that just for information.

Ms. TOOMEY. Mr. Chairman, in the interest of fairness, I want to address first Mr. Fritts' attempt to discredit our study. We are not a rogue organization. We represent over a dozen artists' organizations, and we have 40 letters of support for the study with everyone from all the unions, Don Henley's group, the Arts Empowerment Coalition, Just Plain Folks, everything from very big and small organizations, consumer groups, Consumer Union, Consumer Federation, Media Access Project, et cetera. All of them have looked at our study and said the numbers ring true.

Now, Mr. Fritts does raise an interesting issue. We cite most of the studies that he offered up in comparison to our studies within our study because we say these studies tell us half the picture. They just do not tell us the next. It is almost as if the detective has chased the thief into the drawing room, but then does not look in the closet, and what our study does is it goes into the closet and says this is where the problems are.

The problem is, as soon as we put our study out, the NAB said, well, you have got the wrong numbers. Now, the reason it has taken so long for us to do a study like this is because it is expensive to buy industry data, and it was very important to get a grant to do that kind of work. But the fact of the matter is this should be public data, and if anything really good can come, if we can understand how these dramatic changes are affecting the landscape, what we need to know is publicly what is happening at all of these radio stations.

So one thing that I would suggest maybe come from a hearing like this is the idea that we make, as a requirement of a station's license, that they file certain pertinent bits of information that tell publicly so citizens groups and musicians and artists can all see

the statistics that it took so long to bring forward. I think if we could see them and anticipate what trends are coming down the line, we might be able to adjust for them and make sure that the full diversity of citizens are being served by the public airwaves.

Senator SMITH. What you are asking in law is some regulation that requires so much local content in what is presented by these stations.

Ms. TOOMEY. Even more basically, just information about the stations themselves so that we can know what percentage of marketplace they are controlling, what other connections they have, whether they are actually programming stations whose licenses they do not own but who they have a relationship with which extends the number of stations they have in a market.

Senator SMITH. Mr. Fritts, is there anything about ownership caps that in your view assures the local producers of music get on the air?

Mr. FRITTS. Well, I am not a very good singer, but if I wanted on the air, I would have to get on on the merits, quite frankly. Put it this way. If there is a worthy artist, they will make their way onto the air.

I used to own and operate a chain of small town radio stations, and I know the system pretty well. Our stations were so small that no independent record promoter wanted to come to us. We programmed for the local community just as radio is doing now.

I think the overview here is that the FCC has in the public record documents that Ms. Toomey was talking about, and we would be happy to provide a response to the myths that are sometimes alluded to in these studies.

The problem, I would submit, that Mr. Henley has, is not with the radio stations but, indeed, is with the record companies. There are only five record companies and they operate as monopolies, and they dictate to the artist what the terms and agreements will be. And if it is different than that, then I would like to hear it.

Senator SMITH. So after the food industry and then the banks and credit unions, we ought to bring the recording folks in here too.

Mr. FRITTS. Just one final point. Mr. Mays has not always been a large company. He started with one radio station many years ago and built his company in the American system.

Senator SMITH. Is there anything in the system that would prevent a start-up operation—like Mr. Henley may want to start a radio station—is there anything that Mr. Mays can do to him to prevent him from going into this business if he so chooses?

Mr. FRITTS. Not that I am aware of.

Senator SMITH. Mr. Henley.

Mr. HENLEY. Well, if I was going to get in the radio business, I should have done it in the 1970s.

[Laughter.]

Mr. HENLEY. But you and I have more in common than just my music. I know something about farming and I know something about peas because I grew up on a farm in East Texas picking peas for my father. And what has happened to the radio industry is exactly what has happened to the agriculture industry. I am a member of the American Farmland Trust, and I know about the decimation of the small family farms in this country. They have virtually

disappeared. Why? Because big agribusiness has taken over the industry, and that is exactly what has happened in the music business.

You can do all these research models and you can concentrate on the business factor, but what is left out of the equation is the impact on the culture. In my humble opinion, research has ruined the radio business because of the way they do it. They do call-out research. They do focus groups. They will bring people into a room or they will call them up and play 10 seconds of a song to them, and they will say, do you like this? They will do even galvanic skin response, for Christ's sake, and see if the heart rate increases. That is not the way people listen to music. People have to become acquainted with a song. It has to grow on them, and music does not get a chance to do that anymore.

So in my estimation, research has ruined radio. It is not realistic. It does not have a human element or a human factor in it. Everything is built on a business model, and that does not take into account our culture and our feelings as human beings and our emotions and our need for creativity and expression.

Senator SMITH. Thank you.

Mr. SHORT. To answer your question, I think it is similar to me saying could someone, one individual, start the next Microsoft or start the next General Motors or next whatever giant corporation that exists? Technically the answer is yes, but realistically how can you do it, particularly given that you have a monopoly in place. Many of these companies I just mentioned were kind of like the first and that was their in. Now that everybody knows how to do it, it is unlikely, since everybody knows the secrets, that there is going to be the next one anytime soon.

Clear Channel was basically first. You know, they were in position. When the law changed, they were out of the gate. They did whatever they had to do quickly and, maybe to their credit, they saw a loophole and they took advantage of it. Now that other people see this loophole, they say, well, let us try to jump through it. Well, the knot is a little smaller now and you might get hung trying to go through there.

There are other reasons. Access to capital is extremely difficult. Who is going to lend a small entrepreneur first time out of the gate many, many millions of dollars to go up against a giant? I would not risk my money with that scenario and most other prudent businessmen or women would not either.

I think Senator McCain had mentioned earlier, when he started, about the legislation for a tax certificate or something of that nature. I think that we do need to look at a tax certificate with some provisions for small businesses and particularly for minorities.

One of the things that happened, if you look at the history of the telecommunications acts in the past, from 1934 through 1978, hardly any stations were owned by African-Americans. It was not because no African-American thought of the idea. Who was going to lend you the money? And then who was going to advertise after you got it? But they made provisions with the tax certificate that allowed a significant growth in minority ownership from 1978 through 1996. That is probably the greatest growth in terms of Af-

rican-American and other minority participation in the broadcast industry.

And then came the bolo punch, the knockout punch in 1996. While they had all these supposedly great intentions, it for practical purposes was no better than the guys who invented the leisure suit. I mean, it was supposed to be a nice style, but who needs it now? Get rid of it. If it is no longer appropriate, if it is no longer relevant, make adjustments.

The 1996 Telecommunications Act was supposed to be an amendment to the 1934 Act, not a replacement so that the new, smart lawyers can figure out a way to make one or two or three companies control not only the media but control—look at the elections—control the public viewpoint. If you own the airwaves, you can basically push whatever agenda that you have personally, and it may not necessarily be the agenda that is best for the country.

So I would say institute a tax certificate, make banks and lending institutions lend money. And if you take away some of these stations—Clear Channel has what? I have information that says—well, correct me. He has got his information. But Clear Channel has an estimated revenue of over \$3 billion annually.

Senator SMITH. But if you want to go into Mr. Clear Station's business, can you do that?

Mr. SHORT. Can I do what?

Senator SMITH. You may have to have a business model. You may have to go get a loan. Can you get into the business? Can you get a license?

Mr. SHORT. Yes, you can. If you are a U.S. citizen, no felony, and you have a few bucks in your pocket, yes. Will you survive?

Senator SMITH. Can you be a JetBlue? I do not know. That is just a question I am asking. I want to make sure that we have the kinds of regulations that give people ins to it, but in the end we cannot guarantee that anybody succeeds.

The CHAIRMAN. Can you be a family farmer?

Senator SMITH. That is a great question. I know some family farmers that are doing very, very well, and there are some that just do not. And I know a lot of food processors very frustrated with Wal-Mart because they absolutely dominate the market. But eventually somebody is going to figure out how to do better what Wal-Mart does.

Mr. SHORT. But it is frustrating. I did that. I was the guy who was an accountant. I was the guy who believed the American dream that, yes, you could own a radio station. When I had my station—and Jim Winston is behind me sitting here—there probably were not 100 African-Americans who owned a station at that time. And Mr. Mays talks about more African-Americans owned stations. Well, I think there are more African-American-owned stations, but the number of African-American owners is down. You have maybe Radio One, Inner City, and a few companies like that that have a lot.

So now the chances—if you are an African-American growing up in this country, and you say, you know what, this guy over here made \$3 billion in radio advertisement, I think that is what I want to do, I do not want to be a teacher, I do not want to be a scientist, I want to be a broadcaster if they have got that kind of money in

broadcasting, how can that person do it with monopolies in place, limited access to capital? There seems to be no end in sight.

Senator SMITH. Monopoly is a legal term of art.

Mr. SHORT. Oligopoly, monopoly. If it walks like a duck, quacks like a duck, it is a duck.

Senator SMITH. But that is why we have the Sherman antitrust law, and I assume that they are going to enforce it. I guess what I want to find out, are they enforcing it?

Mr. SHORT. That is a great question.

Senator SMITH. Are there things that are going on in this industry that make it impossible for others to compete against monopolies? Maybe there are, maybe there are not. But if they are big businesses, they tend to be called monopolies, and I want to make sure that little businesses are not impeded from becoming big businesses by some structural impediment.

Mr. SHORT. Right. The DOJ had said that, I believe, if you exceeded the 40 percent ruling, if you owned more than 40 percent of the market, many of these companies that were trying to buy more in that market were denied because you were considered to have enough market dominance.

Syracuse is a good example that either the DOJ has kind of looked the other way or there are new rules or something, because they have greater than 40 percent. And then you go out and you combine your strength in radio by purchasing television stations in the same market. So it just goes on and on.

Senator SMITH. Just an editorial comment.

The CHAIRMAN. I think Mr. Mays is eager.

Senator SMITH. I think he wants to talk.

I just want to say big is not always better. Bigness does not always equal most profitable. So sometimes when you get too big, you are going to find all kinds of inefficiencies that come from scale and they are going to break you down and you are going to get some competitors coming in that have figured out how to take you down.

Mr. Mays, is anybody working at taking you down?

Mr. MAYS. I do not know, but certainly United Airlines might have a different view of that.

Let me say that 20 percent of the industry revenues is not a monopoly.

The CHAIRMAN. Mr. Mays, on that subject, according to Media Access Productions, BIA Financial Networks data, May 16, 2002, Clear Channel's revenue was \$3.25 billion, 27.5 percent of the revenue share. Now, if you have different information, I would be glad to have it. But BIA Financial Networks is a reliable gauge. That was for 2001. But \$3.25 billion is a pretty good amount of money. And big may be better or worse, but where it is 27.5, I will be glad to get whatever information you have.

Mr. MAYS. I think those industry revenues are wrong, and I think—

The CHAIRMAN. So the BIA Financial Networks are wrong.

Mr. MAYS. Yes. And I think since that was published, they have come out and said that those industry revenues are wrong and the industry revenues are \$16 billion. I am looking at an independent

report here that says Clear Channel does, in fact, have \$3.2 billion in revenue, and that is 18.7 percent of the industry revenue.

The CHAIRMAN. What independent organization is that?

Mr. MAYS. This is a Bear Stearns source, BIA Financial Networks.

The CHAIRMAN. I do not want to waste the time of the Committee but we would be glad to hear your information. I am proceeding on the information you got 27.5 percent of the revenues by a reliable source. And if you have a reliable source, we would be glad to correct the record.

Go ahead, please.

Mr. MAYS. Okay, excuse me.

I would say it depends, Senator, on what that individual radio owner would like to do. I think obviously with almost 4,000 owners, that you have a lot of one-owner radio stations. I mentioned earlier that Jerry Lee in Philadelphia is the number one station, the most profitable station in Philadelphia. He operates one station. It is very successful. He does not want to own 2 or 10 or 1,200.

But there are other companies that have recently entered the market. Certainly Radio One, which is basically an African-American-owned company, has grown considerably on a percentage basis much faster than we. Spanish Broadcasting, Hispanic Broadcasting, Telemundo. Salem, which is a religious broadcaster has been growing their business. I think the answer to your question is, yes, the barriers of entry are not overwhelming for a person to build a large company within this industry, and I think we are seeing that every day.

There are 10 percent more minority-owned stations since 1997 to 2002.

The CHAIRMAN. Is that an increase in minority owners or minority ownership stations?

Mr. MAYS. I am not sure, Senator. My data shows—

The CHAIRMAN. I am sure.

[Laughter.]

Mr. MAYS. But minority owned companies. The difference is—

The CHAIRMAN. Please proceed.

Mr. MAYS. Okay. And I am sorry I do not have that data, but the data is they are 10 percent owned by minority-owned companies since 1997.

I would like to also respond to what Mr. Henley—

The CHAIRMAN. Again, could I put that in a different perspective since we are dealing with statistics? I think that is from 2.75 percent of the market to about 3. some percent of the market, that 10 percent increase you are talking about.

Mr. MAYS. But let me say, Senator, we concentrated our efforts in the divestiture required by the Justice Department in our last large acquisition, and we sold \$1.5 billion worth of radio stations to the minority community. And there were a number of different owners that we could have sold that \$1.5 billion worth of properties to.

And then as I said, we also co-established a fund called the Quetzal/Chase Fund and funded it ourselves with \$15 million to provide funds for minorities to buy broadcast properties. And we strongly

support your bill and we will be happy to do anything that we can to help that get through these halls.

I would like to also say that Mr. Henley accuses us of doing too much research and broadcasting to the mass audiences in our individual markets based on research, and then says that we do not play anything except what the record companies tell us to play. I mean, it is inconsistent.

But I would say, again, that our whole focus is serving our local communities and nothing can take us away from that, Mr. Chairman.

And I really do appreciate you having us here today.

The CHAIRMAN. Well, thank you.

I just want to point out again it is interesting how we talk about statistics. I think it is pretty impressive when you say there has been an increase of 10 percent in minority broadcasters. In a little different perspective, it was 2.7 percent of all broadcasters in 1991. It is now up to 3.8 percent. I understand that minority includes Hispanic as well as African-American and other minorities. I do not think that that is quite what we had in mind, is it, Mr. Short?

Mr. SHORT. I would certainly hope that such pathetic numbers are what we had in mind.

The CHAIRMAN. That is why I am introducing the legislation today.

Mr. Fritts, please, go ahead.

Mr. FRITTS. Mr. Chairman, let me give you a success story. One, we agree with you that the numbers for African-American, for Hispanics and other minorities of ownership of stations is under what it should be and could be, and we have a number of programs in effect that we are helping to alleviate that problem in terms of training, in terms of helping secure capital access to the capital markets, but more especially, the biggest boost will come when your legislation passes. We think that is a very important part of that.

There is a gentleman named Al Vicente. He is a former NAB board member. He is an African-American. He is currently buying radio stations and has built up a group from about a year-and-a-half ago until now, somewhere in the neighborhood of 20 radio stations that he is buying and operating himself as local stations in various markets. And while that is not enough to move the number substantially by itself, it is a start, and it indeed answers Senator Smith's question of is there an opportunity and can it be done.

I would point out one final point. On a personal basis, my son sells advertising for a radio group in competition to Mr. Mays' group in Jackson, Mississippi. While it is tough competition, as a salesperson he is doing quite well, thank you, in a tough marketplace and does not have any complaints about what is going on in the marketplace.

So it can be done. He would like to be an owner himself, but unfortunately he does not have access to the capital markets to buy where he would like to, but maybe some day.

The CHAIRMAN. Well, this has been long, and I apologize to the witnesses for the length of this hearing. Obviously there is a great deal of interest.

We intend, most likely, to have additional hearings, including television, newspaper, other ownership issues. It is topical because the FCC may be making some decisions and we hope that we can add to their base of knowledge. We had a hearing not long ago where we had five FCC commissioners, and there were varying levels of concern amongst those five commissioners about this issue of media concentration. So I think we need to continue to look at it.

I think Senator Smith's point is well made, that things have a tendency to balance out, but I also think in some cases, such as minority ownership—I apologize that I do not know the total percentage of the American population that are minorities, Hispanic, African-American, Asian, et cetera, but I would imagine it is significantly more than 3.8 percent which is the percent of ownership of radio stations—of broadcasting. And I think that that is an important factor because that is where people get their news and information and everybody should have the right to get different messages of different kinds. This is really what this is all about.

We also do not want to stifle artists, especially new and emerging artists, and I am sure, Mr. Mays, that you are sensitive to that issue as well. I also understand some have raised questions about fewer and fewer numbers of songs that are being played on some stations, and that is an area that we did not discuss. But I hope that this will spur more of a national debate, more information being exchanged, better information both for the Federal Communications Commission, as well as Members of Congress in general, in this Committee in particular.

I thank you for your contribution today. I thank you for being here. And speaking as one Member of the Committee, this has been a very important and very helpful hearing, and I hope we have been fair to all.

This hearing is adjourned.

[Whereupon, at 12:41 p.m., the Committee was adjourned.]

