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THE FUTURE OF RADIO

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 24, 2007

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

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THE FUTURE OF RADIO

WEDNESDAY, OCTOBER 24, 2007

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

The Committee met, pursuant to notice, at 10:02 a.m. in room SR–253, Russell Senate Office Building, Hon. Maria Cantwell, presiding.

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Good morning, the Senate Committee on Commerce, Science, and Transportation will come to order, and we're having a full Committee meeting this morning on the future of radio.

We are joined by Carol Pierson, President and CEO of National Federation of Community Broadcasters, welcome. Ms. Dana Davis Rehm, Senior Vice President for Strategy and Partnerships from NPR, thank you for being here. Mr. S. Derek Turner, Research Director for the Free Press, thank you very much. Mr. Tim Westergren, Chief Strategy Officer and Co-Founder of Pandora Media, I'm sure we're going to hear more about what that is, thank you. And, Mr. Mac McCaughan, Founder of Merge Records, and member of Superchunk, and Mr. Russell Withers, Founder and Owner of Withers Broadcasting, on behalf of the National Association of Broadcasters.

Welcome, all. This morning we are scheduled to have a vote at 11:00 which may be followed by a couple of votes, so I'm going to forego my opening statement and submit it to the record so that we might hear from you, and maybe even get to a question and answer period before that.

But I'll see if any of my colleagues wish to do the same, or to make an opening statement.

[The prepared statement of Senator Cantwell follows:]

PREPARED STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

I want to welcome everyone to the hearing on the future of radio. I want to thank Chairman Inouye and Vice Chairman Stevens for calling this important hearing.

Radio remains a vital means to inform and educate listeners throughout the country as well as serving to entertain them. Today, consumers have an overwhelming number of choices on how to spend their leisure time.

Radio is but one among many choices consumers have and over-the-air radio broadcast is but only one means for distributing audio programming to listeners. There is also satellite radio, Internet radio, podcasts on iPods and MP3 players, as well as downloads on wireless phones. Consumers also can receive audio channels with subscriptions to cable or satellite television service. And they can always listen to CDs or old cassettes and albums.

As the lines of traditional radio get blurred and the digital delivery of audio programming occurs over an increasing number of platforms, consumers will have more choices than they know what to do with as to what they listen to, how they listen to it, when they listen to it, and where they listen to it.

But it is not going to all happen overnight. Unlike the transition to digital television, the transition to digital radio is voluntary. And there are still critical details that need to be worked through.

For that reason alone, terrestrial radio will continue to play an essential role for a considerable time to come. Ultimately, I see these different audio platforms as complementing each other rather than competing with one another.

The value of terrestrial radio in fulfilling the Commission's mission in promoting "competition, diversity, and localism" can't be understated.

But unfortunately, the 1996 Telecom Act brought about massive radio industry consolidation, a loss of localism, and a lack of programming diversity.

A recent bright spot, though, has been Low Power FM radio. These community-based, non-commercial radio stations create hours of original local programming, can tailor their services to niche populations, and are an inexpensive means of adding another voice to a consolidated radio market.

After the FCC did its due diligence on potential interference, it launched the new Low Power FM service in 2000. A rider to an appropriations bill later that year, made a technical change to the FCC rule and required additional testing, effectively limiting the service from being licensed in more populated areas.

Those additional tests by an outside lab cost the taxpayer millions of dollars and came up with the same conclusion as the FCC. Senator McCain and I have introduced legislation in the last three Congresses to try and set things right.

And as we look ahead, we must also take stock of where we have been.

The Telecommunications Act of 1996 lifted all nationwide ownership limits for radio station broadcasters, and permitted a single entity to own and operate as many as eight stations in the Nation's largest markets.

Three years later, the FCC relaxed its television-radio cross-ownership rule. This was followed in 2003, by the FCC replacing its rules prohibiting newspaper-broadcast cross ownership as well as its 1999 local television-radio cross ownership rule, with a single rule on cross media limits.

As we all know these specific rules were remanded by the Third Circuit Court in Philadelphia, and never went into effect.

Last year, the Commission began the process for reviewing all of the remanded rules as well as conducting its required periodic review of media ownership rules.

A number of my colleagues from both sides of the aisle have expressed concerns how the Commission has conducted the review to date. At times, I have the impression that the Chairman has his answer, particularly with respect to eliminating the existing media cross ownership rules, and this whole process is all about checking off the necessary boxes rather than getting at the facts. I hope that is not the case.

Based on statements made by Chairman Martin, it appears that he wants to wrap the proceeding up and issue rules by this December 18th. I think this would be a major miscalculation on his part.

I want to assure Chairman Martin that people really care about media ownership. I know people back home in Washington State do. And they take every opportunity to tell me so. I hope that Chairman Martin will not short circuit the process.

I look forward to hearing from the panel.

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

Senator DORGAN. Madam Chair, let me take just a minute and a half. Because of the time problem, I will be very brief. But, I want to say that I think this is a very important hearing. I'm a cosponsor of the Local Community Radio Act which deals with Low Power FM, I'm a cosponsor of the Internet Radio Equality Act. I've opposed the merger of satellite radio companies XM and Sirius. There's a lot to talk about with respect to the future of radio.

But I want to talk just for 1 minute, especially about the proposed FCC proceedings, with respect to the concentration of ownership, that is, relaxing the ownership limits on broadcasters—radio and television—and also allowing cross-ownership of newspapers. Senator Trent Lott and I, we're having a press conference at noon today on that subject.

But, I think those listening and those paying attention to the FCC should understand they're going to be in for a huge battle, if they think they're going to go now and begin, between now and the middle of December, relax the ownership limits on television and radio that has already had dramatic concentration—far more than is healthy for this country—and then at the same time, allow cross-ownership with newspapers.

I just want people to understand, the FCC is going to be in for a big fight if it caves in to the interests that are pushing them to relax ownership rules, that is not in the interests of this country.

So, I wanted to make that point. But, I know this is about radio, and I appreciate having the hearing.

Senator CANTWELL. Senator McCaskill, do you wish to make an opening statement?

STATEMENT OF HON. CLAIRE McCASKILL, U.S. SENATOR FROM MISSOURI

Senator McCASKILL. Briefly, Madam Chair, I agree with many of the things that Senator Dorgan has indicated. I, particularly, have heart palpitations about the idea that one company—having more spectrum than the entire FM band—I mean, just think about that. One company, having more spectrum than the entire FM band. And one national company with more channels than its local competition combined, in every market in America.

I think those things are something that we need to be very focused on, I think it is our job to speak for those people out there that we don't hear, and there are a lot of people out there whose voices we don't hear in the halls of Congress. And, I think it's important that we do that, and I think this hearing is an important part of that, and I look forward to the testimony.

Thank you, Madam Chair.

Senator CANTWELL. Thank you, and again, welcome to the witnesses who are here to have a hearing on the future of radio.

Mr. McCaughan, I think we'll start with you, and just go right down the line. And if people could keep their comments to 5 minutes, we are going to have a timer on this morning. But if you could keep track, and obviously we'll accept longer statements and information for the record.

But, again, welcome Mr. McCaughan, thank you for being here.

STATEMENT OF MAC McCAUGHAN, MUSICIAN AND CO-FOUNDER, MERGE RECORDS

Mr. McCAUGHAN. Madam Chair and Members of the Committee, it's an honor to testify before you today at such a crucial hearing. My name is Mac McCaughan, the Co-Founder of Merge Records, which is an independent record label, we're based in North Carolina. And, we've released over 300 albums from 60 different bands over the past 20 years.

I'm also a musician and a songwriter with 11 full-length records released by my band Superchunk, 6 albums that I've recorded under the name Portastatic—and I'd like to apologize in advance for needing to refer to my notes today, I'm used to performing on stage, but I can, I have a memory for song lyrics, but I hope you trust me when I say, you do not want to hear me sing my testimony this morning.

[Laughter.]

Mr. MCCAUGHAN. Radio has always been important to me, in fact, I think it has a lot to do with why I sit here today. Unlike any other medium, I think radio fosters a direct relationship between music and the listener. As a kid, I went to sleep and woke up to the radio, and that was at a time when even album rock radio featured music that was chosen by the DJ—new records, his or her favorite new records.

Around the age of 13, I began listening to college radio, which exposed me to all different kinds of music that you can never hear on *Top 40* or album rock stations. And that music, that I discovered via college radio, really set me on the course of making music myself, and eventually starting a record label, which is Merge.

As both a performer and a label owner, I've relied on radio as an essential component of the work that we do in getting our music out there to people who want to hear it.

I come here today to offer my perspective on the current state, and possible future, of broadcasting, and I urge you to adopt policies that encourage localism, competition and diversity on the airwaves.

I'd like first to talk about the value of community-based and noncommercial radio. Low power, college, NPR, and other noncommercial broadcasting enterprises are extremely important today, especially as local information and entertainment options become more scarce. Commercial radio is about aggregating the largest possible number of listeners in a targeted demographic, but community-based radio is about serving its audiences. It has a unique power and desire to be a conduit for news and culture, and is essential to the diversity that defines cultural life in this country.

As a record label owner, I can tell you that noncommercial radio has been a leading source of support for the music that we release, and we would not have had the chance to introduce many of our artists to music listeners and build such a dedicated customer base without the help of noncommercial radio. Broadcasters such as KEXP, KCMP, KCRW, WXPN and in North Carolina, WXYC and WXTU continue to program a wide variety of independent and local music on the dial, in the community and on the web. And WXYC in Chapel Hill, incidentally, was the first radio station, 10 years ago, to begin broadcasting over the Internet, 24 hours.

For a label like ours, and many other musicians out there, support of noncommercial radio which is programmed by people as passionate about music as we are, is essential. Congress should take action to allow for the growth of noncommercial radio, and the expansion of Low Power FM into more urban settings.

In 2000, Congress passed legislation to limit the FCC's ability to issue noncommercial Low Power FM radio licenses in more populated communities across the country. And lifting this ban once and for all will lead to a significant expansion of community-based stations that will prioritize local and independent content and news, not to mention programming that highlights the kind of musical genres that are routinely ignored by commercial radio.

I also want to urge this Committee to take the necessary steps to ensure that our media landscape does not become even more consolidated. The deregulation that followed the 1996 Telecommunications Act allowed for unprecedented consolidation in commercial radio which has resulted in homogeneity, is often out of step with artists, entrepreneurs, media professionals, and educators, not to mention the listeners.

Back before the Telecom Act, this commercial radio industry was much more competitive. DJs and programmers in markets around the country were eager to play new music. This big piece of rock history is no longer, as corporate radio's sense of adventurism, localism, and risk-taking is a thing of the past. Nowadays, you are much more likely to hear new, independent music in a TV show, in a car commercial, in a video game, on satellite radio or community radio station than on commercial radio. Although label owners, artists and listeners would be thrilled to hear more independent music on commercial radio, in most cases this chance simply does not exist.

As a specific example, from our experience at Merge, two of the albums that we've released in 2007 by the bands Arcade Fire and Spoon both debuted on the *Billboard Top Ten.* The bands both played on *Saturday Night Live,* which is a real coup for bands on a label of our size, and the mainstream print media has written extensively about them. Both bands tour the world, playing highly successful, sold-out concerts. Spoon performed here in D.C. last night at a sold out show at the 9:30 Club, which was broadcast on NPR, yet both of these bands have been virtually absent from the commercial airwaves throughout the trajectory of their careers.

Instead, it's been noncommercial radio that has played a leading role in helping these bands reach a mainstream audience, just like it does with a majority of our other artists, bands like Camera Obscura, M. Ward, The Clientele, North Carolina's own Rosebuds. Because the independent music community's business model focuses on selling tens of thousands of albums instead of millions, Merge and other independent labels can rely on a combination of noncommercial radio and the Internet for promotion and distribution.

But if Congress and the FCC implement policies that open up commercial radio for independent artists and labels, it could change the economics of the independent sector and the culture at large.

It's been widely reported that the FCC is considering altering the media ownership rules again, and loosening the local ownership caps to allow major radio groups to buy even more stations in each market. And no matter what your taste in entertainment or news, if you value localism, competition and diversity, Congress and the FCC must recognize that further deregulation is not the answer.

Finally, I'd like to talk about the value of the Internet——

Senator CANTWELL. Mr. McCaughan, you're a little over your time. It's like, you know, song length.

Mr. MCCAUGHAN. OK, sure.

Senator CANTWELL. So, if you could—we're interested in all that you have to say, kind of summarize and then we'll get onto our other panelists, and then we can take the rest of your testimony for the record.

Mr. MCCAUGHAN. OK, great.

Senator CANTWELL. Thank you.

Mr. MCCAUGHAN. I was going to summarize by saying that the Internet is incredibly important to a label like Merge, for getting our music out there, exposing it to people, and you know, we'd like to keep the information flowing and keep technology growing without resorting to the old bottleneck that would be created by a tiered Internet, things such as this.

To conclude, artists who thrive outside the commercial realm depend on and deserve open access to public platforms such as the airwaves and the Internet. Likewise, communities and citizens should have access to localized and diverse media. This is not just a means of doing business, but also an important facet of American life that needs to be nurtured and protected.

I'd like thank Chairman Inouye and the Members of the Committee for taking the time to consider these issues, and it's my hope that those involved in the decisionmaking process on these issues can take something from the statements I have made.

I would be happy to answer your questions after the testimony.

[The prepared statement of Mr. McCaughan follows:]

PREPARED STATEMENT OF MAC MCCAUGHAN, CO-FOUNDER, MERGE RECORDS

Chairman Inouye, Senator Stevens and members of the Committee, it is an honor to testify before you today at such a crucial hearing.

My name is Mac McCaughan, and I'm the Co-Founder of Merge Records, an independent record label based in Chapel Hill, North Carolina, that has released over 300 albums from the 60 bands on our roster over the past 20 years. I'm also a musician and a songwriter, with 11 full-length records released by my band Superchunk, and 6 albums I've recorded under the name Portastatic.

Radio has always been very important to me. In fact, it has a lot to do with why I sit here today. Unlike any other medium, radio fosters a direct relationship between music and the listener. As a kid I went to sleep and woke up to the radio in an era when—even on album rock radio—the DJ was playing his or her favorite new records. Then, at the age of 12, college radio exposed me to music that I had never heard on top 40 or album rock stations. The music I discovered then set me on the course of making music myself and starting a record label. And since that time, as both a performer and a label owner, I have relied on radio as an essential component of the work we do helping audiences learn about our music.

I come here today to offer my perspective on the current state and possible future of broadcasting, and to urge you to adopt policies that encourage localism, competition and diversity on the airwaves.

First, I'd like to talk about the value of community-based and non-commercial radio. Low-power, college, NPR and other non-commercial broadcasting enterprises are extremely important today, especially as local information and entertainment options become scarcer. Commercial radio is about aggregating the largest possible number of listeners in a targeted demographic. Community-based radio is about serving its audiences. It has the unique power and the desire to be a conduit for news and culture, and is essential to the diversity that defines cultural life in this country.

As a record label owner, I can tell you that non-commercial radio has been a leading source of support for our label's music. We would not have had the chance to introduce many of our artists to music listeners—and build such a dedicated customer base—without the help of non-commercial radio. Broadcasters such as KEXP, KCMP, KCRW, WXPN and North Carolina's own WXYC and WXDU continue to program a wide variety of independent and local music, on the dial, in the community and on the web. For a label like ours, and many other musicians out there, the support of non-commercial radio, which is programmed by people as passionate about music as we are, is essential.

Congress should take action to allow for the growth of non-commercial radio, and the expansion of Low Power FM into more urban settings. In 2000, Congress passed legislation to limit the FCC's ability to issue non-commercial Low Power FM radio licenses in more populated communities across the country. Lifting this ban once and for all will lead to a significant expansion of community-based stations that will prioritize local and independent content and news, not to mention programming that highlights kinds of musical genres that are routinely ignored by commercial radio.

I also want to urge this committee to take the necessary steps to ensure that our media landscape does not become even more consolidated. The deregulation that followed the 1996 Telecommunications Act allowed for unprecedented consolidation in commercial radio, which has resulted in a homogeneity that is often out-of-step with artists, entrepreneurs, media professionals and educators—not to mention listeners.

Back before the Telecom Act, the commercial radio industry was much more competitive, with deejays and programmers in markets around the country eager to play new music. This big piece of rock history is no longer, as corporate radio's sense of adventurism, localism and risk-taking is a thing of the past. Nowadays, you are much more likely to hear new independent music in a TV show, in a car commercial, in a video game, on satellite radio or community radio stations than on commercial radio. Although label owners, artists and listeners would be thrilled to hear more indie music on commercial radio, in most cases, the chance simply does not exist.

Let me give you specific examples from our experience at Merge. In 2007, two of the albums we released—by the bands Arcade Fire and Spoon—both debuted in the Billboard Top Ten. They appeared on *Saturday Night Live*. The mainstream print media has written extensively about them, and both bands tour the world, playing highly successful, sold out concerts. Yet both of these bands have been virtually absent from the commercial airwaves.

Instead, it's been non-commercial radio that has played a leading role in helping these bands reach a mainstream audience, just like it does with the majority of our other artists, bands like Camera Obscura, M. Ward, The Clientele and The Rosebuds. Because the independent music community's business model focuses on selling tens of thousands of albums instead of millions, Merge and other independent labels can rely on a combination of non-commercial radio and the Internet for promotion and distribution. But if Congress and the FCC implement policies that open up commercial radio for independent artists and labels, it could change the economics of the independent sector and the culture at large.

It's been widely reported that the FCC is considering altering the media ownership rules again and loosening the local ownership caps to allow major radio groups to buy even more stations in each market. No matter what your tastes in entertainment or news, if you value localism, competition and diversity, Congress and the FCC must recognize that further deregulation is not the answer.

Finally, I'd like to talk about the value of the Internet. Given that Merge Records and artists we represent have had little access to commercial radio, the Internet has become a powerful new platform through which we can promote, distribute and sell our music. Credit must go to non-commercial broadcasters and NPR, which are leading the way in using technologies to offer new content delivery methods such as webcasting and live concert feeds, in addition to their regular programming, but that's not all. An exciting range of emerging technologies such as Internet radio, satellite radio, music subscription services, digital music stores and new webcast services like Mog, Pandora and Last.fm that have expanded the opportunities for independent bands and labels worldwide. Not just our label, but *any* label and artist should have the benefit of competing on an equal playing field, as new technologies emerge that help musicians connect with audiences. An Internet based on the principles of network neutrality allows these experiments in commerce and technology to grow. Any policy decision that enables the reestablishment of old bottlenecks or creates a tiered Internet would be a tremendous step backward.

To conclude, artists who thrive outside of the commercial realm depend on and deserve open access to public platforms such as the airwaves and the Internet. Likewise, communities and citizens should have access to localized and diverse media. This is not just a means of doing business, but also an important facet of American life that needs to be nurtured and protected.

I want to thank Chairman Inouye and the members of this committee for taking the time to consider the issues surrounding community access to broadcasting and other important media concerns. It is my hope that those involved in the decisionmaking on these issues can take something from the statements I have made. Thank you for inviting me to testify today. I will be happy to answer your questions.

Senator CANTWELL. Thank you, Mr. McCaughan.

Mr. Withers?

STATEMENT OF W. RUSSELL WITHERS, JR., FOUNDER AND OWNER, WITHERS BROADCASTING COMPANIES, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Mr. WITHERS. Good morning, Chairman Inouye, and members of the Committee, my name is Russ Withers, I'm the Owner of Withers Broadcasting Companies, which operates 30 local radio stations and 6 television stations in 7 states, including Missouri and West Virginia.

I'm testifying on behalf of the National Association of Broadcasters where I serve as Chairman of the NAB Radio Board and a member of the Executive Committee.

Radio's future is very bright, and I'll offer a perspective today from over 50 years working in radio, on a variety of issues, among them Low Power FM, media ownership and copyright fees.

First, with respect to Low Power FM. Broadcasters strongly support the current third adjacent channel protection and have serious concerns with introducing thousands of micro-radio stations to the FM band. Broadcasters do not oppose licensing Low Power FM, in fact, the FCC has authorized 811 Low Power FM operators, others have received construction permits or have applications pending at the FCC, and we encourage the Commission to act on these within the existing policy.

LPFM stations exist today within third adjacent protection for a reason, and that's to guard against interference to both LPFMs and full-power stations.

With respect to media ownership, let me also be clear. Broadcasters are not asking for total deregulation. Our message is simple: We must have reasonable rules that reflect the current competitive radio environment. With reasonable rules, we can have a vibrant industry that will continue to provide the service that our local communities expect—whether that's lifeline service in times of emergency, or entertainment and informational programming every day.

Some will argue that the changes to the broadcast ownership rules adopted in the 1996 Telecom Act have not served the public interest, but they forget that at least part of the reason that you, here in Congress, directed the FCC to make those changes, was because the fragmented broadcast industry—particularly for radio—was in serious trouble.

In the early 1990s, the FCC reported that more than half of all stations were losing money, and almost 300 stations had gone silent. You can't serve the public interests with no service.

Since 1996, however, numerous studies have shown that the changes within local broadcast markets, especially among radio stations, have enhanced the diversity of programming offered by local stations, and another study demonstrated that localism is still alive and well, despite the rule changes. There are more radio stations today in the United States than at any time in our history.

Despite claims that the radio industry has been swallowed up by a few corporate giants, there are more than 4,490 different owners of the approximately 13,500 full-power stations in this country, and according to the FCC, more than 6,498 of those are locally owned.

I can assure you that I and my fellow broadcasters are on the job every day, serving and contributing to our communities. You need only look at the California wildfires this morning, as evidence of our commitment. We need reasonable ownership rules to allow us to keep providing the service.

Turning now to the issue of copyright fees. The NAB supports legislation to vacate the Copyright Royalty Board decision, and to establish new rules for Internet streaming of music. The CRB decision earlier this year caused serious harm in two ways.

First, the cost for radio stations to stream music will drastically increase, and second, the new CRB rates are a barrier to entry for many stations that want to be part of the Internet revolution.

We support a new and fair rate structure that encourages Internet streaming. We've made attempts to work with the recording industry to reach compromise, and were left waiting 92 days for an answer. As a result of their stonewalling, we all face a very uncertain future for what was becoming a growing and exciting platform for music.

Lastly, Mr. Chairman, I want to address the issue of performance fees, and the attempts by the recording industry to impose what broadcasters consider to be a performance tax on local radio.

Local radio and the performing industry have always enjoyed a mutually beneficial relationship that can be distilled down to one concept—free music for free promotion. Local radio offers the recording industry a listening audience of 232 million listeners a week, to promote and expose music. That drives consumers to go buy music, attend concerts, and purchase artist merchandise.

Now, with slowing sales, and arguably a flawed business model for the digital age, the recording industry is looking to recoup their waning revenues through a performance tax on local radio broadcasters. Local radio, however, is not the reason the recording industry is suffering from declining profits, and local radio should not be used as a bail-out fund.

Radio broadcasters will fight this tax to preserve a local radio system that remains free, essential and available to all consumers.

Thank you for inviting me here today, and I look forward to your questions.

[The prepared statement of Mr. Withers follows:]

PREPARED STATEMENT OF W. RUSSELL WITHERS, JR., FOUNDER AND OWNER, WITHERS BROADCASTING COMPANIES, ON BEHALF OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Good morning, Chairman Inouye, Vice Chairman Stevens, and members of the Committee, my name is W. Russell Withers, Jr., I am the Founder and Owner of the Withers Broadcasting Companies, which own and operate 30 local radio stations and six television stations in seven states. I am also a Member of the Board of Directors of the National Association of Broadcasters (NAB) and the Chair of the NAB Radio Board. NAB is a trade association that advocates on behalf of more than 8,300 free, local radio and television stations and also broadcast networks before Congress, the Federal Communications Commission (FCC) and other Federal agencies, and the courts.

This is a hearing about the future of the radio industry, so let me start with a simple fact: radio, as an industry, is not the same as it was 10 years ago, 20 years ago or 40 years ago. I have been a part of this industry for more than 50 years, and I have watched the media industry change. How people listen to music has changed. How they receive and engage with the news has changed. And for radio owners like myself, the competitive pressures are very different.

Originally, we used to just compete with each other, and maybe a few local newspapers. Those days are long gone. Now, radio stations are competing for the same advertising dollars as television, cable, newspapers, Internet sites and huge Internet aggregators like Google.

Even in the face of these changes and competitive pressures, however, my industry has not, and will not, forget that our primary task is service to the community. Our core product—top-quality music, news, local information, weather and emergency services for our local communities provided without charge—remains much the same. We are there for our local communities every day. We are there to help inform our communities when weather or other emergencies occur. And, importantly, we are there to help when the emergency is over. Unlike some national entities that show up to report disasters and such, we don't leave—we remain part of the community when the effects of the disaster linger on and on. In fact, broadcasters contribute more than ten billion dollars in community service every year. In short, you would be hard pressed to find an industry that contributes more to their local communities than broadcasters.

There are some other interests that will try to tell you a different story. Some vocal groups regularly contend that the radio industry in this country has been swallowed up by a few corporate giants who do not care about the communities they serve. Well, here is another fact: there are more radio stations today in the United States than at any point previously. In fact, despite all the boisterous complaints about media consolidation, there are more radio station owners today than there were in 1972. Sure there are some large companies, as there are in any industry worth investing in. But, there are also thousands of other radio station owners. And we all serve our local communities.

Media Ownership

As a radio owner, I can tell you that we need to have reasonable media ownership rules. The rules that govern this industry should reflect the undeniable changes in the media marketplace. It is easy to see the past through rose colored glasses. But everyday, radio stations owners like myself have to deal with reality. And the reality is that outdated regulations can hold us back from competing with industries that are not regulated like ours.

You here in Congress recognized the relationship between reasonable rules and a healthy radio industry back in 1996 when you mandated reform of the highly restrictive ownership rules then in place. Remember the state of the broadcast industry before 1996. In 1992, for example, the FCC found that, due to "market fragmentation," many in the radio industry were "experiencing serious economic stress." *Revision of Radio Rules and Policies,* Report and Order, 7 FCC Rcd 2755, 2756 (1992) (FCC *Radio Order*). Specifically, stations were experiencing "sharp decrease[s]" in operating profits and operating margins. *Id.* at 2759. By the early 1990s, "more than half of all stations" were losing money, and "almost 300 radio stations" had gone silent. *Id.* at 2760. Given that the radio industry's ability "to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability," the Commission concluded that "radio's ability to serve the public interest" had become "substantially threatened." *Id.* Accordingly, the Commission believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized." *Id.*

Congress agreed. That is why, in 1996, you acted to "preserve and to promote the competitiveness of over-the-air broadcast stations."[1] Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes." House Report at 54–55.

I submit that we should not ignore these important lessons of the past. Policies that would turn back the clock so that broadcasters are at a competitive disadvantage against other information and entertainment providers clearly would not serve the public interest.

Like any industry, radio has to adapt to the changes in the marketplace. We are embracing new technologies and new plans to remain relevant in our local commu-

[1] H.R. Rep No. 204, 104th Cong., 2d Sess. at 48 (1995) ("*House Report*").

nities for decades to come. We are embracing the future by investing significant financial and human resources in new technologies, including high definition digital radio or, HD Radio, and Internet streaming, so that we can continue to compete in a digital marketplace and improve our service to local communities and listeners. All we ask is that the policies you adopt here in Washington recognize the reality that we face. Let us embrace the future—resist the calls of those who would embalm us in the past.

XM and Sirius Merger

This Committee has held a hearing and heard perspectives on the proposed merger of XM Radio and Sirius Satellite Radio. We'd like to thank the many Members of Congress who have opposed this proposed merger-to-monopoly. A monopoly in satellite radio would clearly harm consumers by inviting subscription price increases, stifling innovation and reducing program diversity. This monopoly would jeopardize the valuable free over-the-air, advertiser-supported services provided by local radio stations and their ability to serve local communities and audiences. All local stations ask is for a fair opportunity to compete in today's digital marketplace on a level playing field.

Low Power FM Stations

Let me focus for a minute on another subject that I am sure you will hear about today—Low Power FM (LPFM) broadcasting. I will speak about two issues: the relationship between LPFM and full power FM service and the relationship between LPFM and FM translators.

Regarding the former, local broadcasters oppose S. 1675, the Local Community Radio Act of 2007. We believe this legislation would allow the FCC to license thousands of micro-radio stations that will cause harmful interference to full power FM radio stations providing valuable services to local communities and listeners. The proposed bill is based on the results of a well-intentioned, but fatally flawed study intended to determine the amount of interference these new micro-radio stations would cause. That study, however, was deficient in its methodology, implementation and analysis of results in assessing the need for third adjacent channel interference protection.

To the contrary, multiple studies commissioned by NAB, the Consumer Electronics Association and others have all independently concluded that removal of the current adjacent channel protections is not practical because receivers will not be able to adequately reject the undesired signals that would be created.

Today, under its current policy, the FCC has licensed over 811 LPFM stations around the country, and with many additional granted construction permits and applications still pending at the FCC. Broadcasters have encouraged the FCC to act on any pending LPFM applications and facilitate those that have received construction permits. Clearly, there is already an efficient process in place for LPFM stations to be licensed and to operate within the current third adjacent protection policy that all stations, both low power and full power, must follow.

To be clear, local broadcasters do not oppose the licensing of LPFM stations. However, we do oppose the introduction of thousands of micro-radio stations that would cause significant harmful interference to existing full power FM radio stations. Third adjacent protection for all broadcasters exists for a reason—to guard against interference and to protect our lifeline service to communities.

Reducing interference protection for subsequently-authorized full power FM service could also deny thousands of listeners the benefits of FM station upgrades or new FM services, including digital radio. Often lost amid the clamor for more LPFM stations is the fact that full power FM stations provide vast amounts of community-responsive public service. FM stations are a primary source for local news and information, political discourse, music programming in a wide variety of formats and emergency information. And these valuable services will only increase in the future, as more stations convert to digital and offer CD-quality audio, additional free programming streams and new services such as datacasting.

We believe that, instead of risking significant interference to full power local FM stations, government should focus its efforts on creating constructive means by which an operating LPFM station that is displaced by new or upgraded full power FM service can be relocated without creating harmful interference. Such means could include granting the displaced LPFM station priority and expedited processing over other LPFM applications without the need for opening an application window. Indeed, the FCC has already granted such displacement relief in the context of low power television, and given the minimal number of LPFM stations in this situation, we would encourage that this type of relief be examined first, before other more problematic avenues are explored.

With regard to FM translators, local broadcasters do not favor an approach where LPFM stations are granted preferential treatment over FM translators. Since the FCC first authorized FM translators in 1970 as a means of delivering radio service to areas and populations that were unable to receive FM signals because of distance and terrain obstacles, translators have proven to be a vital component for delivering essential news, weather, emergency information and AMBER Alerts, as well as entertainment to many communities.

The FCC's current system of assigning FM frequencies on a first-come first-served basis has worked well, and there is no reason to think it will not continue to work well in the future. Affording preferential treatment to new LPFM stations would jeopardize FM stations' delivery of important, locally-oriented programming to many parts of the country via FM translators.

Broadcasters have also urged the FCC to lift the freeze on pending FM translator applications and quickly process these applications. In 2003, the FCC imposed a freeze on the processing of FM translator applications presumably because granting translator licenses might adversely affect the licensing of future LPFM stations. Nothing could be farther from the truth, however. LPFM and translators are not mutually exclusive and both can be viable services alongside each other.

As mentioned, broadcasters do not oppose the licensing of LPFM stations. We recognize that some of these stations may provide niche programming to local communities. However, that does not diminish the fact that FM translators are important tools that local full power broadcasters need to provide a full complement of diverse, quality programming to listeners throughout the country, especially in remote areas. The FCC has explicitly recognized that translators "provide an opportunity to import programming formats otherwise unavailable" in local markets. In this light, the valuable service that translators provide should be recognized and fostered.

In sum, there is no demonstrated need for a change in regulatory priority status between LPFM stations and FM translators. Pending applications for FM translators have not impeded the FCC's ability to process LPFM applications under the existing rules. Moreover, to the extent that parties are urging Congress to change the law to enable LPFM stations to be placed on channels spaced third adjacent to full power FM stations, we would strongly encourage Congress to reject these calls.

Internet Streaming

Let me turn now to the issue of Internet streaming. A few moments ago, I mentioned Internet streaming as one way broadcasters can adapt their traditional business models to include new technologies that complement local free over-the-air radio. Unfortunately, current conditions make this difficult. Broadcasters are required to pay sound recording performance fees when they stream their signals on the Internet. However, the most recent rates set by the Copyright Royalty Board (CRB) for these fees are so high that a viable business model for simulcast streaming is almost impossible. The increase in the sound recording performance fees over the next 4 years established by the CRB is unreasonable and debilitating to growing this exciting new service. There are numerous and serious flaws in the CRB's decision, but let me mention just two of them. First, the CRB gave *no* credit to radio broadcasters for the tremendous promotional value we provide to the recording companies and artists. This is a major factor in record sales and revenues from concerts. Second, the CRB based the rates it established on rates paid to the recording industry by interactive webcasting services that provide the ability to purchase recordings online. We believe there are fundamental differences between such services and the free advertiser-supported services broadcasters provide.

This subject falls primarily within the purview of the Senate Judiciary Committee, and thus I will not dwell on it today. It is, however, very important for the future of radio, so let me briefly emphasize that the sound recording performance fee for Internet streaming—and the standard by which it is set—must be reformed. NAB supports H.R. 2060 and S. 1353 which would vacate the CRB decision, establish an interim royalty rate structure and change the current "willing buyer, willing seller" standard that has been a recipe for abuse and needlessly inflated royalty rates to levels that are suffocating radio streaming services. In fact, the "willing buyer, willing seller" standard has given rise to a presumption in favor of agreements negotiated by the major recording companies, acting under the antitrust exemption contained in the Copyright Act. The predictable result has been unreasonably high sound recording fees.

In addition, the conditions imposed on broadcasters that stream should be modified. The statutory performance license imposed nine conditions on broadcasters that stream, at least three of which are wholly incompatible with broadcasters' over-the-air business model. For example, one condition prohibits the playing of any three tracks from the same album within a three-hour period. Another condition prohibits DJs from "pre-announcing" songs, and a third requires the transmitting entity to use a player that displays in textual data the name of the sound recording, the featured artist and the name of the source phonorecord as it is being performed. These conditions are designed to prevent copying of sound recordings from distribution mechanisms far different than radio. Radio stations should not be forced to choose between either radically altering their over-the-air programming practices or risking uncertain and costly copyright infringement litigation.

Performance Tax

On a related subject, let me address the efforts of the recording industry to convince Congress to impose a new levy on local broadcasters, in the form of an additional fee for playing recorded music on free, over-the-air radio. The imposition of such a performance tax would be inequitable and unfair to radio broadcasters, and could substantially harm our ability to serve our local communities.

Radio broadcasters already contribute substantially to the United States' complex and carefully balanced music licensing system, a system which has evolved over many decades and has enabled the U.S. to produce the strongest music, recording and broadcasting industries in the world. For more than 80 years, Congress, for a number of very good reasons, has rejected repeated calls by the recording industry to impose a tax on the public performance of sound recordings that would upset this balance. There is no reason to change this carefully considered and mutually beneficial policy at this time.

As we noted in NAB's July 2007 testimony before the House Judiciary Subcommittee on Courts, the Internet and Intellectual Property, the recording industry's pursuit of a performance tax at this time appears from losses that result in part from illegal peer-to-peer sharing of sound recordings, and in part from the loss of revenues from the sale of recorded music and an inability of record companies to timely adapt to rapid developments in digital technology and consumer demands. Broadcasters are not responsible for either one of these phenomena, and, particularly in the current highly competitive environment, it makes little sense to siphon revenues from local broadcasters to support international record labels.

For decades, radio broadcasters have substantially compensated the music and recording industries, including making annual payments of hundreds of millions of dollars in fees to music composers and publishers through ASCAP, BMI and SESAC and providing record labels and artists with free promotion of their recordings and concerts. Local radio stations have been the driving force behind record sales in this country for generations. Music producers and publishers receive royalty payments from producers of sound recordings who record their works, but those sums are small relative to the receipts by the record companies and artists who receive the vast majority of their revenues from the sale of sound recordings. In fact, the recording industry enjoys tremendous promotional value from radio airplay. From recording industry executives:

- "I have yet to see the big reaction you want to see to a hit until it goes on the radio. I'm a big, big fan of radio."—Richard Palmese, Executive Vice President of Promotion RCA (2007)
- "It's still the biggest way to break a band or sell records: airplay. It's very difficult to get it, but when it happens, it's amazing."—Erv Karwelis, Idol Records (2007)
- "Radio has proven itself time and time again to be the biggest vehicle to expose new music."—Ken Lane, Senior Vice President for Promotion, Island Def Jam Music Group (2005)
- "It is clearly the number one way that we're getting our music exposed. Nothing else affects retail sales the way terrestrial radio does."—Tom Biery, Senior Vice President for Promotion, Warner Bros. Records (2005)
- "If a song's not on the radio, it'll never sell."—Mark Wright, Senior Vice President, MCA Records (2001)

Throughout the history of the debate over sound recording copyrights, Congress has consistently recognized the important and very significant promotional benefit from the exposure by radio stations, as well as the fact that placing burdensome restrictions on performances could alter that relationship, to the detriment of the music, sound recording and broadcasting industries. For that reason, in the 1920s and for five decades following, Congress regularly considered proposals to grant copyright rights in sound recordings, but repeatedly rejected such proposals.

When Congress first afforded limited copyright protection to sound recordings in 1971, it prohibited only unauthorized reproduction and distribution of records, but did not create a sound recording performance fee. During the comprehensive revision of the Copyright Act in 1976, Congress again considered, but rejected, granting a sound recording performance fee. Congress continued to refuse to provide any sound recording performance fee for another twenty years, not withstanding a plea by the recording industry in the early 1990s that it do so. During that time, the recording industry thrived, due in large measure to the promotional value of radio performances of their records.[2]

It was not until the Digital Performance Rights in Sound Recordings Act of 1995 (DPRA) that even a limited performance fee in sound recordings was created. In granting this limited right, Congress stated it "should do nothing to change or jeopardize the mutually beneficial economic relationship between the recording and traditional broadcasting industries."[3] As explained in the Senate Report accompanying the bill, "[t]he underlying rationale for creation of this limited right is grounded in the way the market for prerecorded music has developed, and the potential impact on that market posed by subscriptions and interactive services—but not by broadcasting and related transmissions."[4]

Consistent with Congress' intent, the DPRA expressly did not include a sound recording performance fee for non-subscription, non-interactive transmissions, including "non-subscription broadcast transmission[s]"—transmission[s] made by FCC licensed radio broadcasters.[5] Congress made clear that the reason radio broadcasting was not subject to this new limited fee was to preserve the historical, mutually beneficial relationship among recording companies, radio stations and music composers:

> The Committee, in reviewing the record before it and the goals of this legislation, recognizes that the sale of many sound recordings and careers of many performers have benefited considerably from airplay and other promotional activities provided by both noncommercial and advertiser-supported, free over-the-air broadcasting. The Committee also recognizes that the radio industry has grown and prospered with the availability and use of prerecorded music. This legislation should do nothing to change or jeopardize the mutually beneficial economic relationship between the recording and traditional broadcasting industries.[6]

The Senate Report similarly confirmed that "[i]t is the Committee's intent to provide copyright holders of sound recordings with the ability to control the distribution of their product by digital transmissions, without hampering the arrival of new technologies, and without imposing new and unreasonable burdens on radio and television broadcasters, which often promote, and appear to pose no threat to, the distribution of sound recordings."[7]

Proponents of a performance tax for sound recordings in the U.S. often point to the laws of foreign jurisdictions to justify imposing such an additional fee on local radio broadcasters. This argument ignores key differences in the American industry structure, and simplistic comparisons using isolated provisions of foreign laws yield misleading results. For example, many foreign legal systems deny protection to sound recordings as works of "authorship," while affording producers and performers a measure of protection under so-called "neighboring rights" schemes. While that protection may be more generous in some respects than sound recording copyright in the U.S., including the right to collect royalties in connection with public performances, it is distinctly less generous in others. Additionally, in many neighboring rights jurisdictions the number of years sound recordings are protected is much shorter than under U.S. law. Further, broadcast systems in many other countries that have a performance tax are, or have been, owned or heavily subsidized by the government and have cultural and social mandates accompanied by content requirements.

The recording industry's legitimate difficulties with piracy and its failure to adjust to the public's changing patterns and habits in how it chooses to acquire sound recordings was not a problem created by broadcasters, and broadcasters should not be required, through a tax or fee, to provide a new funding source to make up for

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[2] *See, e.g.,* S. Rep. No. 93–983, at 225–26 (1974) ("The financial success of recording companies and artists who contract with these companies is directly related to the volume of record sales, which, in turn, depends in great measure on the promotion efforts of broadcasters.").

[3] S. Rep. No. 104–129, at 15 ("1995 Senate Report"); *accord, id.* at 13 (Congress sought to ensure that extensions of copyright protection in favor of the recording industry did not "upset[] the long-standing business relationships among record producers and performers, music composers and publishers and broadcasters that have served all of these industries well for decades.").

[4] *Id.* at 17.

[5] 17 U.S.C. § 114(d)(1)(A).

[6] 1995 Senate Report, at 15.

[7] *Id.*

lost revenues of the record companies. Indeed, the imposition of such a tax could create the perverse result of less music being played on radio or a weakened radio industry. For example, to save money or avoid the tax, stations could cut back on the amount of pre-recorded music they play or change formats to all-talk, providing less exposure to music. This could not only adversely impact the recording industry, but the music composers and publishers as well. A performance tax would have a particularly adverse impact on radio stations in small and medium-sized markets that are already struggling financially. Were such additional royalties imposed, in the face of competition from other media, many of these stations would have to spend more time in search of off-setting revenues that could affect the time available for public service announcements for charities and other worthy causes, coverage of local news and public affairs and other valuable programming.

With respect to the performance of sound recordings on over-the-air broadcasting, NAB urges the Committee to recognize that a new performance tax on broadcasters is neither warranted nor equitable. The frustrations of the recording industry in its inability to deal with piracy and an outdated business model are not sufficient justification for imposing a wealth transfer at the expense of the American broadcast industry, which has been instrumental in creating hit after hit for record labels and artists and whose significant contributions to the music and recording industries have been consistently recognized by Congress over the decades.

In conclusion, I firmly believe that the future of free over-the-air radio broadcasting is bright. Our commitment to our local communities, coupled with the momentum for consumers to realize the benefits of HD Radio, will propel our industry forward. But to do so, we must remain free from interference in our signals and from regulations that will hamper our ability to serve our local listeners. We look forward to working with this Committee and are happy to answer any questions you may have.

Senator CANTWELL. Thank you, Mr. Withers for your testimony.

And Mr. Westergren, before you start, I'm going to allow the Chairman, Chairman Inouye, to make an opening statement.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII

The CHAIRMAN. I thank you very much. I'd like to commend Senator Cantwell for taking the leadership in this area on radio. I suppose radio is not as sexy as Internet, or the other high-tech matters before us. I recall, as a child, I was brought up on the radio. I knew what time the fishes were running, I knew what time was best to surf. But today, with all of the consolidation, I wonder if less local news will be the result. I'm not suggesting it should all be local, but, I'm nostalgic, that's all.

There are many issues before us, and I'm so happy that Senator Cantwell has come out with this bill. And so, we're looking to the future, and we're asking your help, because frankly there are so many things happening, we don't know where to go.

I was one of the authors of the 1996 Act, at that time if you would search the text of the bill, you will find the word "Internet" appearing three times. That's how important it was—just three times out of thousands of words.

Today, everywhere you go, it's the Internet.

So, with that, thank you very much.

Senator CANTWELL. Thank you, Mr. Chairman for those comments, and the Chairman was referring to the legislation that we've introduced again on Low Power FM radio.

Senator Snowe, did you wish to make an opening statement at this time?

STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Senator SNOWE. I do have one, and I ask unanimous consent to submit it for the record.

Senator CANTWELL. Without objection.

[The prepared statement of Senator Snowe follows:]

PREPARED STATEMENT OF HON. OLYMPIA J. SNOWE, U.S. SENATOR FROM MAINE

Thank you, Mr. Chairman, for holding this hearing on the state of the radio industry. Even with the advent of new media, radio still plays a crucial role in our lives and while most of the attention has been toward Internet and broadband innovation as well as the DTV transition, radio too has seen it's share of impressive advancements.

Radio is one of, if not, the most reliable form of communication today. Oftentimes during natural disasters and other emergencies, many forms of communications become unavailable to the public but over-the-air radio is a ubiquitous form of mass media that is available to nearly every car and household in the Nation. The system cannot be overloaded and operates well under extreme weather conditions. Radio has been meeting the demands of local communities for nearly a century and is equipped to continue its service well into the next century.

To meet that service, radio has evolved with the introduction of satellite, Internet, and even hybrid-digital or "HD" radio. The birth of satellite radio less than a decade ago has been a boon to consumers looking for increased variety in music, sports and talk programming. Never before have consumers had access to over one hundred streams of programming in a radio service. Satellite radio has served its niche well.

Internet radio has also seen an amazing growth in popularity. Just last year Internet radio listening jumped dramatically, from 45 million listeners to 72 million listeners per month and more than seven million Americans listen to Internet radio every day. The SHOUTcast radio website, which enables users to "tune-in" to thousands of online radio stations around the world, has access to approximately 21,000 online radio stations.

But probably the most significant advancement in radio broadcasting since the introduction of FM stereo more than 50 years ago has been "HD" radio. HD Radio technology enables AM and FM radio stations to broadcast their programs digitally an in doing so greatly improving audio quality for its listeners—FM radio achieves near CD-quality sound. Digital signals are also less vulnerable to reception problems and eliminate the static, pops, hisses, and fades caused by interference. More than 1,500 radio stations are currently broadcasting in HD.

But with all this innovation there are areas that we should investigate further. We must look at how we can promote minority and women ownership within media. Currently only 6 percent of full-power commercial broadcast radio stations are owned by women and 7.7 percent are owned by minorities. But yet for general, non-farm business, women and minorities account for 28 and 18 percent ownership, respectively. The FCC has reported that nearly all of the broadcast stations with majority women and/or minority ownership are located in rural areas and small towns.

The FCC is currently conducting six field hearings on media ownership and also held a hearing specifically on localism in my state of Maine. It was recently confirmed that the FCC Chairman has told the other Commissioners he wants to propose revised media ownership rules by November 13, provide a 28-day period for public comment, and vote on new rules on December 18.

It is my belief that the 28-day comment period Chairman Martin is suggesting is inadequate for comprehensive public evaluation and comment for such a critical issue. That is why I have joined my colleagues Senators Dorgan and Lott to call for a committee hearing on this issue so that we can examine it further and get a better understanding of what direction the Commission plans to take.

I look forward to hearing from our distinguished panels on this and other matters pertaining to the radio market.

Thank you, Mr. Chairman.

Senator CANTWELL. So, Mr. Westergren, if you could re-start the testimony from the panel, thank you very much.

STATEMENT OF TIM WESTERGREN, FOUNDER AND CHIEF STRATEGY OFFICER, PANDORA MEDIA; ON BEHALF OF THE DIGITAL MEDIA ASSOCIATION

Mr. WESTERGREN. Chairman Inouye and Members of the Committee, on behalf of Pandora, the Digital Media Association, and Internet radio industry, thank you for inviting me to speak about the future of radio.

Today I will discuss how Pandora and Internet radio innovation offers unique benefits to listeners and artists, and I will ask your help as we confront our royalty crisis that threatens our innovative company, and our industry.

Pandora, a company I founded after 10 years as a working musician, is radio that listeners enjoy on their personal computers, their home stereos, and on mobile phones. Pandora is the third-largest Internet radio service in America, with nearly 9 million registered listeners.

Pandora is unique, because when you type in a song or artist you like, we instantly provide a radio station that you are certain to enjoy. We can do that because our programming is based on a sophisticated analytical tool called the "Music Genome Project." Hundreds of musical attributes have been identified by our musicologists, and then used to analyze every song in our database.

The Music Genome Project connects the dots between songs and artists, and the results are dramatic. Listeners enjoy radio with more music they like, and more new music they discover. Artists compete for listeners on a level playing field. Once in our database, a song will play on suitable stations, depending only on musical relevance and listener feedback. Being famous or having a big marketing budget won't change a thing.

Every month we add roughly 14,000 songs to our database, which now includes several hundred thousand songs by more than 35 artists. More than 70 percent of our recordings, and 50 percent of our performances are by so-called "Indie" artists, unaffiliated with a major record label.

As an example, on Mac's record label, his songs have spun over 25 million times. This compares to less than 10 percent of Indie music on broadcast radio. To listeners, Internet radio is looking more and more like broadcast and satellite radio.

We are listening to a live Pandora radio transmitting over Sprint's cell phone network. This $2 connector can also plug into your home stereo or car stereo so media convergence is well underway.

Sorry, that was a little loud.

Senator CANTWELL. I don't know, it was pretty good.

Mr. WESTERGREN. Ella Fitzgerald.

But Internet radio is much more powerful. Rather than playing several stations for thousands or millions of listeners, the Internet can accommodate hundreds of thousands of simultaneous channels, allowing unlimited diversity, so listeners can hear music they are certain to enjoy, and discover new songs and artists that would otherwise be invisible to them. Musicians who cannot get airplay on broadcast radio have found a home and an audience on Internet radio—jazz, big band, klezmer, lute music—the list goes on.

Internet radio also offers listeners the opportunity to immediately buy music or concert tickets, and they do. Pandora is a leading referral site for music purchasing, for both *Amazon.com* and the iTunes Music Store, and a recent study found that Pandora listeners are three to five times more likely to purchase music than the average American.

But Pandora and Internet radio face early extinction, because the Copyright Royalty Board recently imposed absurdly high royalties on our industry.

For example, in 2007, Pandora would pay royalties of nearly 50 percent of our revenue, and the rate increases by more than 25 percent in 2008, and again in 2009. In contrast, broadcast radio pays zero sound recording royalties. Satellite radio pays less than 3 percent of its revenue, and cable radio pays 7¼ percent.

I am proud that in 2006, Pandora paid more than $2 million in royalties. But in 2007, our invoice will exceed $6 million. The CRB ruling has rendered our business and the entire business economically unsustainable.

After the CRB decision, Pandora joined the SaveNet Radio campaign, and together with several million Internet radio listeners and more than 6,000 artists, Pandora supporters have been calling Congress, and urging support for Internet radio.

We thank Senators Kerry and Dorgan for cosponsoring the Internet Radio Equality Act, which would resolve this crisis by setting Internet radio royalties at a reasonable 7.5 percent of revenue.

Today, we remain hopeful that the CRB royalty decision will be remedied through Congressional or judicial action, or through negotiation. But the moment we believe otherwise, is the moment we close down our company, lay off 117 employees, and disappoint millions of listeners, and many thousands of recording artists.

As a musician, I am heartbroken at the prospect of silencing Internet radio, an extraordinary resource that offers artists a wonderful promotional platform. As a listener, I am depressed at possibly losing the most powerful music discovery tool ever created, and as a webcaster, I am dismayed at the prospect of telling 9 million listeners that their radio stations are dead.

Everyone at Pandora, and the Internet radio industry wants artists to be paid fairly, but we also want Internet radio to survive, and that will not happen unless the CRB royalty decision is remedied.

Thank you.

[The prepared statement of Mr. Westergren follows:]

PREPARED STATEMENT OF TIM WESTERGREN, FOUNDER AND CHIEF STRATEGY OFFICER, PANDORA MEDIA; ON BEHALF OF THE DIGITAL MEDIA ASSOCIATION

Chairman Inouye, Vice Chairman Stevens, and members of the Committee:

My name is Tim Westergren. I am the Founder and Chief Strategy Officer of Pandora, and it is my pleasure today to speak with you on behalf of my company and the Digital Media Association ("DiMA"), about the radio industry, and particularly about innovation and the future of radio.

What is Pandora?

Pandora is an Internet radio service that listeners enjoy on their personal computers, through home entertainment products and on mobile phones. Pandora is powered by a very unique musical taxonomy, called the Music Genome Project, developed by our team of university-degreed musicologists. Our team has identified hundreds of musical attributes and they assign values to each attribute in each song. When applied across a repertoire of hundreds of thousands of songs, the Music Genome Project literally connects the dots between songs and artists that have something—often quite subtle things—in common. This is the foundation that enables Pandora to offer listeners—quickly and easily—radio stations that play music that matches their taste if the listener simply tells us the name of a favorite song or artist.

The result is remarkable in many ways. More than 8.5 million registered Pandora listeners enjoy a better radio experience, and they are passionate about our service. They listen to more music, they re-engage with their music, and they find new artists whose recordings they purchase and whose performances they attend. Pandora is a bit of a phenom—in only 2 years since our launch we have become the third largest Internet radio service in America. But the real winners are music fans, artists, record companies, songwriters and music publishers.

Something unique about Pandora is that all music, once analyzed by our musicologists and entered into our database, wins and loses audience in the purest of democratic processes. If listeners vote "thumbs up" a song and artist are electronically added to more station playlists, the exposure is greater, and more people can offer opinions about that music. If listeners consistently vote "thumbs down" then the song is performed and heard less. Not even my musical tastes or the CEO's favorites can modify the purity of how our musical taxonomy determines all Pandora radio performances.

Equally unique is the breadth of our playlist. Pandora musicologists will review any CD that is delivered to us, and in most cases enter it into our database and make it available for our millions of listeners to hear. Pandora's collection includes hundreds of thousands of songs across the genres of Pop, Rock, Jazz, Electronica, Hip Hop, Country, Blues, R&B, Latin and in just a few weeks, Classical. These recordings range from the most popular artists to the completely obscure, and each month our nearly fifty musicologists analyze and add roughly 14,000 new songs to the catalogue—a very deliberate process that requires between 15 and 30 minutes per song.

There are no prerequisites for inclusion in the Music Genome Project. Indeed, it is quite common for us to add amateur homemade CDs to the service. As a card-carrying independent musician I am proud to report that fully 70 percent of the sound recordings in our collection, representing over 35,000 artists, are recordings of artists who are not affiliated with a major record label. Most important, because we rely only on musical relevance to connect songs and create radio playlists, all artists are treated equally in the playlist selection process and as a result independent music is likely heard more on Pandora then perhaps any other popular radio service. More than 50 percent of Pandora radio performances are from independent musicians, compared to less than 10 percent on broadcast radio.

What qualities are unique about "new media" radio, and what benefits are associated with those qualities?

In one sense multimedia convergence has already blurred the line between traditional 'terrestrial radio', Internet radio, mobile radio, cable radio, satellite radio and even community radio. For example:

- Your mobile phone today can transmit a "webcast", and with a $2 adaptor you can listen to that Internet radio through your car stereo.
- You can start a "community" radio station on the Internet and while content is focused locally, an audience is available (and may actually listen) globally.
- Your car stereo today comes pre-loaded with AM/FM and perhaps XM, but in only a few years cars will have WiMAX broadband access and you will be able to enjoy Internet radio directly and throw away the adaptor I just spoke of.

To a listener who is hearing a single station at a given time, it is just radio and their choices are amazing—which content do I want to hear, when do I want to hear it, and on what device?

But in another sense, Internet radio is uniquely different from broadcast, satellite and even low-power FM radio, because on the web there are virtually no spectrum limitations and therefore no capacity or scarcity issues. As a result, Internet radio offers almost unlimited "stations" which results in unlimited content diversity.

For music fans, Internet radio means no longer being confined to local or even satellite stations playing homogenous music for broad audiences of thousands or tens of thousands of listeners. Instead, individuals can hear the types of music they enjoy and simultaneously discover new songs and artists that would otherwise be literally invisible to them. Unconstrained by spectrum limitations, webcasting has created a genuine explosion of accessible musical diversity. Lute music, classic country, jazz, klezmer, dixie, gospel, Latin and Hawaiian music—you name it and you can find it—every kind and color of music has found a home and connected with its audience, no matter how small, on the Internet.

Another unique feature of Internet radio is click-to-buy purchasing opportunities, and immediate access to artist information, including the artist's promotional website and tour schedule. Pandora is a powerful platform for recording companies and artists during this tumultuous period for recorded music. An August 2007 Nielsen/NetRatings research study concluded that Pandora listeners are three to five times more likely to have purchased music in the last 90 days than the average American. Similarly, Pandora is one of the top referral sites for music purchasing from both *Amazon.com* and the iTunes Music Store. Other studies have documented that Internet radio listeners are generally more engaged with music, they talk about it more and attend more performances, and they inevitably promote artists and music through word-of-mouth marketing.

Finally, of course, there is the issue of royalties to performers and recording companies. As you know, traditional broadcasters do not pay royalties but the rest of us—cable, satellite and Internet radio—do pay. You may not be aware that Internet radio has the smallest of all radio revenue streams, but we pay proportionately the highest royalties.

RADIO REVENUES AND ROYALTIES

	Internet Radio	Cable/Satellite Radio	European Radio (Music)	Broadcast Radio (Music)
2006 Revenue	$100-150 Million	$1.5-2 Billion	unknown	$15.5 Billion
Sound Recording Royalties	47-300% of Revenue	3-7.25% of Revenue	4.3% of Revenue	0% of Revenue
Songwriter Royalties	4% of Revenue	4% of Revenue	5.2% of Revenue	3% of Revenue

I am proud that in 2006 Pandora paid more than $2 million in royalties to artists and recording companies, and had the old royalties rates stayed in effect, then in 2007 we would be on track to pay over $4 million. Instead, unfortunately, the Copyright Royalty Board recently increased royalty rates more than 30 percent so our royalty in 2007 is now likely to reach over $6 million, almost 50 percent of our total revenue. And per listener per track royalty rates for Internet radio are scheduled to climb an additional 27 percent in 2008, and 29 percent more in 2009.

Under the CRB decision Internet music radio is economically unsustainable; it is not even a close call. Pandora has skyrocketed from a standing start to millions of listeners in 2 years; we were getting within sight of cash-flow positive operations under the old rates, but now we are back under water with no hope of ever emerging as the royalty rates continue to increase. Of course our disappointment is magnified because our broadcast and satellite competitors enjoy no royalties or very reasonable royalties, respectively.

It is for these reasons that Pandora and the entire Internet radio industry thank Senators Kerry and Dorgan for cosponsoring the Internet Radio Equality Act, S. 1353, which would resolve this industry crisis by reversing the Copyright Royalty Board's recent rate-setting decision and set royalties at a reasonable 7.5 percent of revenue—higher than that paid by any U.S.-based radio service and higher than the average royalties in Europe that the recording industry references as the bastion of sound recording performance royalty fairness.

In the starkest possible terms, the Committee and the Congress should be aware that Pandora and the entire Internet music radio industry cannot afford the CRB royalty rates. Today, we still are hopeful and we believe that some combination of Congress, the courts, or a negotiated resolution with SoundExchange will favorably resolve this threat. But if we conclude that the CRB royalty rates are not going to be rectified, Pandora would shut down immediately.

Congress should also understand that Pandora and our DiMA colleagues are not alone in our effort to reverse this unfair CRB royalty decision. Since the SaveNetRadio campaign began several hundred thousand people have contacted Congress and urged support for Internet radio and more than 6,000 artists have joined the effort in support of the Internet Radio Equality Act and more reasonable royalties for artists and recording companies. Everyone in the Coalition wants artists to be paid fairly and supports the growth of Internet radio which directly and indirectly benefits tens of thousands of working artists. But without reduced royalties there is simply no way for Pandora, or any other webcaster, to remain in business.

* * * * * * *

In just 10 years more than 70 million listeners have flocked to Internet radio, a virtual fountain of music discovery. Many of our listeners are returning to radio after years of exile spent listening to the same CDs they bought in college, or not listening to music at all. And musicians are back in business also, as they can now find fans and build community with people who want to buy their music and want to attend their performances. The Internet continues to be a remarkable democratizing force for creativity and innovation.

It has been a wonderful experience to watch our service grow and to witness our listeners' passion and enthusiasm as they have rediscovered their love of music. I am Pandora's traveling minstrel, and in the last 18 months I have visited almost 100 different towns and cities meeting in "town hall"-style with Pandora listeners. From Biloxi and Baton Rouge to Seattle and San Francisco I have met with tens and often hundreds of listeners at each meeting and enjoyed the energy of enthusiastic music fans and musicians who are re-engaged and re-committed to their music and their newfound radio experience.

As a former performing musician and composer, it is exciting to be at the dawn of a new renaissance for musicians, who are empowered with new ways to market their music and successfully develop a fan base. I often wish I could start my band now instead of back in the early nineties when our resources were a van, a staple gun and a pile of flyers that we handed out or stapled to telephone poles.

It is my hope, indeed the reason I started this company, that we are at the beginning of the development of a musicians' middle class, as radio services like Pandora allow musicians to find a fan base and maintain a steady career making music, which is a real alternative to the major-label system that makes you an enormous star or leaves you unemployed. These e-mails from Pandora listeners testify to this new era for independent musicians:

> "I think the best thing you've done is introduced me to so many artists that I love but would have never known that they existed otherwise. Now I buy their albums and look for upcoming shows in my area. You've done the music industry a great service from what I can tell."
>
> "Let me tell you that you are a blessing in my life. I'm 77 years old and the music I like and grew up with just isn't played much any more. Sometimes tears come to my eyes when I hear certain songs. They bring back so many memories. I don't think I have heard any songs I haven't liked. Thank you from the bottom of my heart. I send you arms full of appreciation."

And from a musician:

> "Hi guys—just wanted to thank you for putting my music into your system. I have had sales all over the U.S. from people who found me via your site. Pandora is great. I use it all the time. And I can't believe what a promotional tool it has become for my own music."

Since 1999 Pandora has survived the dot-com collapse thanks to more than 30 employees who worked months without salaries, and we are now one of the largest payors of sound recording performance rights in this great Nation. We employ more than 100 people, most of whom are trained and experienced musicians and most of whom work at our headquarters in an enterprise zone in Oakland, California. We have invested; we have innovated; and we have had some very good initial success. Please support resolution of the Internet radio royalty crisis by cosponsoring the Internet Radio Equality Act so our industry can continue to grow, and continue to benefit artists by paying fair royalties and developing new audiences.

As a musician who spent a decade walking in the shoes of the working artist, I am heartbroken at the prospect of silencing what has become an extraordinary resource for the artist community. As a listener and music lover, I am depressed at the prospect of losing the most powerful music discovery tool ever put in the hands of music lovers. And as a webcaster, I am dismayed at the prospect of telling millions of devoted listeners that their radio stations are dead.

Thank you for your time and consideration.

Senator CANTWELL. Thank you, Mr. Westergren for the testimony and for the demonstration, we appreciate that. It's not every day we get a media demonstration.

Mr. Turner, if you'd like to give your statement?

STATEMENT OF S. DEREK TURNER, RESEARCH DIRECTOR, FREE PRESS; ON BEHALF OF CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA

Mr. TURNER. Madam Chair, Chairman Inouye, and Members of the Committee, I thank you for the opportunity to testify today on the important issues surrounding the future of radio.

I'm the Research Director for Free Press, a public interest organization dedicated to public education and consumer advocacy on communications policy.

Even in today's multimedia world, broadcast radio remains one of the most powerful media in our daily lives. Well over 90 percent of Americans tune to the radio each week, for an average of 19 hours a week.

New technologies like HD Radio and Internet simulcasting hold great promise for the future of this industry, as do changing demographics.

For example, while total time spent listening to radio has stagnated for the general population, it has actually increased substantially among African-Americans and Latinos, and it matters who owns these stations.

In a democracy, the diversity of ownership should reflect the diversity of the population. Sadly, as my testimony will show, this is not the case.

The FCC has a statutory obligation to promote ownership diversity. The Communications Act directs the Commission to, "avoid excessive concentrations of licenses by disseminating licenses among a wide variety of applicants, including businesses owned by women and members of minority groups."

But the Commission lacks even the most basic understanding of what actually the true state of female and minority broadcast ownership is. Now, we can't evaluate the problems that we don't measure or study, let alone solve them.

This is why my organization, Free Press, took on the task that the Commission has neglected. Using the Commission's own data, we found that despite comprising over half of the population, women in this country own just 6 percent of the radio stations. Minorities make up a full third of our population, but own just 7.7 percent of the radio stations, and the stations that women and minorities own are fundamentally different. Female and minority owners are more likely to own just one single station, and are more likely to be local owners, which fosters a deeper connection to the communities that they serve.

Now, these characteristics are very important, for they are the precise characteristics of those owners who are most vulnerable to the pressures of media consolidation.

The 1996 Telecom Act triggered a wave of consolidation in the radio industry, by removing the national ownership limit, and increasing local ownership caps. The impact on ownership diversity was clear, and it was devastating.

Since 1996, there has been a whopping 40 percent decrease in the number of owners, even as the number of stations has increased. In the average local market, just two firms control 74 percent of the market's revenue—a highly concentrated level by any standard.

Now, how do female and minority owners fare under this wave of consolidation? Our research demonstrates conclusively and empirically that more consolidation means less female and minority ownership. As concentration increases, these single-station and local owners find it increasingly difficult to compete against the big radio giants.

Now, I mentioned earlier that the FCC has no idea what the true state of female and minority broadcast ownership is. This is not hyperbole. It may be hard to believe, but the Commission has never conducted an accurate count.

Though the FCC collects information regarding the race, ethnicity and gender of every broadcast owner, they have done nothing meaningful with this information. Instead, they have issued bogus summaries that are deeply flawed.

For example, our research conclusively showed that the Commission, in its most recent effort, missed over half of the radio stations owned by women and minorities. In television they fared far worse, missing over two-thirds of the television stations owned by women and minorities. This is simply a shocking testament to the FCC's indifference to the plight of women and people of color in this country, and it is also an embarrassing record of neglect and incompetence for a Federal agency.

How can the Commission conduct any meaningful analysis regarding the effects of its policies, if it can't even conduct a basic count of who owns what?

Congress must send a message to the FCC to stop its rush toward more media consolidation. The Commission needs to first adequately study the issue of minority ownership, before it moves forward with any rule changes. And the Commission needs to complete other related tasks, such as the dormant localism proceeding, and issue the long-overdue Section 257 report that Congress requires on the Commission's efforts to promote ownership diversity.

We also support other measures that increase opportunities for women and minorities to access the public radio airwaves. The Local Community Radio Act, sponsored by Senators Cantwell and McCain, expands Low Power FM and will help create a more diverse broadcast system and will provide a crucial path to full ownership by women and people of color.

In closing, ownership rules exist for a reason—to increase diversity and localism, which in turn produces more diverse speech, more choices for listeners, and more owners who are responsive to their local communities.

Thank you, and I look forward to your questions.

[The prepared statement of Mr. Turner follows:]

PREPARED STATEMENT OF S. DEREK TURNER, RESEARCH DIRECTOR, FREE PRESS; ON BEHALF OF CONSUMERS UNION, CONSUMER FEDERATION OF AMERICA

Summary

Free Press,[i] Consumers Union,[ii] and Consumer Federation of America[iii] appreciate the opportunity to testify on the important communications policy issues surrounding the future of radio. As consumer advocates, we strongly support policies that will fulfill the goals of the Communications Act "to make available . . . to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex"[1] a media that favors a "diversity of media voices",[2] characterized by "vigorous economic competition, technological advancement",[3] and one that serves "the public interest, convenience, and necessity."[4] Ensuring a vibrant future for radio, as well as all other communications media, is vital to maintaining our economic and social well being in addition to our vigorous political discourse. Our democracy thrives on the dissemination of the widest possible sources of information, and radio remains one of the most important conduits for the propagation of local, national and international news, culture, entertainment and information.

The United States is a diverse melting pot of people and cultures. In such an environment it is not unreasonable to expect that the privilege of access to the scarce radio broadcast airwaves be distributed in a manner that reflects our racial, ethnic and gender diversity. Unfortunately, this is not the case. Women and people of color comprise 67 percent of our population, but own just 13 percent of our Nation's radio stations. This underrepresentation is a national disgrace and a true crisis for the millions of Americans who lack representative voices on the public airwaves. Compounding this tragedy is the simple fact that women and people of color are radio's future. African American's and Latinos spend 20 percent more of their time listening to radio than whites, over 22 hours each week. And while radio listenership has stagnated or declined among whites over the past decade, it has actually increased among people of color.

Though the Communications Act explicitly directs the Federal Communications Commission to disseminate "licenses among a wide variety of applicants, including . . . businesses owned by members of minority groups and women",[5] *our research reveals that the FCC lacks even the most basic understanding of the current state of female and minority ownership,* and therefore has no basis to assess the impacts of its broadcast regulatory policies on these underrepresented owners.

Our study, *Off The Dial* (attached to this testimony as an appendix),[*] is to date the only comprehensive assessment of the state of female and minority radio ownership and the impacts of FCC regulatory policy. Using the Commission's own data, we have done the work that the FCC has neglected to do.

The results of this study indicate a perilous state of under-representation of women and minorities in the ownership of broadcast media, where two-thirds of the U.S. population has very few stations representing their communities or serving their needs. The results also point to massive consolidation and market concentration as one of the key structural factors keeping women and minorities from accessing the public airwaves.

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[i] Free Press is a national, nonpartisan organization with over 350,000 members working to increase informed public participation in media and communications policy debates.

[ii] Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers. Consumers Union's income is solely derived from the sale of *Consumer Reports,* its other publications and from noncommercial contributions, grants and fees. In addition to reports on Consumers Union's own product testing, *Consumer Reports* with more than 5 million paid circulation, regularly, carries articles on health, product safety, marketplace economics and legislative, judicial and regulatory actions which affect consumer welfare. Consumers Union's publications carry no advertising and receive no commercial support.

[iii] The Consumer Federation of America is the Nation's largest consumer advocacy group, composed of over 280 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power and cooperative organizations, with more than 50 million individual members.

[1] The Communications Act of 1934 (As Amended in 1996), Title I, Section 1.

[2] The Communications Act of 1934 (As Amended in 1996), Title II, Section 257.

[3] *Ibid.*

[4] *Ibid.*

[5] The Communications Act of 1934 (As Amended in 1996), Title II, Section 309(j).

[*] This document is retained in the Committee's files and is also available at *http://www.freepress.net/docs/off_the_dial.pdf.*

We hope that this study reminds policymakers at the FCC and in Congress that ownership rules that mitigate media market concentration and consolidation exist for a reason: to increase diversity and localism in ownership, which in turn produces more diverse speech, more choice for listeners, and more owners who are responsive to their local communities and serve the public interest.

The Dismal State of Female and Minority Ownership

We analyzed tens of thousands of pages of official FCC documents to determine the racial and gender status of the owner of every single full-power licensed commercial radio station broadcasting in the 50 U.S. states and the District of Columbia—over 10,500 stations in total. The results from this effort are stark:

- Women own just 6 percent of all full-power commercial broadcast radio stations, even though they comprise 51 percent of the U.S. population.
- Racial or ethnic minorities own just 7.7 percent of all full-power commercial broadcast radio stations, though they account for 34 percent of the U.S. population.

Our previous television study, *Out of the Picture,*[6] found that female and minority ownership of broadcast television stations was similarly anemic. Women own 5 percent of broadcast TV stations, while people of color own just 3.3 percent of stations.

These groups' level of radio station ownership is only slightly higher, despite the fact that the cost of operating a radio station is dramatically lower than a TV station. Moreover, radio station ownership is very low compared to the levels seen in other commercial industry sectors:

- According to the most recent figures available, women own 28 percent of all non-farm businesses.
- Racial and ethnic minorities owned 18 percent of all non-farm businesses, according to the most recent data.
- We found that women own 10.4 percent of all unique broadcast businesses (controlling 6 percent of all stations) while minorities own 10.4 percent of all unique broadcast businesses (controlling 7.7 percent of all stations).
- In sectors such as transportation and healthcare, people of color own businesses at levels near their proportion of the general population. But in the commercial radio broadcast sector the level of minority station ownership is over four times below their proportion of the general population. That's lower than every sector of the economy tracked by the Census Bureau except for mining and enterprise management.

Not only do women and people of color own few stations, but commercial stations have very few women and minorities at the top—in the positions of CEO, president or general manager.

- Just 4.7 percent of all full-power commercial broadcast radio stations are owned by an entity with a female CEO or president.
  - Only 1 percent of the stations not owned by women are controlled by an entity with a female CEO or president.
- Just 8 percent of all full-power commercial broadcast radio stations are owned by an entity with a CEO or president who is a racial or ethnic minority.
  - Less than 1 percent of stations not owned by people of color are controlled by an entity with a minority CEO or president.

However, minority-owned stations are significantly more likely to be run by a female CEO or president than non-minority-owned stations, and female-owned stations are significantly more likely to be run by a minority CEO or president than non-female-owned stations. And both female-owned and minority-owned stations are significantly more likely to employ a woman as general manager.

Female and Minority Owners Control Fewer Stations per Owner

Female and minority owners are more likely to own fewer stations per owner than their white male and corporate counterparts. They are also more likely to own just a single station.

- Of all the unique minority owners, 67.8 percent own just a single station. However, only 49.6 percent of the unique non-minority owners are single-station owners.

[6] S. Derek Turner and Mark N. Cooper, *Out of the Picture: Minority and Female TV Station Ownership in the United States,* Free Press, October 2006.

- 60.8 percent of the unique female owners are single-station owners, *versus* just 50.4 percent of the unique non-female station owners.
- Only 24.4 percent of the unique minority station owners are group owners—owning stations in multiple markets, or more than three stations in a single market—compared to 29.5 percent of non-minority owners.
- Just 16.9 percent of female owners are group owners, *versus* 30.4 percent of non-female owners.
- Overall, racial and ethnic minorities own 2.6 stations per unique owner compared to 3.9 stations owned per unique white, non-Hispanic owner.
- Women own 2.1 stations per unique owner compared to 4.1 stations owned per unique male owner.

Female- and minority-owned stations differ from non-female- and non-minority-owned stations in other ways as well. For example, women and people of color are more likely to own less valuable AM stations and their stations are more likely to be found in larger, more populated markets.

Female- and Minority-Owned Stations Are More Local, More Often

Localism is supposed to be one of the FCC's key considerations in crafting media ownership regulations. Local owners, in theory, are more connected to the communities they serve and thus in a better position to respond to public needs than absentee owners who reside hundreds or thousands of miles away.

Our study found that female owners are significantly more likely to be local station owners.

- 64.4 percent of all female-owned stations are locally owned, *versus* just 41.6 percent of non-female-owned stations.

For minority-owned stations, the relationship is somewhat more complex because the minority population is more concentrated in certain areas. Minority-owned stations are more likely to be locally owned than non-minority-owned stations in larger markets, which have bigger minority populations.

- Among all radio stations, 43 percent of minority-owned stations are locally owned, the same level as non-minority-owned stations.
  - But in Arbitron radio markets (where four out of every five minority-owned stations are located, and which have significantly higher minority populations), 38.3 percent of minority-owned stations are locally owned, *versus* 29.4 percent of non-minority-owned stations.

Local Ownership of Radio Stations

[by State (2007)]

State	Percent of Radio Stations That Are Locally Owned
OK	60.6
TN	58.2
KY	57.0
AL	56.5
MS	54.8
NM	54.7
AR	54.7
ND	54.1
AK	54.0
NE	53.3
ID	52.7
IN	51.2
OR	50.8
GA	49.9
UT	49.4
MN	47.5
MO	47.2
NJ	46.4
NC	46.0
WI	45.9
MT	45.6
WV	45.6

Local Ownership of Radio Stations—Continued

[by State (2007)]

State	Percent of Radio Stations That Are Locally Owned
LA	45.3
KS	44.2
IA	42.2
MI	42.0
WY	41.5
WA	41.4
VA	41.3
NH	41.2
SC	40.1
AZ	38.9
PA	38.5
IL	38.0
TX	37.6
OH	36.4
FL	36.0
HI	35.7
MA	35.2
NY	35.0
CT	34.3
RI	33.3
VT	31.5
ME	30.0
CO	29.6
CA	28.3
MD	27.2
SD	26.2
NV	21.1
DE	16.7
DC	0.0
Nationwide	42.9

◦ In unrated markets (which have significantly lower minority populations), 56 percent of minority-owned stations are locally owned, compared to 62.9 percent of non-minority-owned stations.

Minority Ownership of Radio Stations

[by State (2007)]

State	Percent Minority Population in State	Percent of Radio Stations That Are Owned by People of Color
HI	75.43	11.43
DC	68.44	20.00
NM	57.59	8.18
CA	57.21	15.49
TX	51.89	19.15
MD	41.68	17.48
NV	41.36	4.23
GA	41.25	13.15
MS	40.74	14.91
AZ	40.51	7.78
NY	39.77	3.11
FL	38.97	12.22
NJ	37.75	17.86
LA	37.28	8.96
IL	34.87	2.90
SC	34.67	16.43
AK	33.74	0.00

Minority Ownership of Radio Stations—Continued

[by State (2007)]

State	Percent Minority Population in State	Percent of Radio Stations That Are Owned by People of Color
VA	32.39	7.12
NC	32.26	11.85
DE	31.25	0.00
AL	31.04	11.31
CO	28.47	6.15
OK	27.99	10.86
CT	25.51	8.96
AR	23.66	5.98
WA	23.60	4.29
TN	22.54	4.55
MI	22.37	4.10
RI	21.06	4.17
MA	20.71	4.00
OR	19.23	0.00
KS	19.05	1.16
PA	18.00	2.41
MO	17.49	1.75
OH	17.18	7.14
UT	17.16	4.60
IN	16.19	3.66
NE	15.16	0.00
WI	14.41	0.75
MN	14.15	1.56
ID	13.72	1.82
SD	13.46	0.00
WY	11.99	5.32
KY	11.65	1.72
MT	11.44	0.00
ND	9.56	0.00
IA	8.98	1.46
NH	6.43	0.00
WV	5.88	0.00
ME	4.73	0.00
VT	4.37	0.00
Nationwide	33.8	7.73

Female Ownership of Radio Stations

[by State (2007)]

State	Percent of Radio Stations That Are Owned by Women
DE	25.00
CT	19.40
FL	11.09
ND	10.81
MD	10.68
HI	10.00
AL	9.54
IA	9.22
OK	9.14
WA	8.57
RI	8.33
KY	8.25
VA	8.19
AK	7.94
AZ	7.19
LA	6.97

Female Ownership of Radio Stations—Continued

[by State (2007)]

State	Percent of Radio Stations That Are Owned by Women
WV	6.80
TX	6.76
MT	6.40
OR	6.22
PA	6.15
TN	6.06
GA	6.03
NH	5.88
MS	5.70
CO	5.59
VT	5.56
IL	5.51
IN	5.28
OH	5.19
AR	5.13
NE	4.92
NC	4.62
NY	4.15
MA	4.00
MI	3.79
NM	3.77
CA	3.76
SC	3.38
MO	2.80
WI	2.61
NJ	2.38
MN	2.33
UT	2.30
NV	1.41
SD	1.19
WY	1.06
ID	0.91
KS	0.58
DC	0.00
ME	0.00
Nationwide	6.0

Female- and Minority-Owned Stations Thrive in Less-Concentrated Markets

Our analysis suggests that both female- and minority-owned stations thrive in markets that are less concentrated. Markets with female and minority owners have fewer stations per owner on average than markets without them.

- The level of market concentration is significantly lower in markets with female and minority owners.
- The probability that a particular station will be female- or minority-owned is *significantly lower* in more concentrated markets.
- The probability that a particular market will contain a female- or minority-owned station is *significantly lower* in more concentrated markets.
- Female- and minority-owned stations are more likely to be found in each other's markets.

Allowing further industry consolidation will unquestionably diminish the number of female- and minority-owned stations. The FCC should seriously consider these consequences before enacting any policies that could further concentration.

Female and Minority Ownership Is Low, Even When They're in the Majority

The study shows that women and people of color everywhere—regardless of their proportion of the population in a given market—have very few owners representing them on the radio dial.

- The average radio market has 16 white male-owned stations for every one female-owned and every two minority-owned stations.

Minority-owned stations are far more likely to be found in markets with higher minority populations. But even in these markets, the level of minority ownership is still low.

- Minority-owned stations are found in about half of all Arbitron radio markets.
- In 288 of the 298 U.S. Arbitron radio markets, the percentage of minorities living in the market is greater than the percentage of radio stations owned by minorities.
- 23 of the 298 U.S. Arbitron radio markets have "majority-minority" populations. But in these markets, too, the percentage of radio stations owned by people of color is far below the percentage of minority population.
  - In two of these "majority-minority" markets (Stockton, Calif. and Las Cruces, N.M.), people of color own no stations.
- Minorities own more than one-third of a market's stations in just seven of the Nation's 298 radio markets. Minorities own more 25 percent of a market's stations in just 24 of the Nation's 298 radio markets.

Despite making up half the population in every market, the level of female-station ownership is still extremely low across the board.

- Female-owned stations are found in about 40 percent of all Arbitron radio markets.
- The Stamford-Norwalk, Conn. market is the only market in the United States where women own more than half of the stations.
- Women own more than one-third of a market's stations in just six of the Nation's 298 radio markets. Women own more than 25 percent of a market's stations in just 18 of the Nation's 298 radio markets.

Format Diversity, Market Revenue and Audience Share

Minority owners are more likely to air formats that appeal to minority audiences, even though other formats are more lucrative. Choosing these different formats has a practical impact on the market status of minority-owned stations, as measured by audience ratings and share of market revenues.

- Among the 20 general station format categories, minority-owned stations were significantly more likely to air "Spanish," "religion," "urban," and "ethnic" formats. The Spanish and religion formats alone account for nearly half of all minority-owned stations.
- Primarily because the Spanish, religion and ethnic formats attract smaller segments of the market, the average audience ratings share and share of market revenue held by minority-owned stations is significantly lower than the ratings and revenue shares of nonminority-owned stations.

Female and Minority Ownership of Radio Stations

[by Format (2007)]

Format Category	Percent of Format's Stations Owned by People of Color	Percent of Format's Stations Owned by Women
Adult Contemporary	1.8	5.7
Album Oriented Rock	1.8	15.1
Classical	0.0	6.7
Contemporary Hits	2.7	3.4
Country	2.3	6.8
Easy Listening	2.2	15.6
Ethnic	41.7	11.5
Jazz/New Age	11.3	8.1
Middle of the Road	1.6	6.3
Miscellaneous	6.4	3.8
News	2.2	4.8
Nostalgia/Big Band	2.5	6.1
Oldies	3.1	6.3
Religion	14.0	7.2
Rock	2.2	5.6

Female and Minority Ownership of Radio Stations—Continued

[by Format (2007)]

Format Category	Percent of Format's Stations Owned by People of Color	Percent of Format's Stations Owned by Women
Spanish	39.3	4.8
Sports	3.9	3.9
Talk	4.8	4.4
Urban	32.3	6.2

Ownership and Programming Diversity: A Case Study of Talk Radio

Though the focus of this study was on structural ownership, recent controversy surrounding remarks by two prominent talk radio hosts—Rush Limbaugh and Don Imus—spurred an examination of talk radio programming on minority- and female-owned stations. We found:

- No minority-owned stations aired "Imus in the Morning" at the time of its cancellation.
- All minority-owned stations and minority-owned talk and news format stations were significantly less likely to air "The Rush Limbaugh Show," as were female-owned stations.
- Having a minority- or female-owned station in a market was significantly correlated with a market airing both conservative and progressive programming.
- Overall, markets that aired both progressive and conservative hosts were significantly less concentrated that markets that aired just one type of programming.

These results suggest that diversity in ownership leads to diversity in programming content. This result may seem obvious. But policymakers may have forgotten the reason behind ownership rules and limits on consolidation: Increasing diversity and localism in ownership will produce *more* diverse speech, *more* choice for listeners, and *more* owners who are responsive to their local communities.

The Commission Has Failed to Adequately Account for the True Level of Female and Minority Ownership of Full-Power Commercial Broadcast Outlets

Historically, women and racial and ethnic minorities have been under-represented in broadcast ownership due to a host of factors—including the fact that some of these licenses were originally awarded decades ago when the Nation lived under segregation. The FCC, beginning with its 1978 *Statement of Policy on Minority Ownership of Broadcasting Facilities,* repeatedly has pledged to remedy this sorry history.[7]

Congress also has recognized the poor state of female and minority ownership. The Telecommunications Act of 1996 ("The Act") contains specific language aimed at increasing female and minority ownership of broadcast licenses and other important communications media.[8] The Act requires the FCC to eliminate "market entry barriers for entrepreneurs and other small businesses" and to do so by "favoring diversity of media voices."[9] The Act also directs the Commission when awarding licenses to avoid "excessive concentration of licenses" by "disseminating licenses

[7] *Statement of Policy on Minority Ownership of Broadcasting Facilities,* 68 FCC 2d, 979, 980 n. 8 (1978).

[8] 47 U.S.C. § 257, § 309(j)

[9] Section 257 is contained within Title II of the Communications Act and thus does not directly encompass broadcast services. However, the Commission has interpreted some aspects of the language of § 257 to apply to broadcast licensing. In 1998, the Commission stated: "While telecommunications and information services are not defined by the 1996 Act to encompass broadcasting, Section 257(b) directs the Commission to 'promote the policies and purposes of this Act favoring diversity of media voices' in carrying out its responsibilities under Section 257 and, in its Policy Statement implementing Section 257, the Commission discussed market entry barriers in the mass media services." See FCC 98–281, *Report and Order: In the Matter of 1998 Biennial Regulatory Review—Streamlining of Mass Media Applications Rules, and Processes—Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities,* MM Docket No. 98–43, November 25, 1998, herein after referred to as the *Form 323 Report and Order*.

among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." [10]

The Commission initially appeared to take this mandate seriously. In 1997, the Commission completed a proceeding, as required by the Act, which identified barriers to entry for small businesses (and has been interpreted to include minority- and female-owned entities) and set forth the agency's plan for eliminating these barriers.[11] Unfortunately, subsequent triennial reports have lacked substance.[12]

In 1998, the Commission further demonstrated its seriousness by taking a crucial first step to determine the actual state of female and minority ownership of broadcast radio and television stations. That year, the FCC began requiring all licensees of full-power commercial stations to report the gender and race/ethnicity of all owners with an attributable interest in the license.[13] In the *Form 323 Report and Order,* the Commission stated:

> Our revised Annual Ownership Report form will provide us with annual information on the state and progress of minority and female ownership and enable both Congress and the Commission to assess the need for, and success of, programs to foster opportunities for minorities and females to own broadcast facilities.[14]

Other than this monitoring effort, the FCC has done very little to promote female and minority broadcast ownership (and the follow-up on this monitoring has been abysmal). In its 1999 Order that allowed television duopolies, the Commission paid lip service to concerns about the policy change's effect on minority and female ownership, but still went forward with rule changes that allowed increased market concentration.[15] In 2004, the Commission sought input into how it could better implement Section 257 of the Act.[16] Until this current *Further Notice,* there has been virtually no action made toward evaluating the findings of the original Section 257 studies.

In the *2003 Order* the Commission assured the public that ownership diversity was a key policy goal underlying its approach to ownership regulation.[17] However, the Third Circuit found otherwise, stating that "repealing its only regulatory provision that promoted minority television station ownership without considering the repeal's effect on minority ownership is also inconsistent with the Commission's obligation to make the broadcast spectrum available to all people 'without discrimination on the basis of race.'" [18]

Before considering the potential effects of policy changes on female and minority ownership, the Commission must first know the *current* state of ownership and evaluate the effects of previous policy changes. No one should be in a better position to answer these questions than the FCC itself. The Commission possesses gender and race/ethnicity information on nearly every single broadcast entity and knows exactly when licenses changed hands.

However, *the FCC has* ***no*** *accurate picture of the current state of female and minority ownership, and shows no sign of taking the matter seriously.* Though the Commission has gathered gender and race/ethnicity data for the past 7 years, it has shown little interest in the responsible dissemination of the information contained within the Form 323 filings.

This lack of interest or concern is made evident by the FCC's own Form 323 summary reports. Station owners began reporting gender/race/ethnicity information in 1999, and the FCC released its first "summary report" in January 2003 (for report-

[10] 47 U.S.C. § 309(j)

[11] "In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses," *Report,* GN Docket No. 96–113,12 FCC Rcd 16802 (1997).

[12] In his dissenting statement on the 2004 Section 257 report, Commissioner Michael Copps described the report as a "a slapdash cataloging of miscellaneous Commission actions over the past 3 years that fails to comply with the requirements of Section 257."

[13] 47 C.F.R. 73.3615.

[14] *Report and Order, In the Matter of 1998 Biennial Regulatory Review Streamlining of Mass Media Applications, Rules, and Processes Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities,* MM Docket Nos. 98–43; 94–149, FCC 98–281 (1998).

[15] *Report and Order, In the Matter of Review of the Commission's Regulations Governing Television Broadcasting Television Satellite Stations Review of Policy and Rules,* MM Docket Nos. 87–8. 91–221, FCC 99–209 (1999).

[16] MB Docket No. 04–228, "Media Bureau Seeks Comment on Ways to Further Section 257 Mandate and to Build on Earlier Studies" DA 04–1690, June 15, 2004.

[17] See *2003 Order,* "Encouraging minority and female ownership historically has been an important Commission objective, and we reaffirm that goal here."

[18] See *Prometheus,* note 58.

ing in 2001).[19] A second summary followed in 2004 (for reporting in 2003).[20] The most recent report was issued in June 2006 (for the 2004–2005 period).[21] However, calling these publications "summary reports" is somewhat misleading, as they are merely a listing of each minority- or female-owned station's Form 323 response and not aggregated in any manner. No information on the stations *not* reportedly owned by women or minorities is given.

Closer examination of these summary reports reveals significant problems. For starters, on the FCC website where the most recent summary files are provided for download, there is a paragraph that explains the purpose of the data and provides a brief summary of the tally.[22] This website lists the total number of stations that filed Form 323 or Form 323–E in the 2004–2005 calendar year, and then lists the total number of stations that the FCC determined are owned by women or people of color. All commercial stations are required to report the race/ethnicity and gender of station owners on Form 323. Form 323–E requires all non-commercial educational stations to report the identity of station owners, but does not require the disclosure of the race/ethnicity or gender information.

However, since stations that file Form 323–E *don't report gender or race/ethnicity* information, it is perplexing why the FCC website reports the total number of stations that filed *either* form. This ambiguous reporting has led to some observers using these summaries to erroneously report the wrong percentage of stations owned.[23]

Other problems exist in these summaries. Some station owners listed in the 2003 summary are missing from the 2004 report but reappear in the 2006 summary, despite the fact that ownership had not changed during the interim period. Certain stations have ownership interests that add up to more than 100 percent. In some instances, the type of station facility (AM, FM or TV) is not specified.

But the most alarming problems are ones of omission. Not a single station owned by Radio One is listed by the FCC, even though the company is the largest minority-owned radio broadcaster in the United States. Stations owned by Granite Broadcasting, the largest minority-owned television broadcaster, are also missing from the summary reports. However, examination of the individual Form 323 filings for these stations shows that they are indeed minority-owned. Why aren't they in the FCC's summary?

The answer likely lies in how the larger-group stations report ownership information, and how the FCC harvests the information for their summary reports. Most of the licenses of those stations missed by the FCC are "owned" by intermediate entities, which are—in some cases—many degrees separated from the "actual" owner. Some stations file more than 20 separate Form 323 forms (one for each holding entity), with the true owners listed on only one form. And in many cases, the actual ownership information is attached as an exhibit and not listed on the actual form. Thus the FCC, which tabulates the information for its summaries by harvesting these electronic forms via an automated process, misses stations that file in this convoluted and confusing manner.

The Commission's lack of understanding of its own Form 323 data became even more apparent when the Media Bureau released previously unpublished internal studies that attempted to ascertain the true state of female and minority broadcast

[19] Though this data summary is not directly displayed on the FCC's ownership data page (*http://www.fcc.gov/ownership/data.html*), it can be downloaded at *http://www.fcc.gov/ownership/ownminor.pdf* and *http://www.fcc.gov/ownership/ownfemal.pdf.*

[20] Though this data summary is not directly displayed on the FCC's ownership data page (*http://www.fcc.gov/ownership/data.html*), it can be downloaded at *http://www.fcc.gov/ownership/owner__minor__2003.pdf* and *http://www.fcc.gov/ownership/owner__female__2003.pdf.*

[21] *http://www.fcc.gov/ownership/owner__minor__2004-2005.pdf* and *http://www.fcc.gov/ownership/owner__female__2004-2005.pdf.*

[22] *http://www.fcc.gov/ownership/data.html.*

[23] For example, Howard University Professor Carolyn M. Byerly in an October 2006 report writes: "FCC data indicate that in 2005, women owned only 3.4 percent and minorities owned only 3.6 percent of the 12,844 stations filing reports." This report was based on the flawed FCC summaries of Form 323 data (see "Questioning Media Access: Analysis of FCC Women and Minority Ownership Data," Benton Foundation and Social Science Research Council, October 2006). Also, in his book *Fighting For Air,* New York University Professor Eric Klinenberg writes that "by 2005, the FCC reported that only 3.6 percent of all broadcast radio and television stations were minority-owned, while a mere 3.4 percent were owned by women" (page 28). These are the exact but inaccurate percentages obtained from the information on the FCC 323 summary website. They were calculated by dividing the number of reported stations by the total number of stations that filed Form 323 or Form 323–E (438/12,844 = 3.4 percent women-owned; 460/12,844 = 3.6 percent minority-owned).

ownership.[24] A draft dated November 14, 2005, reports that there were, as of 2003, 60 television stations and 692 radio stations owned by women; and 15 television stations and 335 radio stations owned by minorities.[25] However, our previous filings in this proceeding (containing the data in the Free Press study *Out of the Picture*) showed that by the fall of 2006 there were 44 minority-owned stations, and this was not the result of a massive increase in minority ownership. Indeed, the same FCC draft report indicated just a single African-American-owned television station in the 2003 sample period. However, a review of Granite Broadcasting's (an African-American-owned company) Form 323 filing in 2003 showed that they alone held nine full-power television station licenses.[26] This internal summary is deeply troubling in its inaccuracy and raises questions about the data analysis ability of Commission staff, and the commitment of the Commission to accurately monitor female and minority ownership.

But the biggest indication of the Commission's failure to take seriously its obligation to track female and minority ownership is seen in its most recent effort in this area—the 10 Official "Research Studies on Media Ownership".[27] Study #2, "Media Ownership Study Two: Ownership Structure and Robustness of Media" authored by FCC staff fails miserably in its effort to tabulate the number of female and minority owned broadcast radio stations. It appears that Study #2 likely missed well over half of all the female- and minority-owned broadcast station. As we demonstrate below, *the FCC missed 75 percent of the TV stations that were female-owned in 2005, and missed 69 percent of the TV stations that were minority-owned in 2005.* It is simply astonishing that the Commission could make such an error, especially given the fact that the CU/CFA/Free Press census of TV station racial/ethnic/gender ownership was readily available both in the record in this proceeding, as well as reported in numerous media outlets.

The authors of Study #2 chose to blame perceived imperfections in Form 323 data, and relied on flawed NTIA data as their starting point for assessing minority ownership. This was a fundamental flaw, and indicates a lack of seriousness on the part of the Commission in fulfilling the mandates of Sections 257 and 309(j). The simple fact is, the raw data contained in Form 323 individual filings is extremely reliable and useful. The problems associated with Form 323 are not with the data, ***but*** *how the Commission automates the harvesting of the data from these forms.* There are various aspects of how Form 323 is submitted by owners that appear to be causing the Commission trouble in its efforts to automatically harvest the data. Some stations file multiple forms for a single station (because of the numerous shell or holding companies); some stations do not enter the racial/gender/ethnic ownership information in the form, choosing to attach this information separately (many forms that do this often have "See Exhibit" written where the ownership information should be listed); some owners choose to write "No change; information on file" as opposed to properly filling out Form 323.

These are all roadblocks to the researcher who wishes to use automated scripts to harvest Form 323 data. But they are not roadblocks to those who actually examine each form. *The simple fact is, the Commission appears to have taken the lazy way out when faced with the choice of inaccurate automated data harvesting or accurate but labor-intensive manual coding of Form 323 data.*

Fortunately for the Commission, we did do the hard work of determining the ownership of nearly every single licensed full-power commercial broadcast radio and television station. *In total, the FCC only accounted for 17 of the 68 TV stations that were actually owned by women in 2005.* This means that in its most recent, official, and presumably best effort at assessing female ownership, the Commission missed 75 percent of the actual female-owned TV stations. *In total, the FCC only accounted for 14 of the 45 TV stations that were actually owned by people of color in 2005.* This means that in its most recent, official, and presumably best effort at assessing minority ownership, the Commission missed 69 percent of the actual minority-owned TV stations.

[24] See *http://www.fcc.gov/ownership/additional.html* for documents released in December of 2006.

[25] *http://www.fcc.gov/ownership/materials/newly-released/minorityfemale011405.pdf.*

[26] Furthermore, FCC data also indicates that during the time-frame of the FCC analysis, there were at least three more African-American-owned stations (WJYS, KNIN–TV and KWCV), bringing the number of African-American-owned stations to 12. The FCC document reported two American Indian-owned stations; but at the time of this draft study, FCC records indicate at least four American Indian-owned stations (KHCV, KOTV, KWTV, and WNYB). The FCC document reported four Asian-owned stations; but at the time of this draft study, FCC records indicate at least seven Asian-owned stations (KBFD, WMBC, KBEO, KWKB, KCFG, KEJB and KKJB).

[27] *http://www.fcc.gov/ownership/studies.html.*

Though we did not verify the accuracy and completeness of Study #2's radio ownership data, there is compelling evidence to suggest the Commission also omitted a substantial number of female- and minority-owned radio stations. In our study *Off The Dial*) we found that there were at least 609 female-owned stations and at least 776 minority-owned stations as of February 2007. In Study #2 the FCC reported 376 female-owned and 378 minority-owned radio stations in 2005. There is simply no evidence to suggest a near doubling in the level of female and minority radio ownership in the interim, suggesting that *the FCC missed approximately 40 percent of the female-owned radio stations and missed approximately 50 percent of the minority-owned radio stations.* Given that in the case of TV the Commission included in its tally stations that were not female- or minority-owned, it is likely that in total, the Commission missed over half of the actual female- and minority-owned broadcast radio and television stations.

This inability to even come close to accurately assessing the state of female and minority ownership simply because of a methodological choice shows an obvious lack of concern by the Commission. This lack of concern is truly troubling given the Commission's legal obligation to foster improved female and minority broadcast ownership. The FCC has both the raw data and the resources to adequately address the issues raised by the Third Circuit regarding minority ownership but chooses instead to ignore this issue and rely on public commenters to do its job.

We hope that this exposure of failure will cause the Commission to take pause and reassess its approach toward undertaking this proceeding. The issue of ownership diversity is far too important to be built upon a flimsy foundation of basic empirical data. Chairman Martin recently said, "To ensure that the American people have the benefit of a competitive and diverse media marketplace, we need to create more opportunities for different, new and independent voices to be heard." [28] If the Chairman and the other Commissioners truly believes this to be the case, then they should demand a complete and accurate assessment of the ownership status of every single full-power commercial broadcast station.

Bottom Line: Consolidation Keeps Women and Minorities Off the Dial

Data in the official FCC record, particularly data gathered from the 2000 Section 257 studies, indicates that the primary factors influencing female and minority broadcast ownership are media market concentration, access to capital and equity, and access to deals.

Theory supports these findings. As markets become more concentrated, the cost of stations become artificially inflated, driving away potential new entrants in favor of existing large chains. Concentration has the effect of diminishing the ability of smaller and single-station owners to compete for both advertising and programming contracts. This, combined with the inflated asset values creates immense pressure for the smaller owners to sell their station licenses to larger owners.

This destructive cycle disproportionately impacts women and minority owners, as they are far more likely to own just a single station in comparison to their white-male and corporate counterparts. Current owners are driven out of markets; and discrimination in access to deals, capital and equity combined with the higher barriers to entry created by consolidation shut out new female and minority owners from market entry.

Thus it is clear: if the Commission intends to promote ownership diversity, it cannot accomplish this goal while simultaneously enacting policies that increase market concentration.

It also follows those policies that allow increased market concentration concurrently with efforts to increase ownership by "Socially Disadvantaged Businesses" (SDBs) simply won't work. In fact, it is likely that any short-term gains from such policies in terms of the number of stations owned by women or people of color will be offset in the long term by a loss of unique SDB owners, a loss of SDB stations, and a loss of unique and independent media voices.

The Appendix to this testimony contains the results of econometric modeling of the factors that influence female and minority radio station ownership. The data strongly indicates that as market concentration increases, the number of female and minority owned stations decreases.

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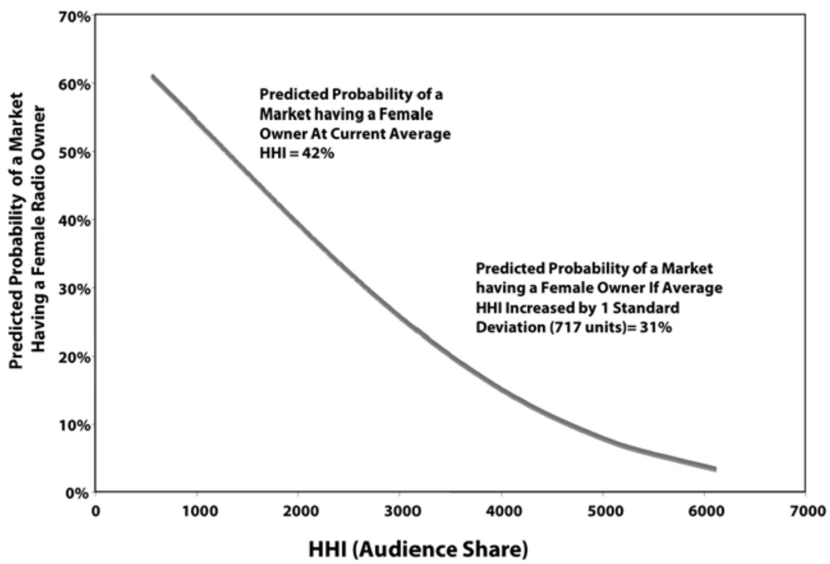
[28] Remarks of FCC Chairman Kevin J. Martin, 2007 AWRT Annual Leadership Summit Business Conference, March 9, 2007, Available at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-271371A1.pdf.* At the same event, Commissioner Robert McDowell stated that the data on female and minority ownership was "extremely troubling" to him, and that he wanted to find out "why that number is lower than in other industries." See *http://www.broadcastingcable.com/article/CA6423119.html?title=Article&spacedesc=news.*

Figure 1 illustrates the impact of increasing local market concentration on the level of female radio station ownership. Figure 1 plots the predicted probability of a market having a female owner present against the HHI calculated from audience share (the probability is based upon the size of the market, the percentage of minority and female population, the presence of a minority owner in the market, and the market audience share HHI; see Appendix for details). As the figure shows, a small modest increase in the market concentration level could lead to a substantial drop in the number of markets with female owners present.

Figure 1: Negative Impact of Market Concentration on Female Ownership



Conclusions and Recommendations

As the FCC goes back to the drawing board to reconsider media ownership rules, it must pay close attention to the Third Circuit's strong language regarding the Commission's failure to adequately justify its rule changes in regards to female and minority ownership. It is not sound policymaking to assert that diversity, localism and female/minority ownership are important goals, but then ignore the effects that rule changes have on these goals. Furthermore, it is a failure of responsibility to gather valuable information on ownership but then do nothing with the data. And it is inexcusable to continue to release data summaries the Commission knows to be flawed.

The findings of *Off The Dial* and those in *Out of The Picture* are crucial first steps toward understanding the true state of female and minority broadcast ownership and the effects of FCC policy on these owners. But more work needs to be completed, such a longitudinal studies examining the changes produced by the 1996 Telecommunications Act. The Commission should conduct this work and pay close attention to the changes in ownership over time. *The FCC must adequately study the impact of rule changes on the level of female and minority ownership prior to moving forward with any rulemaking.* This issue is far too important to make superficial attempts at addressing it, while allowing more consolidation—the very thing that is a primary cause of the problem.

The results of our two studies on female and minority broadcast ownership demonstrate that *any* policy changes that allow for increased concentration in television and radio markets will certainly decrease the already low number of female- and minority-owned broadcast stations. Enacting regulations that lead to such outcomes directly contradicts the Commission's statutory and legal obligations under the 1996 Telecommunications Act. Instead, the Commission should consider pro-active policies that protect and promote female and minority ownership.

It is important to note that the effects of other policies aimed at increasing female and minority broadcast ownership—such as tax credits, relaxed equity/debt attribution rules, incubator programs, or digital channel leasing—will be negligible in an environment of increased market consolidation at the local level.

The Commission needs to think hard about the damages brought about by the misguided policies of the late 1990s, which radically increased market concentration. In the radio sector alone, it is hard for a new entrant to get into the business by purchasing a single station. The realities of the consolidated marketplace mean that owners must control multiple stations in multiple markets to realize the economies of scale that are needed to prosper. But these economies of scale are artificial creations based on poor public policy decisions. The FCC has a social responsibility to restore an environment that rewards localism and dedication to community service.

In addition, we recommend that Congress urge the Commission take the following actions:

- The FCC Media Bureau should conduct annual comprehensive studies of every licensed broadcast radio and television station to determine the true and evolving level of female and minority ownership.
  - The study should examine the level of ownership at both the national level and at the local DMA and Arbitron market levels.
  - The study should be longitudinal, examining the changes since 1999, when the Commission began gathering gender and race/ethnicity ownership information.
  - The study should focus on station format and content, particularly paying attention to local news production.
  - The study, as well as the raw data, should be made available to the public.
- The FCC should revise and simplify the public display of individual Form 323 station filings.
  - A citizen searching for the owner of a local station should easily be able to ascertain the true identity of a station owner, and the Commission should make it easier to find out the true identity of past owners.
  - The practice of station licenses being held by layers of wholly owned entities should be thoroughly examined by the Commission. While this practice may serve a purpose for the tax liability of license holders, it serves no purpose in the identification of the those controlling the public airwaves.
  - Broadcast licenses are awarded for temporary use of the public airwaves, and the identities of the owners should be clearly stated on a single form.
- The Commission should expand the universe of stations that are required to file Form 323.
  - Currently, no owners of Class-A, translator or low-power stations are required to file ownership information with the FCC. However, the Commission states that these classes of stations are important entry points for female and minority owners. To validate this hypothesis, the Commission should extend the obligation of filing Form 323 to these stations.
  - Currently all noncommercial educational broadcasters file Form 323-E, which does not solicit information about the gender, race, and ethnicities of station owners. The Commission should require their owners to disclose this information.
- The FCC should not take any action on media ownership rules until it has thoroughly studied the issue of female and minority ownership and analyzed the effects of past policies.
  - The FCC should also complete the open proceeding on how to better implement Section 257 of the 1996 Telecommunications Act before proceeding with any rulemaking.[29]

In addition, Congress should move to authorize the expansion of low-power FM (LPFM) radio licenses to 3rd adjacent channels on the dial. The interference problems cited to curtail community radio in the past have been disproved, and the distribution of new licenses is long overdue. This would open thousands of new local stations across the country and promote opportunities for diverse voices to use the public airwaves. The LPFM stations that have been licensed to date have been a tremendous success, exemplifying the goal of a more diverse media system. Expanding access to these localized, non-commercial licenses would not solve the problem

[29] MB Docket No. 04–228, "Media Bureau Seeks Comment on Ways to Further Section 257 Mandate and to Build on Earlier Studies" DA 04–1690, June 15, 2004.

of minority ownership. But LPFM represents the quickest way to bring minority owned stations online while the FCC works to solve the long-term structural problems that have perpetuated a legacy of under-representation.

Senator CANTWELL. Thank you very much, Mr. Turner.

Ms. Pierson?

STATEMENT OF CAROL PIERSON, PRESIDENT AND CEO, NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Ms. PIERSON. Today I'm speaking on behalf of community radio, and our project, Native Public Media. NFCB has been representing and providing services to community radio stations for over 30 years.

Nearly half of our stations are controlled by people of color, and 40 percent serve rural areas of the country. And many of the new Low Power FM are also our members.

I've submitted detailed testimony about the importance of community and Native radio, the problems of media consolidation, the need to expand Low Power FM, and new technology-driven radio platforms. I just want to emphasize my major points.

I'm very happy that the Committee is holding this hearing on the future of radio. This is a critical time for radio in the country. Radio is thriving on the noncommercial side. In many areas, the community or public radio station is the only locally owned, and in some cases, the only station with local staff. In emergency situations this can be critical, and it is why NFCB is working with NPR to be sure that all of the community and pubic radio stations are prepared to provide emergency information to their listeners.

We have seen during recent emergencies, the critical role that radio plays, and I've attached a letter with my testimony from a number of emergency management directors, on how important they feel that a local, Low Power FM station can be.

Community radio stations are also expanding their services through webcasting, enhanced web content and other new technologies. It's critical that regulations and fees for use of these new technologies recognize the budgetary and staffing limitations of community radio, while recognizing that artists should get paid for their work.

At the same time, there are many people in this country that don't have an opportunity to own a radio station, or even hear their issues covered on existing stations. We need more community radio stations. The most immediate way to do this, is to expand Low Power FM stations into urban areas. This requires Congress to authorize the FCC to license LPFM stations closer to existing stations, a technology that has been shown to work.

We know that the consolidation of radio ownership has left local, women, and minority owners out in the cold. This is no time to further loosen ownership rules. The FCC must re-affirm the historic regulatory priorities of localism, competition and diversity.

The other major area I want to tell you about is Native Public Media. With a generous grant from the Corporation for Public Broadcasting, NFCB was able to create a center to expand and support media in Indian country. Currently, there are 33 public radio stations serving Native American communities. We are hoping to nearly double that number in the filing window that the FCC recently opened, but there is a great need to increase this service.

If you go to a reservation that has a radio station, you will find almost everyone listening to it. It is the ideal medium to preserve the culture and language, discuss local issues, and to provide health, education and emergency services. We have discovered through consultation with Native American leaders that complete information does not exist about where in Indian country it's possible to put a radio station, and where new technologies will be the way to provide a locally owned media service.

Native Public Media is trying to launch a research project that will pull together the research that exists, and fill in the gaps with new research.

In summary, radio as a platform for communication and information is, in many ways, stronger than it's ever been. Congress should look for strategies that bring localism back to commercial radio, encourage diversity of ownership, expand and protect community radio, including LPFM, and ensure that new technology-driven radio platforms are able to succeed.

I'm glad to answer any questions you have, thank you for the opportunity to testify.

[The prepared statement of Ms. Pierson follows:]

PREPARED STATEMENT OF CAROL PIERSON, PRESIDENT AND CEO, NATIONAL FEDERATION OF COMMUNITY BROADCASTERS

Chairman Inouye, Senator Stevens and Members of the Committee, my name is Carol Pierson. I am President and CEO of the National Federation of Community Broadcasters. I am speaking to you today on behalf of the NFCB and Native Public Media, a project of NFCB.

Today's hearing is so important because Congress and the FCC are facing a number of critical decisions that will greatly impact the current radio landscape and the future of radio. In my testimony today I want to stress several key points:

1. The overwhelming demand for terrestrial noncommercial radio stations coupled with the explosion of Internet-based webcasts and podcasts demonstrates that radio as a communications platform and art form is thriving.

2. Terrestrial radio remains the closest thing this country has to a universally accessible platform for locally originated news, information and entertainment. Radio is more than a tool to deliver an audience for advertisers; it's a tool for real-time public safety communication, local culture, self-identity and political discourse.

3. Changes in ownership rules have drastically altered the commercial radio landscape, challenging the historic regulatory priorities of localism, competition and diversity. To a large extent noncommercial and community radio stations are attempting to fill that void, but Congress and the FCC must act to respond to the extraordinary unmet demand for additional noncommercial platforms and resources to support existing stations.

4. Station ownership remains a major concern, with extremely few opportunities for women or minorities or Native Nations to own radio stations. There is not a lack of interest—rather the regulatory structures have placed potential commercial owners in a market against massive conglomerates with deep pockets. On the noncommercial side, Congress has limited the FCC's ability to license Low Power FM stations, and opportunities like last week's application window for Non Commercial Full Power stations have happened rarely. Recent reports that the FCC is considering loosening existing media ownership rules without addressing key issues of minority ownership and localism are very troubling.

Radio today is in the midst of a complete revitalization, particularly through the growth of noncommercial community broadcasting and the development of new Internet and satellite-based radio platforms. This explosion of content demonstrates that radio as an art form and means for communication is thriving. What is also clear is that policymakers should re-emphasize their commitment to the traditional regulatory priorities of localism, competition and diversity.

Over the past 10 years, a great deal has been said about the impact of the massive consolidation of commercial radio ownership that resulted from the 1996 Telecommunications Act. We have heard the complaints:

- Over two-thirds of listeners and revenues in the commercial marketplace controlled by just ten companies.
- Over 70 percent of advertising revenues in virtually every market controlled by four broadcast firms or fewer.
- The scandalous lack of ownership opportunities for women and minorities.
- New, structural forms of payola that created economic barriers for local or independent music to be considered for rotation.
- And incidents like Minot, where radio did not live up to its potential to inform the public in an emergency situation.

Recent reports indicate that the FCC may consider lifting ownership rules that limit the number of commercial stations a company can own in any given market. I cannot stress strongly enough that the antidote to runaway consolidation in the commercial radio market is not more consolidation. Congress and the FCC must consider and implement policies that will allow for greater diversity of ownership, competition and localism. The Commission has built a significant record on issues of localism and ownership. It would be a huge mistake to allow more consolidation in the face of this record.

One of the clearest windows into the unmet demand for terrestrial radio stations is through the experience of Native Public Media. This is a project of NFCB that represents 33 Native owned and operated public radio stations throughout Indian country. This project has been made possible by a generous grant from the Corporation for Public Broadcasting. These stations provide a unique platform for Native programming, including news, information, education, cultural and language preservation. Listeners enjoy these programs via the radio or in some cases webcasts and podcasts. As Native radio blossoms, more and more Nations express an interest in owning their own station. One-quarter of the pleas to NPM for help in starting a radio station came from Native communities who were experiencing an epidemic of youth suicides. Elders, community leaders and healthcare professionals felt that having their own tribal voice would invoke pride and revitalization of language and enhance community life.

A big part of the mission of Native Public Media is to document the opportunities for Native Americans to utilize broadcast and new digital platforms to create and distribute news, information and educational programming created by Native Nations, for the use of Native Nations. To that end, we realize there are significant gaps in just the basic understanding of how Native peoples access both traditional media and new technologies. NPM has proposed a two stage research report that will consolidate existing data commissioned by numerous government agencies and private foundations and fill in the gaps with new original research. Access to media is necessary in today's world, just as access to new Internet based technologies will be increasingly critical for economic survival. Without accurate data, policymakers are left making difficult decisions based on assumptions and instincts. NPM hopes to fill in the blanks with hard data.

This past week, the FCC held a rare opportunity for noncommercial entities to apply for a full power noncommercial radio station. The window was a significant success, as hundreds of organizations submitted applications to the FCC including 26 from Native Nations; interesting 6 came from a single state—Hawaii. This window demonstrates not only the huge unmet demand for more radio stations, but the need for the FCC to open such windows on a regular, predictable basis.

This committee is also well aware of the need to pass legislation to allow the FCC to grant additional Low Power FM (LPFM) licenses for schools, churches, community groups, local governments, Native Nations and other noncommercial entities. Since the service was established in 2000, nearly 1,000 new LPFM stations have gone on the air, providing critically important local programming in small towns and rural parts of the country. Because of Congressional action, however, the FCC has been blocked from issuing these licenses in larger communities that could greatly benefit from the service. The technology is settled, the service is a huge success, and it is time for Congress to act once and for all to reauthorize the Commission to expand this service.

Expansion and protection of community radio is particularly important in light of the role existing stations play in boosting public safety during emergencies. These stations are often the only ones with local staff to provide emergency coverage. For example:

- In 2004 KWSO staffers in Warm Springs, Oregon kept the community abreast of the events surrounding the worst fire outbreak of this decade.
- Apache radio station KNNB also played a significant role in keeping area residents and tourists safe during the "MMM" fire in 2004 providing coverage in both English and Apache.

I've attached to my testimony a letter signed by a number of emergency management directors. I'd like to quote:

> When the Hurricanes Katrina and Rita hit the Gulf Coast in 2005, the Emergency Operations Center of Hancock County turned to a Low Power FM station to provide the essential public safety information those rural communities needed.

Hancock County was the hardest-hit area on the Gulf Coast. In the hours after the storm, all lines of communication connecting Hancock County to the outside world were down—including cell phones, land lines, Internet, police radio, and broadcast radio stations—except one. Through the storm and in its aftermath, WQRZ–LP—a one-hundred watt radio station, licensed to the nonprofit Hancock County Amateur Radio Club—stayed on the air, thanks to the prodigious efforts of station operator Brice Phillips and a few dedicated volunteers. *While commercial and other larger radio stations did their best to serve their communities, doing great work across the Gulf area, it was the leadership of that LPFM station, and its local volunteers, that kept Hancock County informed.*

When disaster strikes, getting up-to-date and accurate information to citizens as quickly as possible is of utmost importance for public health and safety. As emergency officials charged with coordinating emergency and recovery efforts, we are convinced that the immediate, accurate, and local information WQRZ–LP supplied during the storm saved hundreds of lives in Hancock County.

Finally, it is important for Congress to continue to focus on the establishment of fair and balanced structures that allow noncommercial webcasting to continue. Internet radio provides a boundless opportunity for diverse programming, particularly for the thousands and thousands of organizations and individuals who would like to run terrestrial radio stations but are unable to do so. In addition, the Internet allows listeners to access broadcast content anywhere in the world. NFCB and other webcasters recognize the need to create fair royalty structures that allow artists to be compensated for their work. At the same time, the government should establish fair and reasonable rates and reporting structures that recognize the value of this service and the volunteer and noncommercial nature of many of these stations.

In summary, radio as a platform for communication and information is in many ways stronger than it has ever been. The Congress should look for strategies that bring localism back to commercial radio, encourage diversity of ownership, expand and protect community radio and ensure that new technology-driven radio platforms are able to succeed.

Thank you again for the opportunity to testify, and I look forward to any questions you may have.

October 8, 2007

PUBLIC SAFETY OFFICIALS ENDORSE LOW POWER FM RADIO EXPANSION—SIGN ON LETTER

This letter, authored by Brian Adam, the Emergency Operations Center Director for Hancock County, Mississippi, has been put forward as a petition letter for emergency response professionals and broadcasting experts to endorse, as they lend their support to Low Power FM radio. To learn more about Low Power FM, and how these stations provide essential services in times of crisis, visit *http://www.prometheusradio.org.*

To whom this may concern:

As public servants working for the safety, protection, and growth of our communities, we believe that access to a locally-owned and locally-controlled radio station is an essential component of public safety. For this reason, *we support the expansion of Low Power FM radio (LPFM) stations to nonprofit groups, government organizations, and municipalities across the United States.*

Please refer to the important example below when considering your deliberations as to whether or not you support expanding Low Power FM.

When the Hurricanes Katrina and Rita hit the Gulf Coast in 2005, the Emergency Operations Center of Hancock County turned to a Low Power FM station to provide the essential public safety information those rural communities needed.

Hancock County was the hardest-hit area on the Gulf Coast. In the hours after the storm, all lines of communication connecting Hancock County to the outside world were down—including cell phones, land lines, Internet, police radio, and broadcast radio stations—except one. Through the storm and in its aftermath, WQRZ–LP—a one-hundred watt radio station, licensed to the nonprofit Hancock County Amateur Radio Club—stayed on the air, thanks to the prodigious efforts of station operator Brice Phillips and a few dedicated volunteers. *While commercial and other larger radio stations did their best to serve their communities, doing great work across the Gulf area, it was the leadership of that LPFM station, and its local volunteers, that kept Hancock County informed.*

When disaster strikes, getting up-to-date and accurate information to citizens as quickly as possible is of utmost importance for public health and safety. As emergency officials charged with coordinating emergency and recovery efforts, we are convinced that the immediate, accurate, and local information WQRZ–LP supplied during the storm saved hundreds of lives in Hancock County.

WQRZ was the source of information for county residents, directing them to critical relief resources like food, water and ice, as well as to Red Cross, medical and rescue services. Recognizing the opportunity to coordinate with this information source, Hancock County officials invited WQRZ to move its studio to the Emergency Operations Center, and petitioned the FCC to increase WQRZ's signal coverage. The marriage of WQRZ–LP radio with the Hancock County EOC and the Public Information Office overcame many of the barriers facing emergency management's ability to communicate *en masse* with the citizens of Hancock County.

Many cities would like to take advantage of these inexpensive, reliable, diverse community radio stations—for culture, community, and technical training, as well as public safety. The City of Richmond works closely with WRIR–LP—a community radio station—to provide emergency information to the city, in the event of a crisis.

Unfortunately, Low Power FM station availability was limited from most cities when Congress opted to explore whether or not these new radio stations would interfere with those already on the FM dial. Congress asked the FCC to prove that there was room for LPFM, which they did in 2003, with a $2.2 million taxpayer-funded technical study. *Now that the government has proved that there is plenty of room for more Low Power FM radio on the FM dial, we think it is high time for Congress to let the FCC give out licenses across the nation, and to let our communities expand their capability to communicate critical information to the public in times of disaster*.

The expansion of Low Power FM radio is a goal that all Americans, and their elected representatives, can support. And, as emergency service providers from many diverse areas, we encourage the government to stand behind one form of vital emergency communications that can serve our communities, from coast to coast—without costing the government a single penny more.

Signed,

BRIAN ADAM,
District 2 Supervisor,
Hancock County, MS.

BUTCH LOPER,
Director, Mississippi Emergency Management,
Jackson County, MS.

BOBBY STRAHAN,
Director, Emergency Operations Center,
Pearl River County, MS.

ERNEST JACKSON,
Director, Emergency Management Agency,
Elizabethton-Carter County, TN.

Senator CANTWELL. Thank you, Ms. Pierson for your comprehensive testimony on so many different topics.

Ms. Rehm?

STATEMENT OF DANA DAVIS REHM, SENIOR VICE PRESIDENT, STRATEGY AND PARTNERSHIPS, NATIONAL PUBLIC RADIO

Ms. REHM. Good morning, Senator Cantwell, Chairman Inouye, and Members of the Committee, I'm Dana Davis Rehm, NPR's Senior Vice President for Strategy and Partnerships.

I'm thrilled to share the views of NPR and our member stations on the future of radio.

In our view, radio's future depends on content, and connection to communities. In the arena of high-quality radio programming, public radio has no peers. Over 30 million Americans tune in each week to programs like *Morning Edition,* and *All Things Considered.* These shows are drawing on reporting from our bureaus around the world and throughout the United States, but the foundation of this service is the network of over 800 local radio stations in communities across America.

In recent years, NPR has expanded its news, and NPR stations are investing in their reporting and local programming. When their strengths are combined with NPR's national and international reporting, the result is one of the largest, most capable and trusted news networks in the world.

NPR is also creating new shows and services. *Tell Me More* launched a few months ago. It explores how we all intersect and collide in a culturally diverse world. *News & Notes* is a relatively new show that explores topics and exposes voices that diverse audiences are seeking, and cannot find in mainstream media.

Other public radio organizations—American Public Media, and Public Radio International—are also innovating. APM is home to a powerful new concept, Public Insight Journalism, which has created the Public Insight Network—thousands of listeners who volunteer their experiences and knowledge to help news staff cover stories with authenticity and depth.

While content is our first principle, the future of radio depends on effective use of technology. Our audience is increasingly wanting content when and where it is most useful to them, and on a multitude of devices.

Yet, broadcasting will be the way that most listeners hear public radio for the foreseeable future, and even there, choices abound. Stations are converting rapidly to digital operations, making radio more accessible and more varied. Stations can provide not one, but two or more streams of free programming. Soon, radio reading services for the blind will not need special receivers. Deaf and hard-of-hearing Americans will have access to real-time public radio content in the form of display text on new receivers.

Stations can broadcast a new Spanish language service, or provide music streams, and this is only the beginning for digital radio. We also see the vast space created by the web as a place for deeper, and more varied, content and connection.

To ensure that the experience of the web is as important in people's lives as our broadcasting, we seek to present perspectives, voices and stories that are not seen on every other news site. At their best, their web content will foster personal growth, create connections to others, and strengthen the civil discourse.

The upcoming 2008 election is key to realizing our evolving world. We plan to pool resources across public media, integrate election content on public media websites and on-air. The public will benefit from a deep collection of election-related content, produced and curated by public broadcasters, and they will be invited to contribute their ideas in a nationwide civic dialogue.

Other web-based services are gaining acceptance. Among these are podcasting—NPR and a host of public radio stations and producers present a service that is among the most popular nationwide. Music discovery—soon NPR and stations will launch a web-based music discovery service, original concerts, studio sessions and discovery features will come together on *NPR.org,* where the audience can learn more about music genres and artists rarely heard on commercial radio.

In the mobile space, we are piloting an NPR mobile service—NPR Mobile Web, and NPR Mobile Voice offer stations and NPR content on handheld devices, and on any phone line.

The future of radio depends on equal parts programming and technology, so that audiences can be enriched, educated and informed at all times and places most convenient and useful to them.

Mr. Chairman, Senator Cantwell, while others have downsized their programming investment, NPR and our stations are investing more. We have launched a major national effort, known as the Local News Initiative, to aid stations in the production of high-quality, in-depth, local and regional news. Our goal is to strengthen news across the Nation, to build the capacity of stations to sustain that effort, and to create meaningful, long-lasting relationships between NPR stations and their communities.

The LNI was launched to provide a framework for change that will elevate both stations and national producers to better serve the public.

In short, the future of radio rests with programming first, and with our wise use of technology, and ceaseless efforts to connect with the American people, and in each case, NPR and public radio are working hard to lead the way.

Thank you.

[The prepared statement of Ms. Rehm follows:]

PREPARED STATEMENT OF DANA DAVIS REHM, SENIOR VICE PRESIDENT, STRATEGY AND PARTNERSHIPS, NATIONAL PUBLIC RADIO

Good morning, Chairman Inouye, Senator Stevens and Members of the Senate Commerce Committee. I am Dana Davis Rehm, Senior Vice President for Strategy and Partnerships for National Public Radio. I am pleased to offer the perspectives of NPR and its 850 member stations on the Committee's hearing topic this morning—the future of radio. Actually, I'm more than pleased, I thrilled to be here. At NPR and within public radio we believe we are charting the future course of radio.

The future of radio depends on programming and content first and foremost. In the arena of high-quality radio content, NPR and public radio have no peers. Each week, over some 30 million Americans tune into public radio stations to engage with programming like *Morning Edition,* the most listened to morning program in all of radio, and *All Things Considered,* our afternoon newsmagazine, which went live for the first time 37 years ago this past May. These two vibrant, enduring programs draw on reporting from correspondents based in 18 bureaus around the world, and producers and reporters in 19 locations in the U.S. But the strength of the NPR and member station news network goes far beyond this corps of international and national NPR reporters, and reaches into communities across America.

During the last three decades, leading NPR member stations significantly increased the amount of news programming on their broadcast schedules, while also investing in local reporting and programming. Strong news oriented public radio stations exist today in most of the top markets across the country. When the strength of these stations is combined with NPR's strength in national and international reporting, the result is one of the largest, most capable, and most trusted news network organizations anywhere in the world.

Within NPR and our public radio station partners, nothing is more important than the trust of the public in the content we create and distribute. We work non-stop to ensure that our programming always meets the highest standards of public service in journalism and cultural expression. And our audiences demand and expect constant improvement in breadth, depth, reliability, perspective, accuracy and access.

While many radio entities would be satisfied simply with two programs like *Morning Edition* and *All Things Considered,* NPR continues to develop, produce and distribute new shows to improve our public service mission. *Tell Me More,* launched just a few months ago is hosted by Michel Martin, a dynamic journalist with deep experience in programming, focuses on the way we live, intersect and collide in a culturally diverse world. *News & Notes,* hosted by Farai Chideya, whose expertise is in broadcasting and digital media, explores new topics that more diverse audiences are seeking.

Other public radio production and distribution organizations, namely American Public Media and Public Radio International, continue to develop new programming offerings to explore the ever changing composition of America and the world. You may know American Public Media for *A Prairie Home Companion* with the incomparable Garrison Keillor, one of America's most accomplished and beloved storytellers. But APM is much more. It is home to programs like *Marketplace, Speaking of Faith* and a very powerful new concept, Public Insight Journalism, which has now created a Public Insight Network. This network is comprised of thousand of listeners who are willing to share their experiences and knowledge with radio producers and reporters. It is built on the premise that the audience has perspectives and insights that can help journalists cover the news with greater authenticity and uncover stories that would otherwise go untold.

Similarly, Public Radio International is innovating in radio and on the web. They distribute *This American Life,* from Chicago Public Radio, a remarkable production that documents and describes contemporary life in the United States and *The World,* an international newsmagazine co-produced with the BBC and WGBH Boston. Through a nonprofit subsidiary nonprofit called Public Interactive, they are helping hundreds of public radio stations to extend the life of their programming and create a vibrant web presence in their communities.

While content is the first principle, the future of radio depends on technology. In public radio, we know that our audience is demanding changes in how and when we provide programming to them. The old broadcast model of "if you build it, they will come", no longer holds true. As we often say, our listeners want programming on their terms, whenever and wherever it is most useful to them and to be delivered on a multitude of reception devices. To them, it is all the public radio experience.

It remains true that over-the-air broadcasting will be the principle distribution path for most public radio programs today and for the foreseeable future. But even in over-the-air radio broadcasting, the last enclave of the old analog world, change is rapidly occurring. As of today, more than 600 public radio stations are moving to digital operations. By the end of 2007, we anticipate 350 stations to be on-the-air with digital signals, and of those more than 100 will be multicasting, serving their communities and listeners with not one, but two or more streams of public radio programming.

We view the transition to digital broadcasting as a tool to improve and broaden the reach of our programming to poorly served, un-served audiences. We will use it to make radio reading services for the blind and hearing impaired more accessible. Our vision is that in the not too distant future, listeners to radio reading services will no longer need a special receiver; any new digital radio will have the ability to offer that public service. And for the first time, the 23 million deaf and hard of hearing Americans will have access to real-time public radio programming in the form of text that displays on the next generation of digital radios.

This summer we launched Radio Ahora—produced by Radio Netherlands for distribution by NPR. It mixes together 10–12 hours of live daily programs with documentaries and archival material, all in Spanish. Radio Ahora is targeted at people from Central and South America, doing so by focusing on editorial concerns of that area, regional accents, and a large number of correspondents in those countries.

We also offer streams of classical music, jazz and folk so that our member stations can expand their community service. All of these efforts are only the beginning of the public service potential of digital radio. Its inherently inclusive nature makes it a perfect fit for public radio's relentless pursuit of public service.

Given the increasing adoption of new content platforms—from online to hand-held devices—and the accelerating changes in media usage patterns, public radio has significantly greater opportunities to gather news, share information, build communities of interest, and fulfill its public service mission. Thus, expansion and improvement of public radio websites and web content are priorities that demand our attention. Public radio stations and public radio program producers are taking advantage of the vast “space” created by the web to bring broader, deeper and more varied content to those who listen to our programs and then visit our websites to learn more. The web also allows us to serve audiences who are not familiar with public radio, as our content increasingly surfaces on search engines. We estimate that the primary program producers’ websites in the public radio systems—NPR, MPR and PRI—have 8 million unique visitors each month. We estimate a comparable number of web-visitors to stationsites.

This expansion in the use of web-based content for public radio at all levels is a pattern that will continue into the future. Increased use of web-based resources poses numerous challenges, including making sure that content found in public radio websites is as compelling and important in people’s lives as our over-the-air broadcasts. We envision a unique and important public service role on the web. First among these, we will offer distinctive, insightful perspectives on news and issues of the day. Public radio websites bring in voices that aren’t presented on every other news site. At their best, they put the audience in touch with events that foster personal growth, create connections to other human beings and strengthen our Nation’s civil discourse.

The upcoming 2008 elections provide public broadcasting with opportunities to utilize cross platform news gathering tools. NPR and PBS, in partnership with our stations, are pooling significant editorial and technical resources to engage the public at the local, state, regional and national levels. We are developing an online infrastructure that enables public media entities to integrate our collective election-related content on any public media website, while helping to promote local election content throughout the system. Stations and other entities that use these content modules will be able to leverage election-related resources from across the system for online and on-air use. The public will benefit by having greater access to comprehensive election-related content produced and curated by public broadcasters, as well as new opportunities to contribute their own ideas and content to a nationwide civic dialogue.

Other Internet program distribution platforms are gaining wide acceptance among public radio listeners and forcing changes within public radio. Podcasting, for example, which is radio programming content distributed via the Internet to listeners with portable music listening devices, is a term only recently found in the common language of media, but it has become a growing presence in public radio. iTunes reports that NPR and public radio podcasts are among the most popular in this new program distribution service. NPR, in conjunction with a host of public radio stations and producers, has launched a common podcasting platform that routinely has 9 million monthly downloads, with more than 140 million downloads since the project launch 2 years ago. Among the most popular are the in-depth interview program *Fresh Air, NPR News Story of the Day, Talk of the Nation Science Friday,* and *All Songs Considered.* This summer we launched three Spanish language podcasts. *Al Grano,* a Spanish-language news roundtable host by Maria Hinojosa; a Spanish version of the popular *Youth Radio* pieces heard on NPR newsmagazines; and *La Matinal:* a 29 minute daily newsmagazine produced by Radio Netherlands.

On November 5, NPR will launch a new music service on *npr.org* in partnership with member stations WBGO, WFUV, WGBH, WXPN, WDUQ, KUT, WKSU, WGUC, MPR (also, American Public Media), KEXP and KPLU. Original concerts, studio sessions, and song discovery features from all of the partners will be brought together in one place where the audience can learn more about music genres and artists rarely heard on commercial radio. Over time, we plan to expand this service to include more member stations.

Just 2 months ago, we launched the NPR Mobile service, which is unique in its content delivery platform and business model. In partnership with 10 stations, the two products—NPR Mobile Web and NPR Mobile Voice—offer NPR and local station content on handheld devices or any phone line.

The changing demands of new content delivery technologies, and of our audiences who use them, are the catalyst for change in way we are producing content. Whether it’s the delivery of news and information, music, entertainment or cultural enrichment shows, assembly of the “bits” that become part of current and future digital delivery systems is increasingly important. Our concept for the future is built upon full utilization of digital technology.

The future of radio is dependent on equal parts of programming and technology so that audiences are engaged with content that enriches, educates and informs at the times and places most convenient and useful to them.

Mr. Chairman, we are investing our resources in both programming and technology. We are expanding in both areas and we are adding staff . . . reporters, producers, editors . . . to bring the world, community by community, to our audience.

In contrast to the expansion of regional, national and international news coverage by NPR and others in public radio, the last decade has seen a remarkable retreat in other American broadcast media from serious, careful, and balanced presentation of news, information, and ideas.

Public radio is responding to this growing trend with Local News Initiative (LNI). This is a national effort to increase public radio's listener service through investments that enhance station capacity to provide quality, in-depth news. As other media continue to retreat from serious local news coverage, many stations have recognized that the need for high quality local content and news is becoming more and more critical. Our goal is to increase the level and quality of serious local news coverage in communities across the Nation; strengthen the capacity for local public radio stations to sustain local news efforts; and, create meaningful and long-lasting relationships between NPR, stations and the stations' local communities. Working in partnership with stations and other public radio organizations, the LNI was launched to provide a framework for long-term transformational change that can elevate the ability of both stations and national program producers to better serve the public.

In short, Mr. Chairman, the future of radio rests with programming, technology and ceaseless efforts to connect with the American people. In each case, NPR and public radio are leading the way.

Senator CANTWELL. Thank you very much, and I thank all of the witnesses for their testimony. I'm going to turn now to the Chairman to see if he has any questions he would like to ask.

The CHAIRMAN. Madam Chair, I'm very much impressed by the quality of the testimony this morning. I have about 10 pages of questions I'd like to submit to all of you for your responses, if I may. And this testimony convinces me that this Committee must look into matters such as consolidation, diversity, local news—diversity, not just on news, but on ownership—and we'll be doing that under the aegis of Chairman Cantwell.

Thank you very much.

Senator CANTWELL. Thank you, Mr. Chairman, Senator Snowe, do you have questions?

Senator SNOWE. Yes, thank you very much, Madam Chair and Mr. Chairman for holding this hearing, because I think it is crucial, particularly at this time, since the FCC is looking to further consolidate within the medium. That's why I'm pleased to work with Senator Dorgan on this question, and expanding the comment period, at the very least, and then go from there.

But it's a critical question, because we're seeing a declining number of radio stations, that has certainly occurred in my state. In fact, the FCC held a hearing on localism in our state recently, one of the six hearings nationwide. And it was a very active hearing. People are very much concerned about the fact that we're losing local content, losing the competition, losing the diversity that all of you have addressed here today.

So, I think that ownership consolidation is going to really, I think, undermine all of these principles, without question. And so, I think that we, I appreciate the fact that we're focusing on this question.

I would like to ask you, Mr. Withers, what steps are your members taking to ensure local content of programming? Because I, you know, I am concerned about what is happening with radio ownership consolidation that affects the consumers and, you know, in my state and across this country, and how has it affected diversity and the content that's available to people in the various communities?

Mr. WITHERS. Senator, thank you for the question. As I understood it—because I didn't want to answer a question that I didn't understand correctly—you wanted to know what steps our members had taken to ensure diversity in programming?

Senator SNOWE. In local content.

Mr. WITHERS. In local content. I was—and you mentioned the hearing that just was attended, was held in your state—I was privileged to attend the hearing that was held in Chicago at Jesse Jackson's headquarters, where—and the reason I even bring it up, is that my daughter, who just finished her term as Chairman of the Illinois Broadcasters Association and owns 10 stations in her own name and right, totally separate from anything that I do, was one of the testifiers at that hearing. And she basically—I'm parroting what she was saying—but good broadcasters do good local service and they understand, whether they're group owned or not, they understand that you can't take from a community unless you have put into the community and are a part of the fiber and fabric of it.

We're seeing that played out, as we speak now, in Southern California, where a commercial broadcaster just gave his facility to the public broadcast station that was burned out this morning, and they will continue that until it's over with.

And you know, you've asked me what time it is and I tell you why the Swiss are neutral. There is no real answer for this. You have to understand what the community is and you have to supply their needs. And a good broadcaster will do that. I'm sure there are probably bad chiropractors, bad broadcasters, and I hope I never get a bad brain surgeon. But we try to be the best that we can be.

Senator SNOWE. So, what kind of steps is the membership taking in that respect?

Mr. WITHERS. What concept——

Senator SNOWE. What kinds of steps are they taking and how do you expand diversity and, within the industry? I mean, what can we be doing in that regard, and what is your membership doing?

Mr. WITHERS. We have a, the NAB itself, which is the only thing, I represent them, has a Broadcaster's Foundation, which has an outreach program, where we train minority people of color, females, anybody that frankly wants to take the course. We have scholarships for them so they don't have to pay for it. We have an incidence rating of, I think, 80 to 90 percent of the ones who finish this—this program, wind up in management and many of them, and I've kept in contact with them over the years, have gone on to become station owners. So we are fostering all we can and promoting all we can on a voluntary basis within the National Association of Broadcasters.

Senator SNOWE. Thank you.

Mr. WITHERS. By, under the aegis of the National Association of Broadcasters Education Foundation.

Senator SNOWE. And finally, Mr. Turner, I appreciate your passion about the issue of media consolidation. I couldn't agree with you more. Many of us on this Committee and certainly Senator Dorgan in that respect. What steps do you think that this Committee should take in response to the announcement made by the

FCC, as they prepare to look at changing the media ownership consolidation rules?

Mr. TURNER. Well, that's a really good question. Just to give a little bit of background. This is such an important issue, that the Commission had 10 separate studies conducted on the issue, that took the authors over 8 months to actually perform the work. Now, there was no public input on how those studies were conducted, but once the studies were released, we were given 60 days to comment on thousands of pages and very complex statistical studies.

Yet, 30 days into that comment period, we still hadn't received the underlying data. Only 10 days before the comments were due, did the Commission finally release all the underlying data and allow us to conduct some meaningful analysis of this from the public interest perspective.

Now, they gave us a 20-day extension on filing comments, which we did this Monday, and we filled the record with over 2,500 pages of comments on these studies. Now, mostly we dealt with the issue of newspaper or television broadcast ownership, but if we would have had our 90 days, we would have given another 2,500 pages on the issue of radio.

But fundamentally, I think what the current data shows, is that the best way to promote localism and diversity in radio is to simply roll back consolidation. That will produce more stations that can get in the hands of local owners.

Now, what you can do as Congress to step in and make sure this process is conducted in an open and transparent manner, is to send a message to the Chairman and say, you know, bring them up here, ask him some questions, ask him what is his opinion on the impact of media consolidation and how it impacts communities of color and women. And, send a strong message that there's a bipartisan consensus on this Committee and throughout this body as a whole, that media consolidation should not be permitted.

Senator SNOWE. I appreciate that and we are going to follow up on all of those issues. And, I thank you very much.

Senator CANTWELL. Thank you, Senator Snowe.

Senator Dorgan?

Senator DORGAN. Madam Chair——

Senator CANTWELL. And I will remind my colleagues, we didn't start the clock for members, but since we are expecting a vote, if everybody could keep their questions to 5 minutes, that would be appreciated.

Senator DORGAN. Mr. Turner, as you know, the previous rules that the FCC promulgated, which were struck down by the court, the Senate expressed itself very strongly opposing the rules in a vote on this floor of the Senate, would have in the largest cities of the country, allowed one company to own eight radio stations, three television stations, the newspaper, and the cable company. And that was going to be just fine. Well, it wasn't with the U.S. Senate. And, it wasn't with the circuit court.

But, those who counsel for unlimited, virtually unlimited concentrations say, "You know what, this is good. It's localism, it's fine. Nobody's going to do anything that's counterproductive to local interests." We've had hearings in here where we've heard about voice tracking, a guy sitting in a basement in Baltimore saying, "It's a great day here in Salt Lake City. The sun's up, we're going to have a wonderful day and I'm glad you have joined me," pretending that he's in Salt Lake City. In fact, he's broadcasting out of a basement in Baltimore. That's called "voice tracking." How prevalent is voice tracking? Do you have any data about that?

Mr. TURNER. There doesn't exist a lot of data on voice tracking because this is primarily something that is in its nature, phantom, and hard to keep track of. And this is something that we would encourage the Commission, along with its efforts to track issues like payola, to start looking at the issue.

Senator DORGAN. It's kind of a virtual localism, isn't it? I mean, it's, let's pretend that we're part of your community, but are not. The reason I mentioned that is, in addition to that sort of pretending that they're part of the local community, we also see a substantial diminution of personnel in the newsroom in many cases. And Mr. Withers, I'll ask you about that in a moment.

But there's, I think, a fairly substantial amount of evidence about consolidation of newsrooms. For example, in one North Dakota community—I would say to you Mr. Withers—one radio company from out of state bought all six commercial radio stations. And so, you know, they run homogenized music through their board, I guess, and they basically emasculated most of the news gathering in those areas. I suppose they would consider themselves local, but they're really not. Tell me, what kind of information with respect to cross-ownership, allowing as the Commission seems to want to do, the common ownership of newspapers and radio and television stations in the same market?

Mr. Turner, you have analyzed the data by the FCC. The FCC maintains that there's no problem here at all. Tell me your analysis of that data?

Mr. TURNER. Well, that's right, Senator. During this process, the former chief economist at the FCC, a woman by the name of Marx, she wrote a memo, basically starting with the question, "How can we loosen these rules?" She didn't start with the question, "What's in the public interest?" And the resulting way the research was framed and was conducted in these 10 studies, was trying to look at whether or not a station does more local news if it's in a cross-owned relationship.

We said, the actual question that should have been asked is, "What happens at the market level?" Because simple economic theory predicts that as you have a more powerful owner in a market, it may push out the other owners who are doing diverse news. And lo and behold, when we actually looked at the FCC's own data in three separate studies and aggregated at the market level, it's exactly the result we found. The strong statistically significant effect that cross-ownership of newspapers and television stations in a local market leads to far less local news.

Senator DORGAN. That's an important contribution.

Mr. Withers, let me—let me say this. There are some wonderful broadcast owners across this country who do remarkable local service, and I admire the work they do every day. But, there is a localism proceeding that has never been completed. Localism is a very important part of providing the license to use the airways free of charge. And with those licenses, we've now gone from 3 years to

8 years and basically send a postcard and make a few assertions and you continue to have the license.

I do think that concentration is at odds with localism, and I think that's demonstrated in many markets across the country. You obviously disagree with that, I expect. Tell me how concentrations of 400 or 200 or 1,200 radio stations serve localism, the interest of localism, in your judgment?

Mr. WITHERS. Senator, it depends on, in many cases, and I think I'm familiar with the foreign—I hate to call them foreign—the out-of-state owner that owns the six radio stations in the community in which you refer. I compete against the same out-of-state company in an area where they have one newsman, I have 16. So, granted, I've spread it over, it's spread over several stations and we do election returns, we do, literally, region-wide election returns, and then there might be as many as 50 people that we have stringers out doing that.

Their competition in one of these markets only has a half a newsperson. I don't agree with that. That's not the way that I said when I addressed Senator Snowe a moment ago. We, you have to put into a community before you can take anything out of it, whether it's advertising revenue or anything we do.

And so, I agree with you. If it's abused, it's like any other thing. If it's been abused, it's not good. If it's done well, then it's, I can afford to put the different news people into a town that wouldn't have one, ordinarily. I mean, we're talking about towns of 8,000, 9,000 people.

But we'd, and we do it and believe in it and it has helped grow, grow, grow. And so, it's yes and no, it's hot and cold, it depends on how well they operate and who they are. And I'm not saying that I'm the fantasy, I'm the know all, see all about any of this. It's just after 50 years, I can, I have seen what works and I've also seen what doesn't work. And it works if you're there serving the local communities.

Senator DORGAN. And, I will finish my time here. Serving local interests works, it's no question about that, and I don't think there's any question either about what concentration does to diminish the service to local interests. It's happened all around the country. And, I think that failure to serve local interest by this dramatically increased concentration is what persuades many of us to suggest that what the FCC wants to do is exactly the wrong thing.

Mr. WITHERS. I respectfully feel that the concentration in and of itself does not cause diminution of service. It's the approach in which it's taken by the different people. There are some markets, I mean, I've got a market now where I have to replace, and I hope he's not watching this or listening to it, where I have to replace the manager. He's got four stations under him.

Senator DORGAN. Well, tell us the market.

[Laughter.]

Senator DORGAN. We won't leak a word of it.

Mr. WITHERS. Oh, you won't say a word. Yes.

But it's because I don't feel he serves the community correctly. But, and that's, the buck stops here. I'm the one that hired him, so I'll be the one that will, that will allow him to take instant retirement, which is a nice fringe benefit that we occasionally offer to some of the people that don't function. But I know what needs to be done. He doesn't agree with me.

And so therefore, I'll replace him. But the fact that it's a market that's about 250 miles from where I live has nothing to do, the consolidation didn't do it. If I lived in the town and he were the manager, it wouldn't improve it any. It might somewhat. I'd probably get invited to more parties, but that would be about it. I don't think that the consolidation of itself is bad, it's the way in which the consolidators have approached it.

And, in the case of the 500-pound gorilla in the room is Clear Channel, and they have seen, I think, so they were trying to run two different companies, a large-market company and a small-market company. And as you are well aware, they are selling off 440 some-odd radio stations. And they're going into diverse hands and much smaller group operators, and I think you'll see that the marketplace is taking care of, in this case, a lot of the lack of attention or difference in management philosophies that might occur in a large or a small market.

Senator DORGAN. But I think the very thing you've described, represents the failure, however, and represents the reason that we have to take action to prevent the FCC from further damaging the radio and television and the industries that we rely on.

I've taken more time. There's much more to say at some point later. I thank the entire panel. It's some really terrific testimony. Mr. Withers, thank you, and the NAB as well.

Senator CANTWELL. Thank you.

Senator Sununu?

STATEMENT OF HON. JOHN E. SUNUNU, U.S. SENATOR FROM NEW HAMPSHIRE

Senator SUNUNU. Thank you very much. Sorry for arriving a little bit late. I read much of your testimony. I did not hear it all, so I apologize if I mention anything or ask anything that's a little bit redundant.

Mr. Withers, I wanted to start with you. And, you know we hear a lot of talk about consolidation and big media and, you know, big isn't necessarily a bad thing. We can think of a lot of industries where we've seen large companies competing and driving down prices for consumers, maybe in manufactured goods and other areas. And I suppose large can be good when it comes to distributing information or content, broadcasting. It's not necessarily a bad thing. But oftentimes the rhetoric is, "Well, concentration is bad. We need to move away from that."

The reason I make this point, is because despite all of the rhetoric, you've got information in your testimony that there are more radio station owners today than there were in 1972. And if you listen to all the rhetoric out there, you would think just the opposite. There must be one-tenth the number. There must be half the number. There must be one-third the number that there were 25 or 30 or 35 years ago. So, I want you to talk a little bit about that statistic, to what extent have the number of owners increased since 1972 and why?

Mr. WITHERS. Thank you for the question. The number of owners has increased because there are more stations that have come on the air. They've had several proceedings where they've opened up— 8090 was the great one, where they, I think they decreed that anybody born within a certain period of time was not given a Social Security card, but was given a license for an FM station.

[Laughter.]

Mr. WITHERS. But in an attempt to—no, that wasn't how I got in the business. I don't think we had Social Security when I got in the business, but the, no it wasn't.

But there have been more—and part of it is attributable to the fact that as we've had more educational systems and programs, like the one that the NAB has, and there are more and more and better broadcast schools. Southern Illinois University in Carbondale, for example, has a tremendous broadcast school. And as you produce more good product, the eagles will want to fly and they want to fly to their own nest. And so, they'll get stations.

There are plenty of stations there. We have, because of the technological changes that the Commission has, FCC has done, there are more stations that fit in, in more places. And the computer modeling has allowed that to happen. And more and more people have applied for and gotten and are running stations.

So you know, when you look at, the first, the top two or three companies probably control 8 to 10 percent of the radio stations. The next 50 owners, own less than 50 stations. And once you get past that, it's all very small groups. There might be a man and his wife that will have four. My daughter, for example, has 10 scattered in two states, Missouri and Illinois. And so there are a lot of small owners that own a, they're not single station owners, but they don't own a lot of stations.

And so, when you—it looks—it's always easy, that's why they don't call it Lieutenant Motors, it's General Motors. There's always a big one that everybody throws darts at. But then, once you get past the top two or three and you get down past that next 50, who don't own a lot of stations, collectively, when you consider the universe of stations, the rest of those are all small operators. And that's what, where the number comes from.

Mr. TURNER. Senator Sununu, can I possibly respond to that?

Senator SUNUNU. Sure.

Mr. TURNER. When we talk about concentration, we're not just talking about the number of stations. We're also talking about the actual market shares of these owners in the local markets. Now, I think it's unacceptable that in the average market, about 75 percent of the revenue is controlled by the top two owners. Now, this has created artificial economies of scale in the industry that have not only hurt the local owners of the radio stations, but it's also hurt local businesses who look to advertise on some of these local stations.

So, when we talk about the issue of concentration, we shouldn't just focus on the concentration of stations, but the actual market power that these owners have been able to exert.

Senator SUNUNU. Well, I don't know that that's entirely correct. Because all things being equal, if you have five participants in the marketplace, each with the same opportunity to reach listeners on the basis of the power of their station, or the coverage of their station. And it turns out that everyone in the market is listening to one station because the other four are horrible, they may have 100 percent so-called market share or market power by your definition, but I would argue that there's every opportunity in the world in that market for competition.

Now that may be a slightly simplified example, but I think if you look at demographics and the fragmentation, the ownership structure, in many cases, the revenue figures that you cite have more to do with listenership than they do with fragmentation. So, I think we need to be careful and clear and honest when we're talking about whether there is or is, aren't competitive forces.

Now, if you're talking about a market with, where there might be only, you know, one radio station, which is very rare, I'm sure there might be places where that's the case, then obviously concentration is a greater concern.

Let me move on, because we don't have too much time and you both obviously had ample time to address that point.

Mr. Withers, I want to talk about a slightly more controversial issue, which is the licensing and performance rights and copyright and royalties for composers and the like. You talked a little bit about that in your testimony.

First, talking about the broadcasters having to pay sound recording performance fees when they put signals on the Internet. And, that you thought that those fees were too high. And, I think it's important when we're dealing with copyright content ownership and licensing that, you know, we have fee structures that make sense, as level a playing field as possible, and we have a good system for protecting those rights.

But in this case, you're talking about performance fees for streaming signals on the Internet not being fair. But don't others, who are streaming content digitally on the Internet or satellite radio, XM and Sirius, they're paying these same performance fees, are they not?

Mr. WITHERS. Yes sir, they are. Mel Karmazan, who you gentlemen know——

Senator SUNUNU. He's been here before.

Mr. WITHERS. He's been here before, got to sit at my immediate right. He—he's now stated that they're usurious and he doesn't feel he should have to pay them. What a surprise. But——

Senator SUNUNU. So you take consolation in the fact that everyone's complaining about them now.

Mr. WITHERS. I don't take consolation, I'm just pleased that we have, for one thing, we have a topic that people are united on and behind us and everybody else, I think, at the panel. You heard testimony today that it would put, it's going to put Pandora out of business because of the size and impact.

My opinion, personal opinion, the Copyright Royalty Board got about 15 times more than they thought they would get. And it's unconscionable, frankly, that when the NAB sends what I thought was a reasonable, and a reasoned offer to them, it took 13 weeks to turn it down.

Senator SUNUNU. So, do you object to paying performance fees for those who own the copyright or do you just think that the fees as currently structured by the CRB is too high?

Mr. WITHERS. Talking, you're talking about Internet streaming?

Senator SUNUNU. Well, why would we—why would we make a distinction?

Mr. WITHERS. Because over the air, it always been——

Senator SUNUNU. Well, we'll get to that, then.

Mr. WITHERS. Well if——

Senator SUNUNU. We'll see if you want to narrow your answer to Internet.

Mr. WITHERS. I want to narrow my answer. Yes, I'm talking about—we frankly weren't at the—why we were asleep at the switch and weren't at the table about 15 years ago when they did the digital thing, I have no idea.

Senator SUNUNU. I'm sorry. I didn't ask a yes or no question though. I asked whether you felt, whether you objected to paying performance fees, or whether you simply felt that the CRB has set them too high for Internet streaming.

Mr. WITHERS. We object to paying them.

Senator SUNUNU. So you don't think the performance, performance copyright should be getting anything from anyone, anytime?

Mr. WITHERS. Given the choice you gave me with the question, that was where we objected to paying it. But since I, we are where we are on this slippery slope, because it is a new and different business model from our business model and plan, the Internet streaming part. We had made an offer. So, since we made an offer, we obviously wouldn't have made it unless we were sincere about it.

Senator SUNUNU. I'm a—you refer to the performance fee for Internet streaming, and I think your position is reasonably clear there. But then, on the next page in your testimony, you talk about a performance tax for over-the-air broadcasts. Now, we're really talking about the same thing, are we not?

Mr. WITHERS. We don't feel so. We think it's a totally different business model. For 40 years—for 40 years Congress——

Senator SUNUNU. But in both cases you're talking about paying money to the performer, who has a copyright on a piece of music. Correct?

Mr. WITHERS. We're talking about—well, if, it's a typical—if it's a typical record company deal, the money doesn't go to the performer to begin with. So, that's a misnomer.

Senator SUNUNU. In both cases, the money doesn't—you're claiming that in both cases, the money doesn't go to the performer?

Mr. WITHERS. In both cases of, if we paid a performance right?

Senator SUNUNU. Yes.

Mr. WITHERS. The, for the last 40 years, Congress has agreed with our position that we are free play on our part. They get free promotion. We're giving them free play.

Senator SUNUNU. I'm just trying to ascertain whether we're talking about the same thing. You used a phrase performance tax, but we're not talking about the government collecting the money?

Mr. WITHERS. I disagree with the term, the performance tax. It's a performance fee, but that's my personal——

Senator SUNUNU. Excellent.

Mr. WITHERS.—that's my personal.

Senator CANTWELL. Senator Sununu, if you could wrap up, because I do want to get to Senator McCaskill.

Senator SUNUNU. I appreciate that.

I just, this is important, I think. I want to be clear, I mean, it's in your, the phrase performance tax was in your testimony. So, we're talking about a performance fee or license——

Mr. WITHERS. Yes, sir.

Senator SUNUNU.—in both cases.

OK, I appreciate that very much. Could I ask one last question of Mr. Westergren?

You've got Pandora, and I understand vaguely, sort of, what kind of a system you have set up and why, with such a narrow casting or, you know, focused play list, the performance fees could be extremely onerous for you. So, you don't have to go into that. I think I understand.

I want to ask you a broader question to you because you're obviously doing something that many would be considered evolutionary, at least, in taking advantage of some of these new platforms. Whose business model is most threatened by what you do? And, what part of the industry or what kinds of business do you think will be most affected over the medium and long-term by the kinds of products and services that you're providing? And I'll close there.

Thank you, Madam Chair.

Mr. WESTERGREN. I guess the best way for me to answer that is to look at who we consider our competition. And, when I'm asked who we compete against, it's anybody who's trying to attract someone else's listening hour. So, we are competing with radio in its many, many forms, whether it's cable, other Internet radio providers, broadcast radio. And increasingly, those various forms of radio are converging. You weren't here earlier, but I actually played a sample of Pandora's stream through a cell phone, which with a little adapter you can stick into your car and listen to it while you're traveling on the highway. And so, we're in a marketplace where you sit adjacent to all these other forms of radio. And our intention is to compete with them.

We think, you know, if I was in their shoes, I would be worried about Internet radio, because I think it's—I'm hearing its footsteps behind me. And I think one of the, sort of, most important messages I'd like to deliver today, is the idea of parity. That we have a situation where we compete directly, but are under radically different licensing structures, by orders of magnitude.

Senator SUNUNU. Are you making any money?

Senator CANTWELL. I'm going to have to——

Mr. WESTERGREN. We're losing hand over fist right now.

Senator CANTWELL. I'm going to have to go to Senator McCaskill. She's been patiently waiting. And I want to make sure we get her in before the vote.

We aren't going to come back after the vote, so let me thank the panel in advance for being here, and your good testimony. Members will be able to submit additional questions for the record. And, if you could answer those in a timely fashion, we'd greatly appreciate it.

Senator McCaskill?

Senator MCCASKILL. Thank you, Madam Chair.

I've got several different—it's hard for me in 5 minutes to go to the different areas I'd like to go to.

Let me start with Mr. Turner. Mr. Turner, are you ever aware, do you have any record or could you give the Committee any information about the licensing renewal process, in terms of accomplishing the goals that you have eloquently spoken about this morning? Are you aware if a broadcaster has ever been sanctioned or license revoked for not serving the public interest?

Mr. TURNER. Senator, throughout history, there has only been a few instances of that actually occurring, where actual licenses was revoked. One of the most famous cases involved a station in Mississippi that actually gave airtime to the Klan, but didn't give opposing time to Medgar Evans.

You don't really see anything like that happening today. The license renewal process is largely a rubber stamp. Even in the event where they have broken specific regulations, such as the amount of advertising aired during children's broadcasting, there's often a three or four thousand dollar fine and a thank you very much, your license is renewed. So, from our point of view, the license renewal process has largely lost the oversight of the public's input into this.

Senator MCCASKILL. If you could provide the Committee, if your organization has such a compilation, I think it would be really helpful for the members of the Committee to get a, really a grasp on how silly the notion is that license renewal provides some kind of stick, in terms of enforcing the public interest, in terms of broadcasting that's ongoing.

Mr. TURNER. We certainly will. This is a very rich area that we think Senators should know about.

Senator MCCASKILL. Thank you very much.

To Mr. Withers—first of all, every time you start talking, I feel like I can shut my eyes and I'm listening to the radio. What a radio voice you have. Obviously that's where you started in the business, was behind a microphone, and you still have the melodic voice that competes very well, I think, over the airways with other voices.

I know your stations in Cape Girardeau. I'm very familiar with them. I know that most of the megawatts you've got down, most of the wattage you have down there are classic rock, you've got contemporary hit radio, and then you've got the very important St. Louis Cardinals, and country.

If you look at your major wattage stations in Cape Girardeau, I'm familiar with what kind of news coverage there is in Cape Girardeau, since I'm, you know, sometimes my mouth is on the other side of the microphone when I travel Cape Girardeau. I don't quarrel that you may cover the news on those, but I don't know that those large stations are news heavy, in terms of local news.

And the other thing I would say about those stations is that they would be probably the ones that you would be most likely to want to stream, in terms of your listening audience. And, to follow up on what Senator Sununu said, I mean, I understand your angst about this, but what Mr. Westergren said is true. I find my listening habits have changed remarkably since I have gotten decent headphones for my computer. And because the sound I can now get out of my computer is remarkable and it is so convenient and it is so easy. And I got this for my kids, by the way, who are 20 and 18. They're the ones who said, "Mom, you know, get a life. Quit turning on the radio at home, just plug into your computer."

How in the world can the computer Internet radio industry compete with you, if you get what they have to pay for, for free? How does that work in a market? How can Mr. Westergren have to pay for these—for these artists—and I know you said, "Well, the performers don't get it," but surely you don't want us to interfere in the contracting between record labels and artists. I don't think you want Congress to begin controlling that private contract between record labels and the artists they represent?

Mr. WITHERS. No ma'am, I do not.

Senator CANTWELL. Mr. Withers, before you answer, I just want to say that we have a couple minutes left now on the vote. I'm going to excuse myself. You can stay at your own peril here to get the information.

[Laughter.]

Senator CANTWELL. But again, thank those who were here today to testify.

Senator MCCASKILL. And I have to, I can't stay for the answer either. I've got to go because this is a very important vote. So, if you want to hold that thought, and even though I have two other hearings I'm supposed to be at, I will come back for it.

Senator CANTWELL. I think that what we should do is put, submit this for testimony back. If you could provide us a written response. This is a very important hearing, very important issues. As you see, my colleagues care greatly about diversification efforts and consolidation concerns, as well as Low Power FM.

So, we appreciate you being here and we appreciate you getting us written responses to our questions.

Thank you, the meeting is adjourned.

[Whereupon, at 11:18 a.m., the hearing was adjourned.]

A P P E N D I X

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

Thank you, Mr. Chairman, for holding this important hearing to examine the future of radio.

Traditional over-the-air radio is enjoying a renaissance today, the likes of which it has not seen since the golden age of radio. The advent of high definition radio which enables AM stations to sound like FM stations, FM stations to deliver CD quality music, and both to multicast additional programming streams and provide real-time on demand traffic and weather services, will completely change the way communities interact with their local broadcasters.

As technology has evolved and the FCC enacted policies enabling the licensing of more radio stations, the number of outlets and owners in the marketplace has flourished.

Indeed, the tapestry of voices that consumers can access in the radio marketplace has never been more rich. Today, an abundance of choices quells our appetite for audio programming. We can listen to traditional over-the-air radio, subscribe to satellite subscription services, plug into a personal library of music via a digital music recorder, download and time shift local news and public affairs podcasts from the Internet, and stream Internet radio programs to our computers.

Similarly, competition for listeners in a market traditionally dominated by free, over-theair radio, has never been more vigorous. The proliferation of myriad new platforms to deliver audio programming has completely revamped the competitive landscape in radio.

Paradoxically, this sea change of innovation in the radio marketplace has seen a dramatic increase in the number and type of media outlets, while ownership of those outlets by minorities and women has plummeted. Minority and women owners of media outlets provide a rich diversity of information to consumers of all races and both genders. Under-representation of minorities and women as owners of instruments of the federally regulated media industry is unacceptable in a democratic society. I believe that there is a compelling governmental interest in seeing that policies are enacted to address this incongruity.

Our challenge of course is to define policies that encourage broad ownership opportunities for all in our society, promote the continued innovation in the marketplace, and secure the future competitiveness and continued vibrancy of traditional over-the-air radio.

As we work to promote greater diversity of media ownership in radio we must acknowledge the new competitive pressures that threaten the continued viability traditional radio and its future ability to adequately serve the public interest. We must recognize that as markets evolve, there are situations where enabling greater media ownership opportunities can serve the public interest by improving economies of scale and bolstering the quality of service that consumers receive.

Let me close by stating that I am particularly committed to this endeavor and look forward to working with my colleagues on both sides of the aisle to enact sound polices that will increase diversity in media ownership.

FUTURE OF MUSIC COALITION
Washington, DC, November 15, 2007

Senate Committee on Commerce, Science, and Transportation,
Washington, DC.

Members of the Committee:

Future of Music Coalition (FMC) is a national nonprofit education, research and advocacy organization that identifies, examines, interprets and translates the challenging issues at the intersection of music, law, technology and policy. FMC achieves this through continuous interaction with its primary constituency—musicians—and in collaboration with other creator/citizen groups.

FMC respectfully submits the Executive Summary from our December 2006 report, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry* for member review following two recent hearings: the "Future of Radio" hearing on October 24, and the hearing on "Localism, Diversity, and Media Ownership" on November 7. FMC believes that these documents could be helpful for the Committee as it moves forward with its work on both media ownership and radio.

FMC has been conducting quantitative research on the effect of the 1996 Telecommunications Act on radio, musicians and the public for the past 5 years. In 2002 we published *Radio Deregulation: Has It Served Citizens and Musicians?,* a report that was widely read, filed at the FCC in the 2003 media ownership docket, and cited by the Third Circuit Court of Appeals in *Prometheus* v. *FCC.* In a 2003 *New York Times* interview, Commissioner Adelstein cited the evidence in FMC's study as a key reason that further radio deregulation was removed from the media ownership rulemaking.

The full report is available at: *http://www.futureofmusic.org/research/radiostudy.cfm*.

In 2006, FMC conducted additional research. *False Premises, False Promises,* released in December 2006, covers thirty years of historical data wherever possible; in other places, the study focuses on the last ten to twelve years—the main period of interest for examining the impact of the Telecom Act. The report relies on industry-collected data to measure changes in radio consolidation and programming including Media Access Pro (Radio Version) from industry consultants BIA Financial Networks, *Duncan's American Radio,* and *Radio and Records* magazine.

The full report is available at: *http://www.futureofmusic.org/research/radiostudy06.cfm.*

Key findings that are documented in the 2006 report include:

Emergence of Nationwide Radio Companies

Fewer radio companies: The number of companies that own radio stations peaked in 1995 and has declined dramatically over the past decade. This has occurred largely because of industry consolidation but partly because many of the hundreds of new licenses issued since 1995 have gone to a handful of companies and organizations.

Larger radio companies: Radio-station holdings of the ten largest companies in the industry increased by almost fifteen times from 1985 to 2005. Over that same period, holdings of the fifty largest companies increased almost sevenfold.

Increasing revenue concentration: National concentration of advertising revenue increased from 12 percent market share for the top four companies in 1993 to 50 percent market share for the top four companies in 2004.

Increasing ratings concentration: National concentration of listenership continued in 2005—the top four firms have 48 percent of the listeners, and the top ten firms have almost two-thirds of listeners.

Declining listenership: Across 155 markets, radio listenership has declined over the past fourteen years for which data are available, a 22 percent drop since its peak in 1989.

Consolidation in Local Radio Markets

The Largest Local Owners Got Larger: The number of stations owned by the largest radio entity in the market has increased in every local market since 1992 and has increased considerably since 1996.

More Markets with Owners Over the Local Cap: The FCC's signal-contour market definition allowed companies to exceed local ownership caps in 104 markets.

Increasing Local Concentration: Concentration of ownership in the vast majority of local markets has increased dramatically.

How Lower Caps Can Be Justified: The FCC's local caps—in fact, even lower caps than the current caps—can be justified by analyzing how the caps prevent excessive concentration of market share.

Declining Local Ownership: The Local Ownership Index, created by Future of Music Coalition, shows that the "localness" of radio ownership has declined from an average of 97.1 to an average of 69.9, a 28 percent drop. See report for methodology and details.

Restoration of Local Ownership is Possible: To restore the Local Ownership Index to even 90 percent of its pre-1996 level, the FCC would have to license dozens of new full power and low-power radio licenses to new local entrants and re-allocate spectrum to new local entrants during the digital audio broadcast transition.

Radio Programming in the Wake of Consolidation

Homogenized Programming: Just fifteen formats make up 76 percent of commercial programming.

Large Station Groups Program Narrowly: Owners who exceed or exactly meet the local ownership cap tend to program heavily in just eight formats.

Only Small Station Groups Offer Niche Formats: Niche musical formats like Classical, Jazz, Americana, Bluegrass, New Rock, and Folk, where they exist, are provided almost exclusively by smaller station groups.

Small Station Groups Sustain Public-Interest Programming: Children's programming, religious programming, foreign-language and ethnic-community programming, are also predominantly provided by smaller station groups.

FMC would like to reiterate to this committee that radio consolidation has no demonstrated benefits for the public. Nor does it have any demonstrated benefits for the working people of the music and media industries, including DJs, programmers—and musicians. The Telecom Act unleashed an unprecedented wave of radio mergers that left a highly consolidated national radio market and extremely consolidated local radio markets. Radio programming from the largest station groups remains focused on just a few formats—many of which overlap with each other, enhancing the homogenization of the airwaves.

From the recent new-payola scandal to the even more recent acknowledgements that giant media conglomerates have begun to fail as business models, we can see that government and business are catching up to the reality that radio consolidation did not work. Instead, the Telecom Act worked to reduce competition, diversity, and localism, doing precisely the opposite of Congress's stated goals for the FCC's media policy. Future debates about how to regulate information industries should look to radio for a warning about the dangers of consolidated control of a media platform.

Future of Music Coalition urges this committee to resist any attempts by the FCC to further loosen or eliminate media ownership regulations.

Respectfully submitted,

JENNY TOOMEY,
Executive Director.

MICHAEL BRACY,
Policy Director.

KRISTIN THOMSON,
Deputy Director.

FALSE PREMISES, FALSE PROMISES:
A QUANTITATIVE HISTORY OF OWNERSHIP CONSOLIDATION

Executive Summary

This report is a quantitative history of ownership consolidation in the radio industry over the past decade, studying the impact of the Telecommunications Act of 1996 and accompanying FCC regulations.

A Brief History of Radio Regulation

Since the 1930s, the federal government has limited the number of radio stations that one entity could own or control. In the 1980s and early 1990s, the Federal Communications Commission (FCC) began gradually to relax these limits. Finally, in the Telecommunications Act of 1996 (Telecom Act), Congress eliminated the national cap on station ownership, allowing unlimited national consolidation. With the same law, Congress also raised the local caps on station ownership. In addition, as this study describes in detail, the FCC regulations implementing the Telecom Act allowed more consolidation to occur than alternative regulations would have allowed.

Methodology and Data Sources

To keep the quantitative analysis as simple and transparent as possible, we have not included technical statistical analysis. Instead, we have filled this report with standard, antitrust-style measures of concentration; our own new methodologies for measuring localism and diversity; and many time-series analyses that simply track who owned what when. The study covers thirty years of historical data wherever possible; in other places, the study focuses onthe last ten to twelve years—the main period of interest for examining the impact of the Telecom Act.

The FCC's own efforts at collecting data on the radio industry are inadequate, as we emphasize throughout the study. Just as the FCC does, we have relied on industry-collected data to measure changes in radio consolidation and programming.

These proprietary sources include: Media Access Pro (Radio Version) from industry consultants BIA Financial Networks, Duncan's American Radio, and Radio and Records magazine.

Major Findings of the Study

Highlights from the study are organized here in similar fashion to its three chapters. The first chapter focuses on national radio consolidation, the second on local radio consolidation, and the third on radio programming.

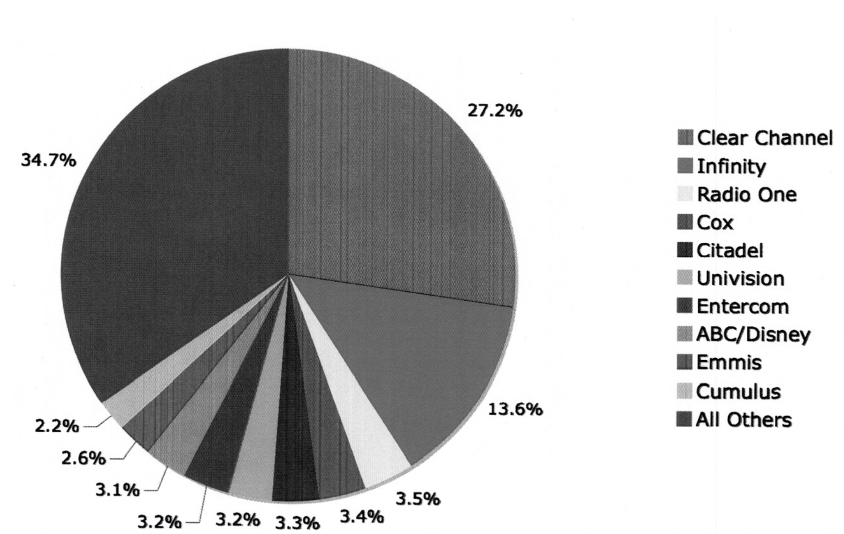
Emergence of Nationwide Radio Companies

1. *Fewer radio companies:* The number of companies that own radio stations peaked in 1995 and has declined dramatically over the past decade. This has occurred largely because of industry consolidation but partly because many of the hundreds of new licenses issued since 1995 have gone to a handful of companies and organizations.

2. *Larger radio companies:* Radio-station holdings of the ten largest companies in the industry increased by almost fifteen times from 1985 to 2005. Over that same period, holdings of the fifty largest companies increased almost sevenfold.

3. *Increasing revenue concentration:* National concentration of advertising revenue increased from 12 percent market share for the top four companies in 1993 to 50 percent market share for the top four companies in 2004.

Figure 1: National Share of Radio Listeners, Commercial Sector, 2005.



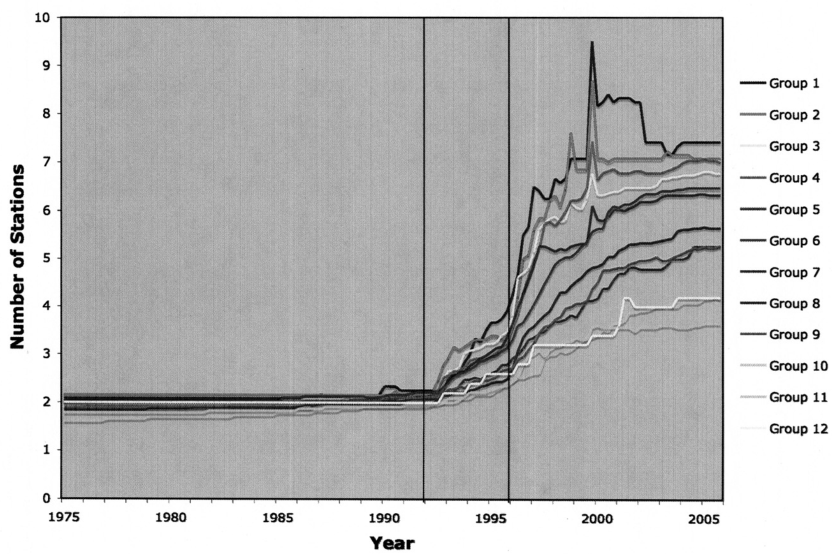
4. *Increasing ratings concentration:* National concentration of listenership continued in 2005—the top four firms have 48 percent of the listeners, and the top ten firms have almost two-thirds of listeners [see Figure 1].

5. *Declining listenership:* Across 155 markets, radio listenership has declined over the past fourteen years for which data are available, a 22 percent drop since its peak in 1989.

Consolidation in Local Radio Markets

6. *The Largest Local Owners Got Larger:* The number of stations owned by the largest radio entity in the market has increased in every local market since 1992 and has increased considerably since 1996 [see Figure 2].

Figure 2: Number of Stations Owned in a Market by the Largest Owner in a Market, 1975-2005, Average by Market Group.



7. *More Markets with Owners Over the Local Cap:* The FCC's signal-contour market definition allowed companies to exceed local ownership caps in 104 markets.

8. *Increasing Local Concentration:* Concentration of ownership in the vast majority of local markets has increased dramatically.

9. *How Lower Caps Can Be Justified:* The FCC's local caps—in fact, even lower caps than the current caps—can be justified by analyzing how the caps prevent excessive concentration of market share.

10. *Declining Local Ownership:* The Local Ownership Index, created by Future of Music Coalition, shows that the localness of radio ownership has declined from an average of 97.1 to an average of 69.9, a 28 percent drop.

11. *Restoration of Local Ownership is Possible:* To restore the Local Ownership Index to even 90 percent of its pre-1996 level, the FCC would have to license dozens of new full power and low-power radio licenses to new local entrants and re-allocate spectrum to new local entrants during the digital audio broadcast transition.

Radio Programming in the Wake of Consolidation

12. *Homogenized Programming:* Just fifteen formats make up 76% of commercial programming.

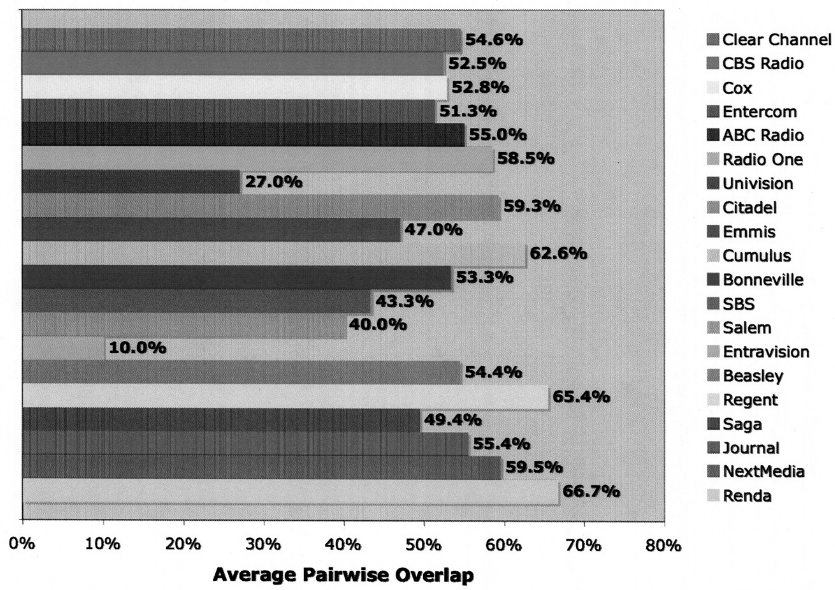
13. *Large Station Groups Program Narrowly:* Owners who exceed or exactly meet the local ownership cap tend to program heavily in just eight formats.

14. *Only Small Station Groups Offer Niche Formats:* Niche musical formats like Classical, Jazz, Americana, Bluegrass, New Rock, and Folk, where they exist, are provided almost exclusively by smaller station groups.

15. *Small Station Groups Sustain Public-Interest Programming:* Children's programming, religious programming, foreign-language and ethnic-community programming, are also predominantly provided by smaller station groups.

16. *Format Overlap Remains Extensive:* Radio formats with different names can overlap up to 80% in terms of the songs played on them.

Figure 3: Average Pairwise Overlap Between Stations in the Same Format, By Owner, June 25-July 1, 2006.



17. *Individual Stations Use Highly Similar Playlists:* Playlists for commonly owned stations in the same format can overlap up to 97%. For large companies, even the average pairwise overlap usually exceeds 50% [see Figure 3].

18. *Network Ownership Is Also Concentrated:* The three largest radio companies in terms of station ownership are also the three largest companies in terms of programming-network ownership.

Conclusion

Radio consolidation has no demonstrated benefits for the public. Nor does it have any demonstrated benefits for the working people of the music and media industries, including DJs, programmers—and musicians. The Telecom Act unleashed an unprecedented wave of radio mergers that left a highly consolidated national radio market and extremely consolidated local radio markets. Radio programming from the largest station groups remains focused on just a few formats—many of which overlap with each other, enhancing the homogenization of the airwaves.

From the recent new-payola scandal to the even more recent acknowledgements that giant media conglomerates have begun to fail as business models, we can see that government and business are catching up to the reality that radio consolidation did not work. Instead, the Telecom Act worked to reduce competition, diversity, and localism, doing precisely the opposite of Congress's stated goals for the FCC's media policy. Future debates about how to regulate information industries should look to the radio consolidation story for a warning about the dangers of consolidated control of a media platform.

About Future of Music Coalition

Future of Music Coalition (FMC) is a national non-profit education, research and advocacy organization that identifies, examines, interprets and translates the challenging issues at the intersection of music, law, technology and policy. FMC achieves this through continuous interaction with its primary constituency—musicians—and in collaboration with other creator/citizen groups.

About the Primary Author

Peter DiCola is a Ph.D. candidate in economics at the University of Michigan in Ann Arbor. He received his J.D. magna cum laude from the University of Michigan Law School in May 2005, and was awarded the Henry M. Bates Memorial Scholarship. Currently, he serves as the Research Director of the Future of Music Coalition while he works on his dissertation. He has research interests in the fields of telecommunications law, intellectual property law, law and economics, labor economics, and industrial organization. He is the co-author, with Kristin Thomson, of *Radio Deregulation: Has It Served Citizens and Musicians?* (2002), which was cited by the U.S. Court of Appeals for the Third Circuit in *Prometheus Radio Project* v. *FCC*. He has also written a chapter, "Employment and Wage Effects of Radio Consolidation," for the scholarly collection *Media Diversity and Localism* (Lawrence Erlbaum and Associates, 2006).

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO MAC MCCAUGHAN

Question. As several of our witnesses have noted, there was a wave of consolidation in radio following the 1996 Telecommunications Act. With fewer stations owned by individuals from within the community, what impact has this had on localism?

Answer. As I stated in my testimony before the Committee, consolidation has had a chilling effect on broadcast diversity and localism. The radio that I grew up listening to is in danger of extinction. Locally owned, non-commercial and college stations are dwarfed by corporate broadcasting, which places advertising revenue and stockholder interests above the programming needs and desires of communities. For musicians and labels, this means dwindling opportunities for their releases to be heard on the mainstream stations. Non-local ownership means important relationships and connections between broadcasters and members of communities are simply not made. Listeners are aggregated into the broadest possible demographics in order to sell more ads, with little to no regard for local and regional characteristics. Our label, Merge Records, counts its success almost exclusively on non-commercial and college radio, as well as the Internet. Congress and the FCC need to not only nurture and protect existing non-com broadcasters, but also provide the means by which more commercial stations can be independently and diversely owned.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO MAC MCCAUGHAN

Question 1. Do you consider low-power FM service a success? Do you believe that Low wer FM service has promoted competition, diversity, and localism?

Answer. Low wer FM certainly helps offset some of the damage done by consolidation. Given its inherent spectrum limitations, however, there is no way LPFM can compete with Big Radio. But since commercial broadcasters often fail to serve the communities in which they do business, every little bit helps. I'd say there's more work to be done in this area, and strongly encourage Congress to remove existing caps on LPFM stations in urban markets.

Question 2. It sounds like your label, Merge Records, is having a very successful year. As you mentioned in your testimony, albums by Arcade Fire and Spoon have both debuted in the *Billboard Top Ten,* and their tour dates are selling out. And this is in spite of the fact these albums are receiving very little airplay on commercial radio stations. Your label has been is business for over twenty years. What would you say is the biggest difference in how commercial radio stations promote artists' works today as compared to prior to the Telecom Act of 1996? Do you attribute these changes to increased concentration in radio ownership?

Answer. I don't actually see a huge difference in how commercial stations promote artists' work today *versus* how this was handled pre-1996. My personal feeling is that commercial radio has always supported the most mainstream and middle-of-the-road artists because those acts have typically been the ones who sold the most records. Commercial radio is first and foremost concerned with selling advertising, and less interested in exposing listeners to new or adventurous music. As an independent label, Merge has never depended on commercial radio to reach potential listeners. College, non-commercial and public radio has traditionally provided our strongest platform to the airwaves.

That having been said, I believe the Telecom Act hastened the disappearance of DJ-driven commercial radio. Within a handful of years, the Nation was deprived of the few remaining commercial proponents of "alternative" music. It seems odd, but we now live in a time in which independent labels such as ours are growing, while major label sales continue to plummet. Although Merge artists are selling more records than ever before and making a mark on the *Billboard* charts, the corollary radio outlets one would expect to be supporting such growth in the independent sector are simply not there.

Question 3. In your testimony you say that commercial radio is about aggregating the largest possible number of listeners in a targeted demographic. If that is the case, can you explain why bands such as Arcade Fire and Spoon that appears to appeal to certain targeted demographic groups by virtue of CD sales; concert ticket sales; etc.; do not receive airplay on broadcast radio? What are some of the barriers that bands such as the ones on your label are facing?

Answer. In the same way that I cannot explain why the major labels continue to pursue failing policies in the music marketplace, I likewise have no explanation regarding commercial radio practices. As I previously stated, Merge has never been able to rely on commercial radio, meaning we've essentially operated as though it were not an option. We've simply found other ways to get our music out there. I can say that commercial radio (as well as television and print media) has historically responded more favorably to labels that spend huge amounts of money advancing their releases, and have failed to pay much attention to grassroots promotion until the results of these often fan-driven campaigns are such that they can no longer be ignored.

Still, commercial rock radio—or "modern rock," as it's often called—wants to be seen as introducing new bands, rather than playing catch up. But in the case of Spoon and Arcade Fire, programmers are essentially behind the curve. Oftentimes, if a band gets big without the help of commercial radio, these stations keep the groups at arm's length. They would rather "break" a band that's being promoted at great expense by a major label than spin a song from an indie act popularized through word-of-mouth, college radio or the Internet.

Question 4. As a label owner, are you concerned about payola? Do you believe that different forms of payola continue to be engrained in radio industry practices? Do you believe that the action the FCC has taken will be effective in curbing, if not eliminating these practices? Do you believe Congress may need to intervene?

Answer. I have to say I've never been terribly concerned about payola because Merge has essentially operated under the assumption that commercial radio was not going to provide a supportive platform for our artists. As I previously stated, we have forged a parallel path, surviving and thriving on a network of non-commercial broadcasters more inclined to support our releases. In other words, I've never felt like it was payola that was keeping Merge artists off the corporate airwaves. I instead blame the unadventurous and homogenous programming of the majority of commercial radio formats. Alongside such programming, our bands could never be accepted.

There is another form of payola I'd like to address. It's more invisible, but also more institutional. Bands are often encouraged to perform at station-sponsored events, many of them in support of worthy causes. As the acts often aren't receiving any money for these appearances, they pay equipment, travel and associated expenses either out-of-pocket, or from a label fund. The implication is that if the band plays such an event, they are more likely to get airplay on the sponsor station. This is, of course, not explicit in any of the corresponding contracts. But many developing acts feel that this is the only way they'll be considered for inclusion on certain radio playlists.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO W. RUSSELL WITHERS, JR.

Question. Payola has a long and unfortunate history on the radio dial. In recent years, however, we have seen efforts by then-New York State Attorney General Eliot Spitzer and the FCC to put a halt to this practice. In the aftermath of these settlements in New York and at the FCC, do you think we have put an end to payola? Do these settlements enhance the ability of local and independent artists to get on the air?

Answer. I can only speak directly on behalf of Withers Broadcasting, which has a strict policy against payola, and has never had any allegations of failing to comply with Section 507 of the Communications Act. With respect to NAB, NAB has a long history of cautioning and informing its members regarding payola. Just last year, NAB sent a comprehensive packet of information to each of its more than 8,300 radio and television members reminding them of the importance of ensuring compliance with all sponsorship identification rules, including the payola rules, and also discussing the settlements in New York. NAB urged broadcasters to renew their familiarity with the rules and their stations' procedures for ensuring compliance with them. NAB reminded broadcasters to ensure they have a current sponsorship identification/payola compliance plan, and to ensure that such compliance procedures are followed, NAB urged stations to consider conducting a review of their plans with all employees. As part of that communication, NAB also released a revised version of a long-standing legal memo regarding payola that is available on our website. NAB will continue these efforts on a consistent basis going-forward.

I am not aware of any relationship between the settlements in New York and independent artists' access to radio stations.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO W. RUSSELL WITHERS, JR.

Question 1. Do you consider low-power FM service a success? Do you believe that low-power FM service has promoted competition, diversity, and localism?

Answer. As a general matter, we believe that the expressed goals for low-power FM service are admirable. NAB has always supported the concept of allowing non-profit organizations and state and local governments to operate low-cost, micro-power, commercial-free stations for the benefit of small community areas, so long as such services do not cause harmful interference to existing full-power stations. We applaud those entities that follow the FCC's rules governing LPFM service and welcome them as complements to full-power radio service. For example, there are certainly some LPFM stations that target niche listeners not reached by commercial radio, and we appreciate that in these instances, LPFM service can benefit the entire radio industry by attracting audience members who otherwise might not listen to the radio.

On the other hand, NAB and others are troubled by the portion of the LPFM industry that use their licenses for other purposes. We have seen press reports and heard complaints from NAB members that certain LPFM stations do little more than air syndicated programming that is not produced locally, and that other LPFM stations routinely air commercials. Moreover, despite the FCC's best efforts, there are certain LPFM stations that frequently flout the rules prohibiting harmful interference to full-power stations. Finally, what often gets lost in the debate over LPFM is the wide array of locally-oriented news, public affairs, emergency information and other programming that experienced, committed full-power FM stations deliver every day, all of which could be irreparably diminished by interference from neighboring low-power FM services.

Question 2. Are there full power radio stations that operate short-spaced? How many full power short-spaced stations are broadcasting in the U.S. today? What is the NAB's position on short-spaced stations?

Answer. Yes, there are full power radio stations that operate on a short-spaced basis. Although we do not have firm recent figures, to the best of our knowledge, I believe that approximately 50 percent of Class B and Class A stations operate short-spaced *vis-à-vis* other full-power stations. As a general matter, NAB believes that all full power stations must be able to operate free of interference in order to continue to offer their audiences a wide array of high-quality local programming.

Question 3. Current law says the FCC may not eliminate or reduce the minimum distance separations for third-adjacent channels for low-power FM stations. Does the FCC have the ability to eliminate or reduce the minimum distance separation for second-adjacent channels for low-power FM stations?

Answer. Current law is intended to protect the public from harmful interference that would harm their ability to hear their local radio stations. Although the Radio Preservation Act does not address whether the FCC is precluded from relaxing second adjacent channel protections, it would make no sense for the FCC to do so. Such an action would be even more harmful to full-power FM service than would be the removal of third-adjacent channel protection. Third adjacent channel protections are necessary to ensure interference is minimized; eliminating second adjacent channels has the potential to wreak havoc on the FM band and render both full power FM stations and LPFM stations virtually unlistenable. For radio broadcasters that are making a substantial investment in their communities to offer greater amounts of local programming through HD Radio multicasting, the potential harm from such action would be tremendous.

Question 4. Unlike the transition to digital television, the transition to digital radio is voluntary. Does the voluntary nature of the transition present any unique challenges? Is there a timeline for completion of the transition? Do you believe that any government intervention will be wanted or necessary? Do you believe that there is a critical mass of consumer electronics companies willing to build digital radio receivers?

Answer. The voluntary nature of the digital radio transition presents an inevitable "chicken or egg" challenge which broadcasters have stepped-up to, as evidenced by the high penetration of HD Radio signals in the major U.S. radio markets. Additionally, a significant consortium of broadcasters has been formed to promote HD Radio (HD Radio Alliance), and the technology developer, iBiquity Digital Corporation, is actively promoting HD Radio to receiver manufacturers and automobile companies.

There is no precise timeline for completion of the transition and we do not believe that government intervention will be desirable or necessary. In fact, although stations do not have to go digital, we anticipate that the pace of stations launching digital will remain steady and perhaps accelerate as stations recognize that it is in their interest to do so.

We believe that a critical mass of consumer electronic companies willing to build digital radio receivers is forming. Perhaps of greater importance is the need to approach critical mass of auto manufacturers including HD Radio receivers as standard equipment—this has not yet been reached. A major milestone will be reached in the next year or so as portable HD Radio receivers start to become available.

Question 5. Research conducted by the Free Press shows that the ownership of commercial radio stations does not reflect the diversity of this country. Mr. Withers, does the low number of women and minority ownership of radio licenses concern the NAB? If so, what steps do you believe your organization, the FCC, and us here in Congress can take to foster greater diversity in the ownership of radio licenses?

Answer. Broadcasters have long supported programs that promote minority and female participation in the media business. Through our partnerships with the National Association of Broadcasters Education Foundation (NABEF) and Broadcast Education Association, NAB has helped create a comprehensive educational system that has brought hundreds of new participants, from all backgrounds, into the broadcast industry. NABEF, for example, conducts seminars and programs that nurture participants at every level of career development—from entry-level sales institutes to managerial-level professional programs at major universities, to executive-level Broadcast Leadership Training (BLT) for those who aspire to own stations.

More specifically, NABEF sponsors Media Sales Institutes at Howard University, Florida A&M and the Spanish Language Media Center of the University of North Texas. These intensive ten-day training programs prepare talented students with diverse backgrounds for sales careers in the broadcast industry. To date, these programs have trained over 220 students for media sales careers. Close to 90 percent have been hired. More recently, NABEF has created an internship program, open to college seniors and recent college graduates, for women and people of color who are interested in broadcast technology and engineering careers. At the management level, NABEF sponsors an Executive Development Program for Radio Broadcasters at Georgetown University and a Management Development Seminar for Television Executives at Northwestern University. For senior level broadcast managers who aspire to advance as group executives or stations owners, particularly women and people of color, NABEF offers the BLT program, modeled after weekend MBA programs. To date, more than 15 percent of BLT graduates have gone on to acquire stations, and many others are in various stages of station acquisition.

As NAB has frequently explained, the public interest is best served by policies designed to encourage minority and female participation in a competitively vibrant broadcast industry. Creating a fragmented, undercapitalized and uncompetitive broadcast industry via undue restrictions on broadcast ownership would not represent an effective means of promoting minority and female ownership. Instead, Congress and the FCC should look for solutions promoting the long-term viability of women and minority entrants into broadcasting.

Thus, NAB strongly supports policies that would help ameliorate the lack of access to capital that everyone agrees inhibits small and minority- and female-owned businesses from entry into the broadcasting and other communications-related industries. The FCC's previous tax certificate program was such a policy. Congressional reinstatement of a similar tax incentive program would be, in the opinion of many including the FCC Advisory Committee on Diversity for Communications in the Digital Age, one of the most direct and effective methods of encouraging minority ownership in broadcasting. Congressman Charles Rangel of New York and Congressman Bobby Rush of Illinois have each introduced tax incentive legislation in this Congress. NAB encourages prompt Congressional approval of such tax incentive legislation. NAB also supports a range of other proposals made by the Minority Media and Telecommunications Council to the FCC to promote the entry and participation of minorities and women in broadcasting. These proposals include modifying FCC attribution rules that discourage existing broadcasters from providing investment capital to potential entrants into the broadcast industry; providing economic incentives for broadcasters to create and nurture incubator programs; providing incentives to encourage the leasing of spectrum to new entrants; modifying

FCC rules that limit the ability to sell certain "grandfathered" clusters of radio stations to small and minority/female owned businesses; encouraging banks and other financial institutions to provide debt financing to qualified small or minority/female entities; etc. NAB has also previously expressed concern about overly restrictive FCC auction rules that would impair small business participation in spectrum auctions by inhibiting their ability to raise capital and attract investors (including larger communications entities) without stripping these small businesses of benefits (such as bidding credits) designed to help them succeed in auctions. In sum, NAB believes the best way for private industry, the FCC and Congress to promote greater participation by minorities and women in the broadcast industry is through public-private partnerships and market-based stimulants that will promote both entry and the long-term viability of new entrants in a competitively healthy broadcast industry.

NAB further observes that the assumption that permitting the common ownership of broadcast stations automatically has a deleterious effect on minority participation in the broadcast industry is unwarranted. Data recently provided to the FCC by public interest groups concerned about the level of minority ownership in broadcasting in fact shows that members of minority groups owned a greater number of television stations in 2006 than they did in 1998, before the FCC modestly relaxed the television duopoly rule in 1999. Earlier studies conducted in 2000 and 2002 had found that minority groups increased their radio station ownership after passage of the 1996 Telecommunications Act.

Question 6. Do you believe that the consolidation in the radio industry as a result of the Telecom Act of 1996 has led to a loss in localism?

Answer. The increase in common ownership that occurred after passage of the 1996 Act has in fact enabled radio stations to better serve their communities of license by helping ensure the financial and competitive viability of free, over-the-air stations, especially smaller ones. An examination of the history of the radio industry prior to 1996 clearly demonstrates that localism is best sustained by permitting broadcasters to compete effectively in the digital multichannel marketplace.

In a detailed survey of the radio industry in 1992, the FCC found that, due to "market fragmentation," many in the radio industry were "experiencing serious economic stress." Specifically, stations were experiencing "sharp decrease[s]" in operating profits and margins. *FCC Radio Order,* 7 FCC Rcd at 2759. By the early 1990s, "more than half of all stations" were losing money (especially smaller stations), and "almost 300 radio stations" had gone silent. *Id.* at 2760. Given that the radio industry's ability "to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability," the FCC concluded that "radio's ability to serve the public interest" had become "substantially threatened." *Id.* Accordingly, the FCC believed that it was "time to allow the radio industry to adapt" to the modern information marketplace, "free of artificial constraints that prevent valuable efficiencies from being realized." *Id.*

Motivated by such concerns, Congress in the 1996 Act acted to "preserve and to promote the competitiveness of over-the-air broadcast stations." Congress found that "significant changes" in the "audio and video marketplace" called for a "substantial reform of Congressional and Commission oversight of the way the broadcasting industry develops and competes." *House Report* at 54–55. In 2003, the FCC concluded that changes made possible by the 1996 Act had brought financial stability to the radio industry.

Because, as the FCC found, financial viability is necessary for radio stations to function in the public interest, ownership changes following the 1996 Act have promoted localism by enabling radio stations to continue serving their local communities and audiences with entertainment and informational programming and vital emergency information. The real threat to locally-oriented broadcast services is not the joint ownership of stations but those stations' inability to maintain their economic vibrancy in the face of multichannel and Internet-based competitors that are not constrained by restrictions on local ownership structure. Only competitively viable broadcast stations sustained by adequate advertising revenues can serve the public interest effectively and provide a significant local presence. Proposals to turn back the ownership regulatory clock would create a fragmented, undercapitalized broadcast industry unable to compete against multichannel and other information/entertainment providers and unable to serve the public interest effectively.

NAB moreover points out that thousands of radio stations remain locally owned. According to the FCC, as of 2005, 6,498 radio stations were locally owned. And all radio stations—whether locally owned or not—provide valuable entertainment and informational programming as well as other important services to local communities. In 2005, the average radio station ran 169 public service announcements per week, the equivalent of $486,187 in donated air time per radio station per year, or a projected total for all radio stations of $5.05 billion. Sixty-one percent of the PSAs aired by the average radio station were about local issues. More than 19 out of 20 radio stations (98 percent) reported helping charities, charitable causes or needy individuals by raising funds or offering other support in 2005. Among radio stations that raised funds for charities and causes, the average raised per station was $94,299, with the projected amount raised by all radio stations in 2005 totaling $959 million. *See* NAB, *National Report on Broadcasters' Community Service* (rel. June 12, 2006). Clearly, the radio industry continues to serve local communities and audiences effectively.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO TIM WESTERGREN

Question. As several of our witnesses noted, there was a wave of consolidation in radio following the 1996 Telecommunications Act. With fewer stations owned by individuals from within the community, what impact has this had on localism?

Answer. This is not a question to which I feel qualified to give an answer. I have only operated in the Internet Radio business. My only observations would be as a listener, in which capacity I have noticed a steady decrease in the diversity of programming on local radio stations, including a decrease in the amount of local content.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DANIEL K. INOUYE TO S. DEREK TURNER

Question 1. As several of our witnesses noted, there was a wave of consolidation in radio following the 1996 Telecommunications Act. With fewer stations owned by individuals from within the community, what impact has this had on localism?

Answer. As the question suggests, the wave of consolidation unleashed by the 1996 Act resulted in large national chains acquiring many stations that for decades had been locally owned and operated. "Localism" became the primary casualty of the cost-cutting measures implemented by the new national-chain owners of these stations.

In many localities, the market power wielded by the largest players increased dramatically in the years following the 1996 Act. Prior to 1996, the top firm in the average local market controlled about ⅓ of the advertising revenues; by 2002 the average top firm had increased its marketshare to near 50 percent. The share controlled by the top four firms increased from 83 percent in 1996 to 93 percent by 2002. This level of market power is seen in both large and small markets. According the latest FCC report on the radio industry:

> "In the 50 largest markets, on average, the top firm holds 34 percent of market revenue, the second firm holds 24 percent, and firms three and four split the next 26 percent. For the 100 smallest markets, on average, the first firm holds 54 percent, the second firm holds 30 percent, and the next two firms split 13 percent. Overall, in 189 of the 299 Arbitron radio markets (over 60 percent of the markets), one entity controls 40 percent or more of the market's total radio advertising revenue, and in 111 of these markets the top two entities control at least 80 percent of market revenue."

This concentration of market power in the hands of a few dominant national conglomerates has had a strong negative impact on localism. First, these companies are prone to operating their 6–8 local stations from one single studio, severely limiting the access points local citizens formerly had to these stations when they were individually and locally owned. Second, these national conglomerates favor the practice of "voice tracking", where a DJ pre-records a programming block in a studio hundreds of miles away from the local community where it will air. These DJ's will often "pretend" that they are actually in the local community, when in fact they have likely never set foot there. Finally the large national owners substitute nationally syndicated programming, national recording artists and national news for local programming. This move away toward localism has resulted in a loss of regionalism and diversity that used to be present on the radio dial.

The concentration of market power has also had real impact on the remaining local station owners and new local owners wishing to enter the market. The large chains can use their local dominance to unfairly compete with stations that wish to offer competing formats, by temporarily lowering their advertising rates to undercut the local competitor. The large chain can afford to cross-subsidize certain stations, making it impossible for a less powerful local owner to compete. The chains can also offer local advertisers multi-station deals that the local single-station owner can't match. The national chains are often vertically integrated, and can give their own local stations preference when selling popular syndicated programming. The vertically integrated companies also often own promotional vehicles such as concert venues and billboards, which allows them to further cement their competitive advantages over the smaller local owners.

Cumulatively, the consolidation enabled by the 1996 Act has created artificial economies of scale in an industry that is supposed to be local in focus. These artificial economies of scale favor national content over local content, and crowd out local owners—those most likely to best serve the goals of localism. This market is not natural, and a rollback of consolidation can bring the market back to an equilibrium where local service is the rewarded outcome.

Question 2. Your testimony discusses FCC policies that hinder the agency's ability to assess the current state of minority ownership. What steps should the FCC take to improve its data on minority ownership?

Answer. The Commission currently *collects* highly accurate information on the gender, race and ethnicities of licensees of full-power commercial broadcast stations. The problem lies in how they have *used and summarized* this raw data.

Currently all licensees of full-power commercial broadcast stations file "Form 323" every 2 years. On Form 323, licensees disclose voting and equity interests of all owners with greater than 5 percent stake in the license. Since many broadcast companies consist of layers upon layers of "holding companies", there are often dozens of Form 323 forms filed for each station. This practice complicates the Commission's current method of analyzing the data (automated harvesting). Furthermore, many of the larger companies do not actually fill out Form 323, instead submitting their ownership information as a pdf file attached to Form 323. Companies that file in this manner are completely missed by the FCC's automated harvesting process.

The Commission could easily remedy this situation by overhauling the way in which companies submit Form 323. They should require each license holder to submit a *single* form for each station that lists the ultimate parent company of the license, as opposed to the current practice of filing dozens of forms for each "holding company". The Commission should also require that each parent company list on this single form the ownership information, prohibiting the companies from filing the information as separate "attached" documents. The Commission should also conduct random periodic audits to ensure that each licensee is properly and timely filing Form 323 (our research indicates that a small number of station owners have submitted improperly filled out forms, or have not submitted forms biannually as required).

The Commission currently does not require non-commercial or non-full-power licensees (*i.e.,* Class A or Translator stations) to file gender, race and ethnicity information. It also does not require sole proprietors to file. We feel that a more complete understanding of the broadcast market can be gleamed by requiring all stations to file.

Once the Commission has adequately dealt with its own deficiencies in analyzing Form 323 data, we feel that it should conduct annual updates on the state of female and minority ownership, and investigate how Commission ownership rules impact market entry and exit by female and minority license holders. Having a basic understanding of the market and the impact of policy is inherent to the Commission's ability to adequately fulfill its mandates under Sections 257 and 309(j) of the Communications Act.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO S. DEREK TURNER

Question 1. Do you consider low-power FM service a success? Do you believe that low-power FM service has promoted competition, diversity, and localism?

Answer. I certainly feel that the current stable of low-power FM channels to be a success. These stations provide hyperlocal information to communities; information that is often deemed unimportant by local commercial broadcasters, and information that is sometimes missed by public radio stations that often have a statewide focus as opposed to the neighborhood focus heard on LPFM stations.

However, the third-adjacent channel restrictions imposed on LPFM have pushed these stations away from urban cities, where hyperlocal information is rarely aired on the large commercial radio stations. This restriction is totally unnecessary from a technical perspective, and is stifling access to the airwaves in the urban cities—access by groups that are more likely to be from underrepresented minority communities.

LPFM has unquestionably promoted localism and diversity. LPFM licensees are by design local and focused on local service. LPFM has also enabled communities of color and women to gain access to the airwaves, lowering (in a narrow fashion) barriers to entry. However, LPFM is only a part of the solution to the problem of lack of diversity on the public airwaves. Our country needs women and minority ownership of full-power stations, and reversing the trend of consolidation is a key component of the solution.

On the question of competition, the competitive threat posed by LPFM to the larger commercial stations is negligible. Promotion of the goal of competition in broadcast media, especially the radio market, can only be achieved through a rolling back of the unprecedented level of consolidation that occurred after the implementation of the 1996 Act.

Question 2. With digital radio, the ability for a radio station to broadcast multiple digital audio streams from a single channel offers great promise for increasing the diversity of programming in both commercial and noncommercial radio. First, in your opinion, should the FCC look at public interest obligations for digital radio broadcasters? If so, what would be your top three things that you believe should be done to promote competition, diversity, and localism? Second, how should the FCC treat multicast digital radio channels? Should the FCC allow a secondary market for these additional channels? Finally, should the FCC count digital and multicast stations against the local radio ownership caps?

Answer. We strongly feel that public interest obligations should apply to digital radio broadcasting. Currently, the FCC has allowed license holders access to more spectrum to broadcast digitally (using so-called "In-Band-On-Channel" technology that requires the station to use spectrum adjacent to their primary broadcast frequency), but has not imposed even the most basic public interest requirements on the users of this public spectrum.

In response to the request for the three top PIOs to apply to digital broadcasters, we support (1) Mandatory localism requirements mandating the airing of a minimum level of local civic or electoral affairs programming and independently and locally produced programming; (2) The prohibition of remote "tracking" programming and the requirement of a person to be physically present in the station at all times; and (3) Meaningful reporting requirements on the fulfillment of local service, with reports made accessible via the Internet as well as the station.

In addition to enforcing public interest obligation on digital radio broadcasters, the Commission must address the issue of subscription-based services. If the Commission chooses to allow a secondary market, all public interest obligations should still apply, and spectrum-fees should be collected. For example, the Commission should limit the number of subscription-based services a station can offer, and impose spectrum fees on subscription-based services that are offered (and because they are generating an additional revenue stream from a public resource, broadcasters should pay a "spectrum use fee" for their use of this public resource).

Multicasting increases each owner's ability to reach an increasingly segmented audience. This furthers the ability of dominant local owners to consolidate market power. This in addition to the current litany of ill effects of consolidation in local radio markets raises important regulatory questions for the Commission. I feel that Congress should reinstitute a national cap on radio ownership and the Commission should conduct an overhaul of its local ownership rules. In conducting this process, the Commission should explore the socially optimal level of local consolidation that best serves the goals of localism, competition and diversity. When determining this market optimum, the Commission should consider the impact of digital multicasting.

Question 3. Your research shows that the ownership of commercial radio stations does not reflect the diversity of this country. What steps should we take to foster greater diversity in the ownership of radio licenses? Do you see this happening under current law?

Answer. The results of our research demonstrate that any policy changes that allow for increased concentration in television and radio markets will certainly decrease the already low number of female- and minority-owned broadcast stations. Enacting regulations that lead to such outcomes directly contradicts the Commission's statutory and legal obligations under the 1996 Telecommunications Act.

To promote female and minority radio ownership, the Commission should enact policies that de-concentrate local media markets. By reducing consolidation at both the national and local level, the Commission can help to deflate the bubble of artificial economies of scale that its pro-consolidation policies helped to create. This will result in lower barriers to entry and more stations available for purchase by local single station owners, who are far more likely to be women and people of color. The simple answer is for the Commission to roll back local ownership caps that currently allow a single owner to control 8 stations in certain markets. These caps should be far lower.

Congress needs to play a role, enacting de-concentration policies that are currently beyond the Commission's authority. Congress should reinstate a national ownership cap, reinstate the tax-certificate policy, and set the license renewal period for every 3 years (ensuring that the renewal process is meaningful and involves the public).

It is important to note that the effects of other policies aimed at increasing female and minority broadcast ownership—such as tax credits, relaxed equity/debt attribution rules, incubator programs, or digital channel leasing—will be negligible in an environment of increased market consolidation at the local level. Rolling back consolidation is paramount.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO CAROL PIERSON

Question. As several of our witnesses noted, there was a wave of consolidation in radio following the 1996 Telecommunications Act. With fewer stations owned by individuals from within the community, what impact has this had on localism?

Answer. Chairman Inouye, it is our belief that the massive consolidation that followed passage of the 1996 Telecommunications Act had a devastating impact on localism, competition and diversity in local markets. Research demonstrates that we have lost over ⅓ of local owners in the past 10 years, as these firms struggle to compete against out of town conglomerates. While supporters of consolidation claim that this consolidation actually leads in an increase of available formats, the Future of Music Coalition demonstrated that in the commercial sector, niche musical formats (including classical, jazz, blues, bluegrass, opera, folk, etc.) are nearly exclusively programmed by companies that are below the local ownership cap. I have attached for your reference a letter to the Committee from FMC that details some of their findings. If Congress is concerned about bringing localism and a true diversity of culture back to commercial radio, they must explore strategies to re-prioritize local ownership and control.

Ironically, this loss of localism in many ways creates a competitive advantage for the non-commercial sector, as locally based community radio stations have emerged as the dominant source for local news, cultural programming and information. This does not necessarily mean commercial consolidation has been a good thing for community radio, as many disgruntled listeners have left the FM band altogether and adopted new technological platforms. Instead, the best world for community and commercial broadcasters alike would feature robust and innovative local broadcasting on the commercial band complemented by expansion and protection of the noncommercial sector. This combination will bring listeners back to terrestrial radio, which will benefit both commercial and non-commercial broadcasters.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO CAROL PIERSON

Question 1. Do you consider low-power FM service a success? Do you believe that low-power FM service has promoted competition, diversity, and localism?

Answer. LPFM has been a significant success. When the service was first proposed in the late 1990s, advocates believed that several hundred organizations would be interested in running their own stations. Clearly, the demand for the service was underestimated, as thousands of churches, schools, community groups, Native Nations and local governments have expressed interest in gaining licenses.

The effectiveness of the initiative has obviously been limited by the Congressional ban that has limited LPFM to smaller communities and rural areas. Even with these restrictions, however, LPFM broadcasters have demonstrated their commitment to locally-originated, innovative programming. From coverage of local political issues, to providing a platform for local culture, to serving as a critical partner for first responders, LPFM broadcasters have provided a significant service for communities across the Nation.

Question 2. A single entity can own multiple translator stations, in effect creating a network. Should there be a limit to the number of low-power FM stations one entity should be able to license? Should the FCC require a low-power FM licensee to be located within the coverage area of its signal?

Answer. LPFM is intended to be a locally originated and locally based service. At some point it may be worth considering revisiting some of the local origination rules, but at this point the local restrictions are key to ensuring that LPFM provide a unique local voice. Regarding your second question, in some situations the physical address of the licensee is outside the limited coverage area of its signal. This is often due to the Congressional restrictions on placing LPFM stations on third adjacent channels. While we agree with existing FCC rules that emphasize local control and content, we do not believe it is necessary for the physical address of the licensee to be within the coverage area, but the licensee organization should be headquartered or their Board of Directors should live within a reasonable distance of the transmitter site, perhaps 10 miles in urban areas and 25 miles in more rural locations.

Question 3. What do you see as the most significant challenges an organization faces in determining whether or not to apply for a Low Power FM license?

Answer. As Native Public Media experienced in the recent NCE window process, the largest challenge is matching interested organizations with available spectrum. There is a vast amount of unused spectrum that potential community broadcasters are unable to access because of the Congressional ban on issuing LPFM licenses in urban markets and the significant length of time between opportunities to apply for full power stations.

There are numerous other challenges—running a LPFM station is not easy. Potential licensees have to identify and hire engineers, develop corporate structures, make programming decisions, develop a budget, and raise funds to make the station sustainable. Fortunately, there are hundreds of case studies now operating and significant mentoring and resource sharing opportunities through organizations like Native Public Media, National Federation of Community Broadcasters, Prometheus Radio Project and others.

Question 4. Do organizations that obtain construction permits from the FCC for low-power FM stations usually go forward in constructing the station?

Answer. The overwhelming majority of truly local LPFM applicants who are granted a construction permit move ahead with building the station. In a few instances, organizational or budgetary concerns made the building or operation of a station unfeasible. Thankfully, these instances have been rare. As a general rule, LPFM applicants are very aware of what they are doing.

Question 5. Is the FCC currently experiencing a significant backlog in processing applications for low-power FM construction permits?

Answer. It is our understanding that virtually all of the pending LPFM applications have been processed.

Question 6. Based on your experience in community media, do you believe the current content origination rules for low-power FM stations are too strict or not strict enough with respect to supporting localism?

Answer. We believe the existing rules create an appropriate balance. LPFM is meant to serve a very specific local niche that is at its heart local. While the rules permit transmission of some syndicated or network programming, no organization should attempt to use a LPFM license as a *de facto* translator or network affiliate. While the current rules are adequate, we generally support efforts by the FCC to ensure localism. For example, the FCC is currently considering making permanent its initial rule that no entity can own more than 1 low power station, and we agree with such limitations to ensure that these radio stations are used by and for the local communities.

Question 7. Are community radio broadcasters giving any thought about broadcasting in digital at this time?

Answer. Many community radio stations have converted to digital broadcasting (HD), in most cases with support from the Corporation for Public Broadcasting or the Public Telecommunication Facilities Program at the Department of Commerce. Several community radio stations have been pioneers in developing new applications for digital broadcasting including multicasting and surround sound. The opportunity that HD radio offers to expand local service is significant. Community radio stations, particularly in rural areas, find themselves trying to serve multiple communities of interest, sometimes in different languages. HD radio's multicasting capability allows separate channels in different languages or offering varied formats which can better serve the audience. It is important that Federal support for this conversion continue so that community and public radio stations can utilize this enhanced service. The Corporation for Public Broadcasting (CPB) will be doing a day-long intensive meetubg just prior to NFCB's Annual Community Radio Conference, March 25, in Atlanta. The stations that are least likely to have converted are the ones with the smallest budgets in the most rural areas. This includes nearly all of the Native American stations. CPB is trying to be sure these stations are not left behind. According to CPB, 312 community and public stations transmitters have converted to HD; another 300 are in the process; and 87 are multicasting. This leaves nearly 400 transmitters yet to be converted. We want to be sure that Federal support continues so that a "digital divide" isn't created in public broadcasting.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DANIEL K. INOUYE TO DANA DAVIS REHM

Question. As several of our witnesses noted, there was a wave of consolidation in radio following the 1996 Telecommunications Act. With fewer stations owned by individuals from within the community, what impact has this had on localism?

Answer. Passage of the 1996 Telecommunications Act seems to have enabled successful ownership consolidation in commercial radio, but any benefits beyond some short-term economic returns are questionable at best. What is most often called localism—the appreciation of and investment in local/regional assets to gather and distribute a collection of programming that informs and improves community—has suffered. While public radio has committed more resources to localism and community, the last decade has seen a remarkable retreat in other American broadcast media from careful, serious and balanced presentation of news, information and ideas.

Many different groups and sources have documented this decline in localism, or commitment to community. The Future of Music Coalition, for example, released a study in December 2006 which found that "the rapid consolidation of the commercial radio industry that followed the Telecommunications Act of 1996 has led to a loss of localism, less competition, fewer viewpoints and less diversity in radio programming in media markets across the country." The trends identified by the Future of Music Coalition bring greater clarity to the impact of consolidation on localism, or as we describe it, community. Not only are there fewer owners of commercial radio outlets, fewer viewpoints and decreased diversity, but not surprisingly, there are fewer Americans tuning in, and they are spending less time listening. The Coalition notes a 22 percent drop over the past 14 years in commercial radio listening.

These trends in commercial radio are bad enough, but there is further cause for concern considering the trends in local newspapers that traditionally covered the full range of community life, according to the "The State of the News Media 2007" report from the Project for Excellence in Journalism at the Pew Research Center. "In contrast with most other news media such as network television and radio, the newspaper industry has stood out because it sustained and in many cases enlarged its newsrooms in the 1980s and 1990s, even as its share of the audience declined. That trend is now over, probably permanently. The newsrooms of America's newspapers are shrinking. The industry began 2006 with roughly 3,000 fewer full-time newsroom staff people than it had at its recent peak of 56,400 in 2000. Over the course of the year, that number fell further, and more cuts are coming in 2007."

As mentioned in my written testimony, public radio is responding to this increasing gap between the public's needs and the service provided by broadcast and print media with the Local News Initiative, a national effort to increase public radio's service to communities. We are investing in building the capacity of local, independent stations to provide in-depth, contextual and balanced news. Our goal is to strengthen high-quality local news programming in communities across America. To accomplish this we are developing and promoting standards of quality and craft; growing, diversifying and developing the talent of those who work on public radio's locally produced news/talk/information programming and piloting collaborative approaches to make more effective and efficient use of limited resources.

It is also worth noting that the audience for public radio has increased, not decreased, over the past decade. Today some 30 million Americans turn to public radio stations each week for news and information covering world, national, regional and local events. With that said, the decline in commercial radio listening and relevance to local communities is a matter of great concern to public radio, as it may signal the decline of free and accessible service to the public.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. MARIA CANTWELL TO DANA DAVIS REHM

Question 1. Do you consider low-power FM service a success? Do you believe that low-power FM service has promoted competition, diversity, and localism?

Answer. NPR and most of the public radio community support the concept of Low Power FM stations and the potential it has to bring greater diversity to radio programming. In several instances, most recently the hurricane disasters in the Gulf, Low Power FM stations and public radio stations were the only stations on the air with local news about changing events, disaster relief information and other essential information.

It may be too early in the development of Low Power FM and its roll out to arrive at a sound conclusion about its impact on competition, diversity and localism. Certainly, the potential exists within the concept of Low Power FM to broaden content diversity and connections to community. Many stations that are members of the National Federation of Community Broadcasters can serve as role models for what Low Power FM stations could contribute to diversity and localism.

Question 2. NPR has been at the forefront in the rollout of digital radio. In your written testimony you state that by the end of the year you anticipate that 350 public radio stations will be on the air with a digital signal. What have been some of the challenges your stations have faced in rolling out the technology? How critical has the Federal Government's role been in contributing to the pace of the rollout? Do you believe that there is a critical mass of consumer electronics companies willing to build digital radio receivers today?

Answer. NPR and public radio have embraced digital broadcasting technology because it offers the potential to expand public service programming. In fact, NPR was the leading proponent within all of radio for testing and demonstrating the workability and utility of multicasting. Today, multicasting is a central component of public radio's plans to utilize the inherently inclusive nature of digital broadcasting technology to broaden our programming diversity and deepen our connections to communities.

The challenges facing public radio stations are significant. Most important among these are the relatively slow appearance of affordable digital radio receivers and low awareness of multicasting among the public. Stations can readily present traditional public radio formats on their new HD channels, such as news and talk programming, classical, jazz, folk and eclectic music. Development of new formats or of highly localized services is expensive and difficult to justify when the audience doesn't yet have wide access to HD receivers. As with all new content distribution technologies, there will be phases of experimentation to determine which programming offerings are needed and supported by our audiences.

The Congress' funding support of public radio's digital transition has been indispensable. Without these additional annual appropriations from Congress, it is doubtful that many public radio stations would have been able to afford the costs of conversion. Congressional funding assistance will remain important for many years to come to ensure that all public radio stations, especially those serving rural audiences, are able to afford this absolutely essential conversion to digital technology.

The encouragement and support of the Federal Communications Commission have also been critical; each action has affected the pace of conversion within public radio and the pace of receiver development and deployment by consumer electronics companies. The experimental multicasting authority granted by the Commission in 2004 made it possible to develop and test multicasting in communities across the country, leading to improvements that allow not just one, but two additional channels of service beyond the main broadcast signal.

The permanent authorization earlier this year accelerated receiver development and marketing. Currently, 60 receiver makers are providing over 50 models of HD receivers equipped for multicasting, and prices have dropped from $399 to entry level units selling at $99. We continue to hope the Commission will permit public radio stations to utilize the connection potential of digital radio with as few conditions as possible so that we can fully develop the public service potential of this emerging technology.

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