S. Hrg. 108–979

MEDIA OWNERSHIP (RADIO CONSOLIDATION)

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 8, 2003

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

U.S. GOVERNMENT PRINTING OFFICE

88–772 PDF WASHINGTON : 2014

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2104 Mail: Stop IDCC, Washington, DC 20402–0001

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JOHN MCCAIN, Arizona, *Chairman*

TED STEVENS, Alaska
CONRAD BURNS, Montana
TRENT LOTT, Mississippi
KAY BAILEY HUTCHISON, Texas
OLYMPIA J. SNOWE, Maine
SAM BROWNBACK, Kansas
GORDON H. SMITH, Oregon
PETER G. FITZGERALD, Illinois
JOHN ENSIGN, Nevada
GEORGE ALLEN, Virginia
JOHN E. SUNUNU, New Hampshire

ERNEST F. HOLLINGS, South Carolina, *Ranking*
DANIEL K. INOUYE, Hawaii
JOHN D. ROCKEFELLER IV, West Virginia
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BYRON L. DORGAN, North Dakota
RON WYDEN, Oregon
BARBARA BOXER, California
BILL NELSON, Florida
MARIA CANTWELL, Washington
FRANK R. LAUTENBERG, New Jersey

JEANNE BUMPUS, *Republican Staff Director and General Counsel*
ROBERT W. CHAMBERLIN, *Republican Chief Counsel*
KEVIN D. KAYES, *Democratic Staff Director and Chief Counsel*
GREGG ELIAS, *Democratic General Counsel*

CONTENTS

WITNESSES

APPENDIX

MEDIA OWNERSHIP (RADIO CONSOLIDATION)

TUESDAY, JULY 8, 2003

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

The Committee met, pursuant to notice, at 9:50 a.m. in room SR–253, Russell Senate Office Building, Hon. John McCain, Chairman, presiding.

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

The CHAIRMAN. We will now move to the second part of our hearing in just a moment, as we allow family members and others to depart and congratulate their loved ones.

[Pause.]

Today the Committee continues its series of hearings examining media by returning to the topic that started it all, radio. That first hearing on the increased concentration of ownership in the broadcast radio industry was the miner's canary to many on this Committee, myself included. It alerted us to the growing consolidation and vertical integration in media.

Prior to enactment of the Telecommunications Act of 1996, a party was not allowed to own more than 40 radio stations nationwide. Since the removal of the national cap, the industry has experienced significant consolidation. The 1996 Act also increased the number of stations that a party is allowed to own in a particular local market. In its recent order, the Federal Communications Commission determined numerical limits on local radio ownerships are, "necessary in the public interest to protect competition in local radio markets."

However, the FCC found its existing methodology of defining local markets based on the station owner's signal contour to be, "flawed as a means to protect competition in local radio markets." As a result, the FCC will now use an advertising metric provided by Arbitron, a market research company, as the basis for determining market definitions rather than engineering data.

I look forward to hearing our witnesses' opinions as to whether this new methodology best reins in excessive concentration in local markets or if another approach would be better to achieve that goal.

At a hearing in June, all five FCC Commissioners testified that there has been, in at least some local radio markets, too much consolidation. Last month the Committee passed an amendment that would force parties that exceed the local radio ownership cap under

the FCC's new market definition to divest themselves of any stations that take them above the cap. Yesterday the National Association of Black-Owned Broadcasters announced its support for this amendment.

This is the Committee's first hearing on media ownership since the FCC's new rules were released last Wednesday. I look forward to hearing the witnesses' views regarding these new rules, as well as the impact of consolidation in the broadcast radio industry on artists and local media buyers. I welcome the witnesses and thank them for appearing today.

Late last night we received word that Congressman Menendez would like to make some remarks to the Committee this morning and obviously we are glad to accommodate our colleagues from the House as well as other members of this body who are not members of the Committee. Mr. Menendez, Congressman Menendez, you are welcome here today and please proceed.

STATEMENT OF HON. ROBERT MENENDEZ, MEMBER, U.S. HOUSE OF REPRESENTATIVES FROM NEW JERSEY

Mr. MENENDEZ. Thank you, Senator. I want to thank you and Senator Hollings and all the other distinguished Members of the Committee for the invitation, the opportunity to testify on consolidation in general, but I would specifically within that context like to refer to consolidation of Spanish language media and its impact on the Latino community. Highlighted in my remarks is the crucially important related issue of the proposed merger between Univision and Hispanic Broadcasting Corporation, a merger that is presently before the FCC.

Prior to the Commission's recent loosening of media ownership limits, I, along with other, about 90 other members of the House Democratic Caucus, sent a letter to Chairman Powell opposing the relaxing of ownership rules in a media landscape that is already heavily concentrated.

Perhaps nowhere is the impact of ownership concentration more evident than in the radio industry. In 1996, the two largest radio companies owned 115 radio stations. Today these two companies own 1,451 radio stations. Furthermore, the top 25 radio ownership groups control 25 percent of the Nation's commercial stations and take in 59 percent of all advertising revenues.

Ownership is even more consolidated in the Spanish language media market, with three companies currently controlling the majority of the Spanish language radio market and only two entities controlling the majority of Hispanic TV audience shares.

The proposed merger would unite Univision, the Nation's largest Spanish language television company, with a continuing and significant interest in the number three Spanish language radio company, Entravision, and the Hispanic Broadcasting Corporation, the Nation's largest Spanish language radio company. If the Commission approves the merger, the new entity would control: the largest Spanish language radio in the country, with more than 40 percent of the revenue; the largest Spanish language TV, with approximately 80 percent of the audience and 70 percent of the revenue; the largest Spanish language website among U.S. Hispanics; and the largest Spanish language cable network.

These are national statistics, but it is at the local level that the full brunt of the monopoly would be felt. For example, if the merger is approved Univision will control 69 percent of the Spanish broadcasting advertising market in Phoenix. 84 percent of its holdings in Entravision, the third largest Latin radio chain in the country, are included in the merger.

This deal would create unacceptable market power in Spanish language media in this country. Univision's own competitor in radio, the Spanish Broadcasting System, the second largest Spanish language radio company with only 16 radio stations nationally and, notably, the only one owned and operated by Hispanics, will find it difficult to compete with the merged entity.

The same would be true for Telemundo, the second largest Spanish language TV company, which has never been able to obtain more than 15 percent of the national Spanish television market share, with Univision currently controlling 80 percent of this market.

Under the tenets of this merger, virtually all Latinos would see and hear their news and entertainment from a single source, Univision. And perhaps not coincidentally, the single source would be owned by a non-Hispanic.

Now, Mr. Chairman, I know that you know very well from your home state and from the U.S. Census Bureau of the incredible growth in our community, 38.8 million, the largest minority in the country, 10 percent increase in 2 years. Approximately 25 percent of that audience has little or no ability to speak English and receives all of their news and information solely through Spanish language sources. Approximately 50 percent of that number live in Spanish-dominant households, in which the inhabitants need or prefer to speak and receive media messages in Spanish.

Based on these findings, the Congressional Hispanic Caucus recently issued its Principles on Broadcast Ownership Rules, which states that: "The commission should establish a clear policy on the separation between Spanish language and English language media markets. The current lack of specific rules on whether these are different markets has created challenges for antitrust policy enforcers and curtailed the ability of many minority broadcasting outlets to enter the U.S. media market."

Additionally, several letters have gone to the FCC from Members of Congress, consumer groups, and unions on the necessity of conducting a series of public proceedings to determine whether or not Spanish language media constitutes a separate market. Unfortunately, Chairman Powell has rather curtly dismissed them all.

So despite appeals from leaders in the Hispanic community and elected officials from around the country and significant evidence to the contrary, the commission appears to be headed toward an erroneous finding that Spanish language media does not comprise a separate market. Such an erroneous finding would create great harm to competition and diversity, precisely the values the commission is supposed to protect.

While Univision proclaims to oppose the separation between Spanish language and English language media markets to Federal regulators, in its pitches to Wall Street investors and advertisers it literally endorses such a separation by bragging about Spanish

language TV's superior ability to reach Hispanics over mainstream outlets. Mario Rodriguez, Univision's President of Entertainment, recently told Television Week that, quote: "Hispanics choose Spanish language television over general market TV every hour of every day of the year."

It's also important to note that the threat of stifling competition in viewpoints is more onerous in the Hispanic markets because it has fewer media outlets. In contrast to the thousands of television and radio outlets in English, the Spanish market has only about 145 television stations and 630 radio stations nationwide. However, even multiple media outlets mean nothing if they are controlled by the same entity and echo the same voice.

It's also a matter of urgent public concern for all Americans that FCC endorsement of this merger would offer a precedent for monopoly control over the editorial content in the native language of any linguistic minority recognized under the Voting Rights Act, whether Latino, Native American, Native Alaskan, or Asian, to any person, no matter what his or her political persuasion would be.

Monopolies of any kind are not good for commerce and media monopolies are not healthy for our democracy.

Finally, Mr. Chairman, the FCC has the merger poised, it seems to so many of us, for approval right now as a follow up to its wildly unpopular media concentration decision. Not surprisingly, there are many reports that suggest that Chairman Powell wishes to push this decision through as quickly as possible.

To accomplish this under the FCC's public interest standard for review of license transfers, this Commission will have to make a finding that the Spanish language market is not, is not, a separate one from the greater media market.

[Mr. Menendez then spoke in Spanish.]

What I said, very simply, is: If you did not quite understand what I just finished saying, you understand why the Spanish language market is a separate market. It is because, unlike NBC, CBS, ABC, Fox, or anyone else, their audience is those who are Spanish-dominant or who simply are unilingual insofar as they only speak Spanish, and that is the audience that is captivated by the smaller number of outlets, by the smaller opportunities.

So it is sociologically, economically, and practically ludicrous, and even though the Commission has other overwhelming evidence before it that a separate market exists, the order has gone down to the Commission's media bureau to justify this finding.

So it is notable that, in spite of the many opposition filings made in the last several weeks against the merger, Univision has not seen fit to answer a single one. It seems to be acting as a boy who, as they say, is assured of his dinner.

So, Mr. Chairman, Members of the Committee, I appeal to all of you for this fastest growing part of our Nation's population, who has less media outlets than any other group and who clearly has— Univision does a great job. I will admit, it does a great job in providing information, but it cannot be the only one to provide that information. The Hispanic community, as Americans as a whole, needs to have competition, competition for their minds, competition for their dollars.

If we consider the market power that this would bestow in the hands of a single source, I think it goes against all that is important to us. Finally, it would be unconscionable to allow it to do so without substantial and pervasive conditions against the threat it poses to competition, diversity, and democracy.

I appreciate the opportunity to address the Committee, Mr. Chairman.

The CHAIRMAN. Thank you very much, Congressman Menendez. We are always pleased to hear from you and we thank you for your advocacy. We thank you again. We know you have a very busy schedule. You are always welcome back here.

Mr. MENENDEZ. Thank you, Senator.

The CHAIRMAN. Thank you. Are there any questions for Mr. Menendez?

STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM NEW JERSEY

Senator LAUTENBERG. Mr. Chairman, before Congressman Menendez leaves, I want to say that I regret that I was unable to greet you publicly before your departure is upon us. Bob Menendez is a good friend of mine, but, more importantly, he is a spokesman for his constituents, for Hispanic Americans, and in large measure is one of those most responsible for the actions taken in the Democratic House membership—a very important position, third highest position in the Democratic House delegation.

So I wanted to say that I welcome Bob Menendez. I want to tell him something, that I occasionally watch Spanish television. It does not do a lot for my language ability, but it does do a lot to tell me about what is of interest to an important constituency, what is important to my neighbors, many of them, who speak Spanish fluently and regularly. So I wanted to say that I am pleased to hear your testimony and look forward to working with you, Bob, and I am pleased that you are here this morning.

Thank you, Mr. Chairman.

Mr. MENENDEZ. Thank you, Senator. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you again, Congressman Menendez.

Now we will move to our panel of witnesses. Mr. Lewis W. Dickey, Jr., the Chairman, President, and CEO of Cumulus Media Incorporated; Mr. Jon Mandel, Co-Chief Executive Officer, MediaCom; Mr. Simon Renshaw, Manager of The Firm; and Mr. Alex Kolobielski, President and CEO of First Media Radio, please come forward.

Mr. Dickey, if you will sit on the far—yes, where you are is just fine. Please be seated and we will begin with you, Mr. Dickey. Welcome.

STATEMENT OF LEWIS W. DICKEY, JR., CHIEF EXECUTIVE OFFICER, CUMULUS MEDIA INC.

Mr. DICKEY. Good morning. Mr. Chairman, my name is Lew Dickey. I am the Chairman and CEO of Cumulus Media. I appreciate the opportunity to appear before the Committee today. This morning I would like to base my remarks around the following three ideas: first, contrary to much of the self-serving rhetoric, deregulation and the resultant consolidation of the radio industry has

revitalized and perhaps saved an industry that I and many fellow Americans alike view as a national treasure.

Second, the recent FCC decision to move away from a contour-based market definition which has been in effect for 11 years and guided several thousand individual transactions, all approved one by one, in favor of an Arbitron-based market definition, will only serve to create more anomalies than it will cure. Though it may not be politically expedient, a much simpler, consistent, and more effective remedy was proposed and should be adopted.

Third, the inability to transfer existing clusters formed in good faith under the existing rules at the time will prevent future competitors from emerging that will check and ultimately curb the growing power of the unambiguous industry leader, Clear Channel. Preserving the status quo simply strengthens and entrenches the incumbent, which I believe is the unfortunate and unintended consequence of this rulemaking decision.

Now, as a second generation broadcaster—and my father is seated behind me—I grew up in Toledo, Ohio, understanding the responsibility that comes with being a licensee. I was taught that we as broadcasters had an obligation to serve our communities.

Like most broadcasters, we witnessed firsthand the economic difficulties facing our extremely fragmented industry in the late eighties and early nineties. There were simply too many radio stations competing for a very small amount of the advertising dollar spent on all media. The FCC recognized that radio broadcasters needed the efficiencies of scale if they were to survive and improve program service and gave broadcasters a modicum of relief in 1991. Congress completed this regulatory relief in 1996 and the market forces were set in motion.

For example, in building our company from scratch I have completed over 130 separate acquisitions. Our focus is on midsized and smaller markets, and I can tell you firsthand about the sad state our industry was in in America's heartland. A great many of the stations we acquired were either losing money or were only profitable because the owners had severely cut back investment in programming and the technical facilities.

For instance, we had to spend tens of millions of dollars to bring these facilities up to FCC code to ensure that they would provide reliable and full coverage for their communities. In addition, many of the stations were either automated or received programming via satellite, with skeleton programming staffs to save money. And in many cases there was no local news staff whatsoever.

Today things are much different under Cumulus. We have 270 stations in 55 cities, and of our 2,800 employees 1,455, or more than half of them, are in programming. We now have 65 full-time news people in addition to the local, regional, and national news that we carry through the Associated Press in addition to other major networks.

The economies of scale afforded by our clusters enable us to offer listeners niche formats, like jazz, blues, black gospel, alternative rock, classic country, and all-sports, that certainly could not be self-sustainable outside of a cluster of multiple stations.

We also have effectively used our platform of stations to benefit their respective communities. For example, last year we raised $7.5

million for charity, including $2.5 million alone for the Saint Jude's Children's Hospital. In addition to fundraising, on June 6 of this year, we opened up simultaneously 43 different playgrounds in different cities across the country for underprivileged children.

We take our responsibilities as licensees seriously and feel very strongly that we have changed local radio in our communities for the better as a result of consolidation. At Cumulus we take a great deal of pride in the way we serve our communities, treat our 2,800 employees, and provide a return for our shareholders. In many ways, Mr. Chairman, we are the Jet Blue for the radio industry.

I am concerned, however, about our continued viability if our hands are tied as we do battle each day with the industry's dominant force. Their tremendous scale gives them an undeniable advantage in the competition for capital, talent, and advertising dollars. Any action that impedes our ability to grow will only strengthen the industry leader as a greater share of advertising dollars increasingly shift toward the larger platforms.

This long-term trend cannot be overestimated and as such I do not believe that we should have to compete under a new set of ground rules that clearly favor an incumbent whose platform is already dominant and becoming stronger every day.

Thank you.

[The prepared statement of Mr. Dickey follows:]

PREPARED STATEMENT OF LEWIS W. DICKEY, JR., CHIEF EXECUTIVE OFFICER, CUMULUS MEDIA INC.

I. Introduction

My name is Lew Dickey. I am the CEO of Cumulus Media Inc., a publicly-traded company that is the second-largest radio company in terms of number of stations with more than 250 located around the country.

The radio industry is now at a critical crossroad, and, as a second generation and life-long radio broadcaster, I appreciate the opportunity to come before this Committee to discuss the very important issues that underlie that crossroad because the resolution of those issues will have a profound impact on radio and the service it provides to the listening public.

To a large extent, the crossroad in radio reflects a fundamental gap between perception and reality:

- Public spokesmen decry the evils of consolidation but ignore the substantial benefits that consolidation has brought to the listening public.
- Fingers are pointed at the alleged misdeeds of Clear Channel—by far the largest radio company with 1,200 stations—and assumptions are incorrectly made that every radio company engages in the same practices.
- Critics point to an FCC rule on market definition that permits some anomalies—such as Clear Channel's ownership of many stations in the relatively small market of Minot, North Dakota—and wrongly assume that the FCC rule allows excessive consolidation in every market.
- Pressed by Congress to do something about the few anomalies that generate almost all of the publicity, the FCC adopts a solution—the use of Arbitron-created markets—that the FCC rejected more than 10 years ago because it would not adequately reflect the actual options available to radio listeners.
- Anxious to protect the public against the alleged dangers of a single large company—Clear Channel—the FCC has shot an arrow that strikes at the heart of smaller broadcasters whose practices have served—and could continue to serve—the listening public well.

The flaws of the FCC's new market definition can be appreciated best by understanding the evolution of the radio industry in the last ten years or so.

Radio historically has been an extremely fragmented industry. Prior to 1992, no single operator could own more than 20 of the more than 10,000 stations in the United States. Following the gulf war in 1991, the industry fell on hard times and

more than half of the radio stations were losing money. There were simply too many stations in each market chasing a very small share of the advertising dollars spent on all media. There were in fact reports that 90 percent of the industry's profit was garnered by about 10 percent of the owners.

Radio owners—and the listening public they served—needed relief if free over-the-air radio was to survive. Responding to this grave situation, the FCC permitted broadcasters to own up to 2 FM's and 2 AM's in each market with a maximum of 20 AM stations and 20 FM stations nationwide. It was a bold attempt to provide relief to a seriously troubled industry, and it revolved around a simple but critical concept—consolidation. The FCC recognized even then that radio broadcasters needed the efficiencies of scale if they were to survive and hopefully improve program service.

In order to implement its new ownership rule, the FCC labored long and hard to develop a market definition that would provide the most uniform and objective method of determining compliance. It considered many options—including the use of Arbitron-based market definitions—and ultimately decided in favor of the contour-based approach. Over the next four years, hundreds (if not thousands) of transactions were completed and billions of dollars of capital were invested as the radio industry completed its first wave of consolidation and produced the very efficiencies that the FCC had sought. As the industry attracted new capital, stations that had gone dark were revived by entrepreneurs who were banking on a new business model that enabled broadcasters to leverage fixed costs against multiple stations in a single market. In short, the FCC's action in 1992 proved to be a desperately needed regulatory relief package for a struggling and still very fragmented industry.

Despite progress, there were many areas—especially in medium and smaller markets—where the FCC's expanded ownership rules had little or no impact. Then, in1996, Congress passed sweeping reform legislation that further relaxed the caps on local ownership and removed the national cap on the number of stations a single company could own. Radio broadcasters could now own up to eight (8) stations in the largest markets and no more than half of the stations in the smallest markets.

The expanded ownership opportunities under the 1996 Act relied on the same contour-overlap methodology that the FCC had adopted in 1992. And why not? There was no reason to believe that the methodology was ill-conceived. And so the Telecommunications Act of 1996 transformed radio in the smaller markets from a basically "mom and pop" industry into a business that could now attract the large amounts of capital and investment needed to provide the improved program service that Congress no doubt sought.

II. The Results of Industry Consolidation

Armed with both public and private capital, entrepreneurs have invested tens of billions of dollars and completed thousands of transactions since 1996 to begin to consolidate one of the country's most fragmented industries. Several large companies were created as a result of this consolidation, but even today, over seven years later, only five companies own more than 100 radio stations out of more than 12,000 that are now on the air. They are Clear Channel, Cumulus, Citadel, Infinity and Entercom.

Clear Channel was by far the most aggressive of the consolidators, acquiring more than 1,200 stations, or almost 1,000 more than my company, Cumulus, which owns the second largest number of stations. On the revenue front the disparity is equally as great. With over $3.5 billion of radio revenue, Clear Channel has almost a billion and a half dollar lead over the next largest competitor, Infinity, and a $3 billion lead over the number three player in revenue, which is Cox. In short, Clear Channel is in a class by itself in terms of revenue and number of stations.

As the proverbial 800-pound gorilla, Clear Channel has become the lighting rod for opponents of radio consolidation. While some of this criticism maybe deserved, much of it is not. For example, concerns have been raised that ownership of so many radio stations by one company has homogenized program fare and turned radio service by *all* stations—whether or not owned by Clear Channel—into a McDonald's version of broadcasting. The truth is otherwise. There is more format diversity today than ever before, and there are more choices on the dial today than ever before. Our experience at Cumulus is illustrative. I have built our company—which focuses on midsize and smaller markets—from scratch through 130 acquisitions which now provides a format diversity in most markets that never previously existed.

Like many other radio companies, Cumulus has been able to utilize the expanded ownership caps of the 1996 Act to develop market clusters that operate with greater economic efficiency and are able to pour much-needed money and resources into developing quality local programming with live disc jockeys and upgraded equipment. Critics today ignore the achievements of companies like ours and speak of those

"mom and pop" operations with great nostalgia on the assumption that those small operations provided reliable and responsive local service. Again, the truth was often otherwise. Many of the stations we acquired were automated juke boxes which had few local programs and instead relied on programming from syndicators via satellite or bare-bones automation systems. Oftentimes, these stations were operated as little more than sales organizations with little or no programming staff and with substandard transmission facilities that were in need of significant capital investment just to bring them into compliance with FCC rules.

Notwithstanding the benefits achieved under existing rules, the FCC voted a month ago to adopt new radio market definition which had the unstated objective of tempering the dominance of Clear Channel and the stated objective of preventing a repeat of the now famous Minot anomaly. I believe that the new rules regarding radio ownership and market definition have missed on both counts and should be withdrawn or modified.

III. Grandfathering of Current Clusters and Pending Applications

The FCC's new market definition means that some radio broadcasters will have market clusters that exceed the new limitation. The FCC is grandfathering everyone's current clusters, but requiring compliance upon transfer of radio properties. For Clear Channel, this is a most welcome development because it is probably not a seller and is in the ninth inning of consolidation. As a result, the presumed primary target of the FCC action is relatively unaffected. Clear Channel will, therefore, be allowed to continue to dominate an industry with unprecedented scale and will inevitably grow stronger with each passing day under the new rules as its competitors remain fragmented.

This is bad news for those of us who have to compete against Clear Channel. We cannot hope to compete effectively against Clear Channel's mammoth organization unless we can grow. Preserving the status quo simply strengthens and emboldens the incumbent and that, in my judgment, is the unintended consequence of the FCC's new rulemaking decision. The point should not be lost amidst all the hysteria over consolidation: Clear Channel will be that much stronger five years from today if the ground rules of consolidation are changed in midstream and impede further growth by its competitors.

To a large extent, this result is almost preordained by the FCC's refusal to grandfather a noncompliant market cluster if it is sold to someone other than a small business (which is unlikely to have the resources to buy a cluster in a market of any meaningful size). First is the question of fairness—telling Cumulus and other radio companies that they cannot buy or sell intact a group of radio stations that were acquired in reliance on pre-existing rules. Second, there is the impact on needed growth for companies who want to compete with Clear Channel and other large radio companies. The inability of smaller companies to sell their clusters intact will cause them to hold on to their clusters rather than break them up and suffer the financial loss that could ensue. There will thus be fewer stations available for sale. The net result will be a slower pace of growth for Clear Channel's competitors—all of which will help preserve Clear Channel's competitive advantage of scale.

Conversely, the question could logically be asked, why not force all clusters to be brought into compliance and thereby level the playing field. The answer is obvious. This approach will hurt the smaller broadcasters and create hundreds of "orphan" stations, many of which will inevitably go dark—prompting an ironic reversion to the pre-duopoly situation of the early 90s where few radio companies could boast of profits. Due to the relative size of the competitors, requiring divestitures to bring a group into compliance will have a much greater adverse impact on Cumulus, Citadel, Regent, Saga or Next Media than it will on Clear Channel,. because we, like many other broadcasters, derive the majority of our collective revenue from markets outside the top 50, which are the markets most likely to be affected.

There is a similar inequity in the FCC's refusal to grandfather applications that were filed before the new rules were adopted. There are apparently hundreds of applications that are currently pending before the FCC that reflect deals constructed on the basis of the pre-existing rules. The practical ramifications of the situation should not be lost in the FCC's urge to change the definition of a radio market: before that change was adopted on June 2, many companies large and small invested substantial time and limited resources to fashion deals that would comply with the prior rules.

As a legal matter, the FCC cannot apply the new rules to those pending applications, because the new rules are not yet effective and probably will not become effective until some time in August at the earliest. The FCC has therefore decided to defer action on non-compliant pending applications until the new rules do become effective. Parties to those pending applications can file amendments to show that

their pre-existing deal complies with the new rules, but, in the absence of an amendment which shows compliance, the FCC apparently proposes to suspend the processing of the application until the new rules do become effective. For Cumulus, this means that many pending applications—including some that were filed many months before June 2—are simply locked away in the FCC's files until the new rules can be retroactively applied. The FCC has explained that retroactive approach by the need for consistency, but the FCC decision fails to cite any harm that will befall the public interest if those pending applications were processed under the pre-existing rules—which are still in effect today.

IV. Radio Market Definition

The FCC's decision to use Arbitron to define markets is also seriously flawed. At the outset, it is important to remember that the FCC rejected this very same approach in 1992 in favor of the contour-based market definition. Some 8,000 transactions later, the FCC now wants to change the rules to prevent a recurrence of the Minot anomalies. Instead of using the objective-based contour overlap methodology, the FCC is now telling radio broadcasters to rely on definitions formulated by a commercial enterprise whose overwhelming source of revenue is from the radio broadcasters themselves.

This approach is inherently rife with conflicts and will be susceptible to manipulation similar to gerrymandering. For example, Arbitron could reduce the market in Macon, Georgia (where Cumulus operates stations) to expand the market in Atlanta because it would benefit large Arbitron customers like Clear Channel and Infinity in Atlanta. That result would obviously hurt Cumulus and the other independents in Macon.

This hypothetical is not designed to impugn the motives or actions of Arbitron. But we should not lose sight of the most critical fact here: Arbitron is a private vendor understandably interested in maximizing its profit, and that kind of company should not be endowed with the power to be the official arbiter of radio market definitions and thus the ultimate regulator of industry consolidation.

The difficulties with the FCC's new approach are compounded by Arbitron's failure to include 40 percent of the country's stations in rated markets. That means that the FCC now needs to devise yet another methodology for defining a market in the smaller markets. That situation also creates the potential for manipulation by broadcasters who may try to influence Arbitron's decision to rate an unrated market or to discontinue the service in a rated market when it suits the radio companies' expansion needs. This scenario may actually increase the amount of concentration in a market under the new rules—hardly a consequence intended by the FCC.

In an effort to combat manipulation of Arbitron data, the new FCC rules state that a broadcaster cannot rely on any changes in Arbitron markets until those changes have been in effect for two years. To be sure, that reservation will preclude broadcasters from immediately exploiting any inappropriate changes in the Arbitron definition; but that 2-year reservation will allow the exploitation after two years. And beyond that, the 2-year reservation will preclude a broadcaster—and the FCC itself—from immediately using Arbitron changes that do reflect legitimate changes in the radio marketplace. In short, the use of Arbitron can produce anomalies in both the short run and the long run.

It is indeed ironic that the FCC was looking for an "intellectually honest" solution to the Minot problem and, in its zeal to do something that would mollify the critics, jettisoned a rule that had produced relatively few anomalies in exchange for a new methodology which is subject to manipulation, draws a distinction between rated and unrated markets, and could actually lead to greater concentration in some instances, and all while unfairly restricting broadcasters ability to compete against the industry's dominant powerhouse. In short, the FCC's new market definition will surely produce far more anomalies over time than it will cure, and the new rules regarding grandfathering and transferability will only serve to embolden a company whose market power the FCC presumably wanted to curb.

If the objective is to remedy the anomalous situations like Minot, it can be done under the existing contour-overlap methodology with a simple qualification based upon the proximity of the transmitters to the defined market. The NAB proposed a test that no station could be deemed to be in the market under the contour-overlap methodology if the station's transmitter was more than fifty-eight (58) miles from the "market perimeter." We then could have preserved and refined a market definition methodology under which over 8,000 transactions have occurred and under which local markets have already largely been consolidated. This final test would have the added benefits of consistency for ALL stations (both rated and unrated) and not being subject to manipulation.

V. Conclusion

In deciding whether to keep the existing rule or in fashioning a new rule, it must be remembered that the radio industry is a diverse industry with dozens of different companies who each have unique cultures and operating strategies. This Committee should not assume that all broadcasters behave similarly or that consolidation will only produce one way of operating a cluster. For example, at Cumulus, we believe in being live and local and have eschewed the practice of piping in talent from another market and pretending that they are right there in the local studio. That is a tactic that is used against us, and sometimes it works and sometimes it doesn't. But that does not affect our programming decisions. We believe that, in the long run, we will take share from companies who aren't predominately local because radio is truly a local medium, and we feel very strongly that a local and personal touch is critical to good public service and to our financial health.

Therefore, I caution the Committee not to use some broadcasters' programming policies as the sole basis to define beneficial public policy for an entire industry. I would also ask the Committee not to tie our hands as we work to continue to grow so that we remain viable and continue to compete across the street from Clear Channel. Any action that impedes that growth will only serve to strengthen the industry leader as a greater share of advertising dollars increasingly shifts towards larger platforms. That will inevitably enhance Clear Channel's ability to lock up the best talent and the biggest promotions—all of which will increasingly make it a more formidable competitor for audience share as well. That last point cannot be emphasized too strongly. Clear Channel will become a more powerful market force under the new rules. If the Committee is interested in fair competition and better public service, the FCC's new definition for rated radio markets should be changed.

The CHAIRMAN. Thank you very much.

Mr. Mandel.

STATEMENT OF JON MANDEL, CO-CHIEF EXECUTIVE OFFICER, MEDIACOM, GREY GLOBAL GROUP, INC.

Mr. MANDEL. Good morning. I am here today to try to help you through some of the morass of twisted claims made by those with vested economic interests in the broadcast industry. Why would an advertising agency be willing to do this? Why would we have joined with others in filing at the FCC as the Coalition for Program Diversity? Some of our agency counterparts have told us to just keep quiet because the media companies could hurt our business if we aggravate them. And because our clients pass on commission basis, we make more money if advertising costs skyrocket.

However, I am concerned about the future of not just the advertising industry, but the broadcast industry as well. I am shocked that some would have you and others in this town make decisions based on half-truths and misconceptions. Let mE clear up some facts and misstatements that have been made at the Commission and to this Committee. Because we are focusing on radio today, I will use radio examples.

There is a belief that radio consolidation saved the radio industry from demise. But as Michael Bergner, a station broker, said in *Business Week* about the years since 1987: "Even if you knew nothing about the business, you would have had to go out of your way to lose money."

It was stated in this chamber that Clear Channel only owns 10 percent of the radio stations in this country. True, but misleading. The industry source "Who Owns What," which is owned by Clear Channel, credits the company with having 32 percent of the national audience to radio. In the markets that Clear Channel is in, the percentage would be much higher.

Clear Channel has implied that this is because they are excellent programmers. Yes, in Washington they improved one station from number 35 on its ranking to number 20. In New York, they own the top four stations, which is the same rank when they bought them in 1999.

In San Diego, Clear Channel owns the top six stations—no improvement since they bought them in 2000. In San Diego, by the way, they also own three other stations and sell the advertising time at another six, and they also own one of the two radio rep firms that also sell the ad time for their competitors.

The same lack of station-building story holds in New Orleans and Minneapolis. In Austin and Atlanta, they lost rank. Is this good radio management or good banking?

In the interest of free market, regulators and Congress have deregulated, which has instead caused a constrained market that has cost advertisers and the economy. The issue is both horizontal and vertical in nature. That is because the consolidated companies own multiple stations in multiple markets and program them in-house. Advertisers and local economies suffer.

As a Clear Channel program director was quoted in *Inside Radio:* "Clear Channel stations only buy syndicated programming from us—keep the money inside the family." For instance, the Weather Channel had a syndicated radio package that Clear Channel would not run because it was, quote unquote, "note appropriate in our markets." How many jobs were lost when the Gulf Coast or Arizona tourism offices could not be as effective in running advertising in Washington saying, it's snowing where you are, but it's nice here?

When Clear Channel decided it was in fact appropriate because they took over national ad sales on the show, how much more did advertisers pay?

Mike Savage is cleared on independent stations and is quite successful. It has been reported that Clear Channel is trying to get him to break his contract by promising upgraded clearances. How many advertisers will lose an outlet when those independent radio stations are no longer a viable outlet? How many advertisers will be blocked on a national basis from running product advertising or issue advertising that Clear Channel disagrees with?

The consolidation in radio has caused large cost increases over what straight supply and demand would have caused in a free market. In Atlanta, costs are 155 percent higher than supply and demand, which is a consolidation tax of over $144 million a year. New York radio is overcharged by 30 percent, $156 million a year. San Diego is also 30 percent. Mossy Auto Group, which is a San Diego car dealer, overpaid by $600,000, that means maybe they do not mind because the prices are so high that smaller auto dealers have trouble advertising.

The people and businesses of Austin are overcharged by 95 percent. I would sure hate to walk into El Arroyo Restaurant if that fact gets out of this room.

In New Orleans, the consolidation tax is only 7 percent because there are 10 non-consolidated stations as an alternative to the 3 big owners. Ray Brant and Bone Brothers are car dealers in New Orleans. They overpaid by $85,000 last year. Did they eat it or charge Louisianans more for their cars?

Minneapolis has a consolidation tax of 78 percent because there are only four large consolidated sellers. In Washington, the Metro advertises for more riders and, if like New York, is probably a little starved for money, but it was overcharged a quarter of a million dollars last year because of radio consolidation.

In Las Vegas, 30 percent, $14 million; and in Tulsa, Atomic Burrito has to sell a lot more beans or lay a worker off to cover the $4,200 per year 12 percent consolidation tax they pay.

Those are the facts. You can look them up. It is clear that the effort to create a free market has done anything but. It is analogous to letting a private citizen maintain the only public free road into the market and looking the other way when he puts a private toll up. The cost to the economy created by this closed market while winking that it is free is of paramount importance to advertisers and the people of the United States who have to pay the costs. We believe it should be to you as well.

You asked about radio. We have done the work and can prove the same problems in television. I welcome your questions.

[The prepared statement of Mr. Mandel follows:]

PREPARED STATEMENT OF JON MANDEL, CO-CHIEF EXECUTIVE OFFICER, MEDIACOM, GREY GLOBAL GROUP, INC.

Good morning. I am here today to try to help you through some of the morass of twisted claims made by those with vested economic interests in the broadcast industry. Why would an advertising agency be willing to do this? Why would we have joined with others in filing at the FCC as the Coalition for Program Diversity? Some of our agency counterparts have told us to just keep quiet because the media companies could hurt our business if we aggravate them. And, because our clients pay us on a commission basis we make more money if advertising costs skyrocket.

However, I am concerned about the future of not just the advertising industry but the broadcast industry as well. I am shocked that some would have you and others in this town make decisions based on half-truths and misconceptions. Let me clear up some facts and misstatements that have been made at the Commission and to this Committee. Because we are focusing on radio today, I will use radio examples.

There is a belief in Washington that radio consolidation brought on by the 1996 Act saved the radio industry from demise. But as Michael Bergner, a station broker in Florida said in *Business Week* about the years since 1983, “Even if you knew nothing about the business, you would have had to go out of your way to lose money.”

It was stated in this chamber that Clear Channel only owns 10 percent of the radio stations in the country. True but misleading. The industry source, *Who Owns What* (which is owned by Clear Channel) credits the company with having 32 percent of the national audience to radio. In the markets that Clear Channel is in, the percentage would be much higher.

Clear Channel has implied that this is because they are excellent programmers and improved the stations they bought. Yes, in Washington they improved one station from #35 on its demo ranking to # 20. But in New York they own the top 4 stations, which is the same rank when they bought them in 1999.

In San Diego, Clear Channel owns the top 6 stations, which is no improvement since they bought the top 6 in 2000. They also own 3 other stations in San Diego and sell the advertising time in another 6. And they also own one of the two radio rep firms that also sells ad time for competitors.

The same lack of station building story holds in New Orleans and Minneapolis. In Austin and Atlanta they lost rank. Is this good radio management or good banking?

In the interest of “free market,” regulators and Congress have deregulated which has instead caused a constrained market that has cost advertisers and the economy. Further, it has so limited the market that no one else can come in. The issue is both horizontal and vertical in nature. That is because the consolidated companies own multiple stations in multiple markets and program them in-house. Thus, advertisers and local economies suffer. Let me give you some examples.

As a Clear Channel program director was quoted in *Inside Radio* before Clear Channel bought it and fired the editor, Clear Channel Stations "only buy syndicated programming from us . . . keep the money inside the family." The Weather Channel had a syndicated radio package that Clear Channel would not run because it "was not appropriate for our market." How many jobs were lost when the Gulf Coast or Arizona tourism offices couldn't be as effective in running advertising in Washington saying "It's snowing where you are but it is nice here."

When Clear Channel decided it was appropriate in their markets because they took over national ad sales in the show, how much more did the advertisers pay?

Mike Savage is cleared on independent stations and is quite successful. Clear Channel is trying to get him to break his contract by promising upgraded clearances. How many advertisers will lose an outlet when those independent radio stations are no longer a viable outlet? How much more will those who want Savage's audience have to pay on Clear Channel? How many advertisers will be blocked on a national basis from running product advertising or issue advertising that Clear Channel disagrees with?

The consolidation in radio has caused large cost increases over what supply and demand would have caused in a free market. In Atlanta costs are 155 percent higher than free market, which is a consolidation tax of $144.5 million per year. New York radio is overcharged by 30 percent. $156 million per year. San Diego is also 30 percent. That means that the Mossy Auto Group overpaid by $600,000. Maybe they didn't mind because the prices are so high the smaller auto dealers have trouble advertising.

The people and businesses of Austin are overcharged by 95 percent. I would sure hate to walk into El Arroyo Restaurant if that fact gets out of this room.

In New Orleans, the consolidation tax is only 7 percent because there are 10 non-consolidated stations as an alternative to the 3 big owners. Although that may change even for the worst now that Clear Channel traded outdoor assets with Viacom so Clear Channel also now owns the only non-broadcast alternative to radio. Ray Brandt and Bohn Bros are car dealers in New Orleans. They overpaid by $85,000 last year. Did they eat it or charge Louisianans more for their cars?

Minneapolis pays a consolidation penalty of 78 percent because there are only four large consolidated sellers to choose from. In Washington, D.C. the Metro advertises for more riders and is probably a little starved for money but it was overcharged $250,000 last year because of radio consolidation.

Las Vegas is 30 percent, $14 million per year. And in Tulsa, Atomic Burrito has to sell a lot more beans or lay a worker off to cover the $4,200 per year, 12 percent consolidation tax on their radio advertising.

Those are the facts. You can look them up. It is clear that the effort to create a free market has done anything but. It is analogous to letting a private citizen maintain the only public free road into the market and looking the other way when he puts a private toll up. The costs to the economy created by this closed market while winking that it is free is of paramount importance to advertisers and the people of the United States who have to pay the costs. We believe it should be to you as well.

You asked about radio, but we have done the work and can prove the same problems in television. I welcome your questions.

The CHAIRMAN. Thank you very much, Mr. Mandel.

Mr. Renshaw, welcome.

STATEMENT OF SIMON RENSHAW, MANAGER, ON BEHALF OF THE RECORDING ARTISTS' COALITION

Mr. RENSHAW. Good morning, Mr. Chairman and Members of the Committee. My name is Simon Renshaw, I wanted to be here, I thank you for the opportunity to speak today on behalf of the Recording Artists' Coalition. I am a full-time music manager and a board member of the Recording Artists' Coalition.

The Recording Artists' Coalition is a nonprofit recording artist advocacy group comprised of numerous well-known, featured recording artists, including Tony Bennett, Clint Black, Jimmy Buffet, Sheryl Crow, Don Henley, Billy Joel, Stevie Nicks, Bonnie Raitt, Bruce Springsteen, and many others.

The Recording Artists' Coalition was formed in 1999 in response to the effort by the Recording Industry Association of America in November 1999 to obtain an amendment to the work-for-hire provisions of the Copyright Act. Since then, the Recording Artists' Coalition has been involved in numerous legal and political issues affecting recording artists.

I also want to note that my statements today reflect the viewpoints of other pro-artist groups, such as the American Federation of Television and Recording Artists, the American Federation of Musicians, the Future of Music Coalition, and the National Academy of Recording Arts and Sciences.

I have been in the music business for close to 30 years. I started in the business in 1974 and I have been a full-time music manager since 1986. Over the last 17 years, I have been involved in the careers of musical artists in a wide variety of musical styles and genres and of varying levels of success, from new artists to international superstars.

A major part of the work of the manager is liaising with my clients' record labels and assisting them with the design and implementation of strategies to create awareness and, hopefully, success at radio. My clients include, among others, the Dixie Chicks.

As you may recall, Don Henley, another founding member of the Recording Artists' Coalition, testified before this Committee last January and explained how artists and the public have suffered because of radio industry consolidation and the Telecommunication Act of 1996. Before the 1996 Act, artists and record labels worked well with the radio industry. Each side needed the other and, while each exerted much influence and leverage over the other in the daily give and take between them, a delicate balance did emerge. The artists had a certain leverage over radio and radio had a certain leverage over artists. The system, while imperfect, still worked.

All of that has now changed. The mad rush to consolidate has dramatically tipped the balance in favor of the radio industry. They now have unprecedented influence and control over artists and record labels. So while the radio industry continues to prosper, the recording artist community, already devastated by unchecked music piracy and unprecedented record label cutbacks and spiraling operational costs, is bearing an even greater financial and creative cost.

Many in the artist community had hoped that the Internet would be able to ameliorate the problem. This has not happened. Radio air play is still necessary to introduce new artists to the public and to support established artists. Without radio air play, a new act has very little chance to succeed. Access to radio is absolutely essential.

With real competition between radio networks and stations, there was always opportunity for young acts to emerge. The emergence of these young artists is the lifeblood of the music industry. But with rampant consolidation, it is becoming increasingly difficult for new artists to emerge.

Unchecked consolidation is at the root of the problem. As networks consolidate, they homogenize play lists and engage in more centrally located programming. This harms the artist in numerous

ways. With centralized programming, there are arguably fewer spots for new artists. This gives radio networks enormous leverage to make ever-increasing demands on the record label and the recording artist.

These demands take various forms, ranging from increased financial support of the network, some of which is called "payola," or independent radio promotion, to increased demands on recording artists to perform or take part in radio promotions for little or no compensation. The implied penalty for not agreeing to paying high tribute or to offer gratis services to a radio network is decreased or no radio air play. The pressure on artists and the labels to capitulate is real and is at times overwhelming.

Consolidation and the resulting homogenization of play lists and centralized programming has also greatly diminished the artist's reliance on breakout cities. Before consolidation, local DJ's and program directors retained the power to create local diversified programming. Sometimes a band's success would be solely due to a single DJ or program director compelled to play music that is overlooked elsewhere.

This was one of the beauties of the pre-1996 system. A band or artist could receive an inordinate amount of attention from a single radio station. The interest in that city would then—could then have an enormous effect because the attention of the lone radio station would oftentimes act as a catalyst for other stations in other cities to start adding an artist's song or work to their play lists. This would have a cascading effect and all of a sudden a new artist would achieve national success that would otherwise have been denied it in today's radio world.

One has to wonder whether any of the great musical trends in contemporary music would have happened in today's radio environment. Would the Motown or Stax sounds have ever been heard? Would the Beach Boys have exploded out of southern California? Would the Grunge sound of Seattle have ever ignited a new generation of music lovers?

Many of the most important music styles have been the ones that developed and matured locally, that were brought to the forefront by local radio stations championing their music.

I am sure many of you are aware of the controversy surrounding the Dixie Chicks. This incident received a good amount of press coverage. As a result of statements made by members of the Dixie Chicks at a concert, two radio networks, Cox and Cumulus, banned the Dixie Chicks from their play lists at a chain level, while many other stations across the country banned them at a local station level and many others did not. In Colorado Springs, Colorado, two DJ's were suspended for violating that ban when they played the Dixie Chicks' records.

Whether you agree with my clients' statements or not, I know you support the First Amendment. Unfortunately, radio consolidation has provided radio networks with an enormous opportunity to undermine free speech by boycotting records while they wage political wars with artists and labels, be that for ratings gains or be that for political favor.

I appreciate that the networks also enjoy the same First Amendment rights as my clients, but we must remember that those who

crafted the original limitations on ownership feared conglomerates exercising this kind of control over political speech. Ownership limits were intended in part as a way to prevent such a monopoly of thought and discourse. The public air waves were to be used to promote a marketplace of ideas. A marketplace of ideas, the cornerstone of this democracy, can only be nurtured and sustained within a system promoting ownership diversity, not ownership consolidation.

Even the perception of a radio network using power in this way clearly demonstrates the potential danger of a system of unchecked consolidation that ultimately undermines artistic freedom, cultural enlightenment, and political discourse. What happened to my clients is perhaps the most compelling evidence that radio ownership consolidation has a direct negative impact on diversity of programming and political discourse over the public air waves.

Some in the radio industry have suggested that recent FCC rule changes actually restrict radio networks from continuing their drive toward consolidation. I am not convinced that this is the case. Some serious analysts have concluded that the intricate market rule changes do not make it harder to acquire a new station. I am attaching to my testimony comments from the Future of Music Coalition setting forth that conclusion.

My personal view is that the recent FCC rule changes in market definition are relatively insignificant. This is not a local market problem. This is a national problem. As such, I hope the Committee will consider the implementation of new national limits on ownership. Only by placing national limits on ownership and perhaps limits that are more reflective of the pre-1996 world will the harm caused by radio consolidation tend to diminish and hopefully disappear.

Thank you.

[The prepared statement of Mr. Renshaw follows:]

PREPARED STATEMENT OF SIMON RENSHAW, MANAGER, ON BEHALF OF THE RECORDING ARTISTS' COALITION

Mr. Chairman and Members of the Committee,

My name is Simon Renshaw. I am honored to be here and I thank you for the opportunity to speak today on behalf of the Recording Artists' Coalition (RAC). I am a full time music manager and board member of the Recording Artists' Coalition. The Recording Artist Coalition is a non-profit recording artist advocacy group comprised of numerous well-known featured recording artists, including Tony Bennett, Clint Black, Jimmy Buffet, Sheryl Crow, Don Henley, Billy Joel, Stevie Nicks, Bonnie Raitt, Bruce Springsteen, and Trisha Yearwood. RAC was formed in 1999 in response to the effort by the Recording Industry Association of America in November 1999 to obtain an amendment to the work-for-hire provisions of the Copyright Act. Since then RAC has been involved in numerous legal and political issues affecting recording artists. I also want to note that my statements today reflect the viewpoints of other pro-artist groups such as AFTRA, AFM, the Future of Music Coalition, and NARAS.

I have been in the music business for close to 30 years. I started in the business in 1974 and after initially working in live concert production, I have been a full time artist manager since 1986. Over the last 17 years I have been involved in the careers of musical artists in a wide variety of musical styles and genres, and of varying levels of success, from new artists to international superstars. A major par of the work of the manager is liaising with my clients record labels and assisting them with the design and implementation of strategies to create awareness and hopefully success at radio. My clients include, among others, the Dixie Chicks.

As you may recall, Don Henley, another founding member of the Recording Artists' Coalition, testified before this Committee last January and explained how artists and the public have suffered because of radio industry consolidation and the Telecommunications Act of 1996.

Before the 1996 Telecommunications Act, artists and record labels worked well with the radio industry. Each side needed the other, and while each exerted as much influence and leverage over the other in the daily give and take between them, a delicate balance emerged. The artists had certain leverage over radio, and radio had certain leverage over the artists. This system, while imperfect, still worked.

All of that has now changed. The mad rush to consolidate has dramatically tipped the balance in favor of the radio industry. They now have unprecedented influence and control over the artists and the record labels. So while the radio industry continues to prosper, the recording artist community, already devastated by unchecked music piracy, unprecedented record label cutbacks, and spiraling operational costs, is bearing an even greater financial and creative cost.

Many in the artists' community had hoped that the Internet would be able to ameliorate the problem. This has not happened. Radio airplay is still necessary to introduce new artists to the public, and to support established artists. Without radio airplay a new act has very little chance to succeed. Access to radio is absolutely essential. With real competition between radio networks and stations, there was always opportunity for young acts to emerge. The emergence of these young acts is the lifeblood of the music industry. But with rampant consolidation, it is becoming increasingly difficult for new acts to emerge.

Unchecked consolidation is at the root of this problem. As networks consolidate, they homogenize playlists and engage in more centrally located programming. This harms the artist in numerous ways. With centralized programming, there are arguably fewer spots for new artists. This gives the radio networks enormous leverage to make ever increasing demands on the record label and the recording artist. These demands take various forms, ranging from increased financial support of the network—some call this payola or independent radio promotion—to increased demands on recording artists to perform or take part in radio promotions for little or no compensation. The implied penalty for not agreeing to pay higher tribute or to offer gratis services to the radio network, is decreased or no radio airplay. The pressure on artists and the labels to capitulate is real, and at times overwhelming.

Consolidation, and the resulting homogenization of playlists and centralized programming, has also greatly diminished an artist's reliance on breakout cities. Before consolidation, local DJs and program directors retained the power to create local, diversified programming. Sometimes a band's success would be solely due to a single DJ or program director compelled to play music that is overlooked elsewhere. This was one of the beauties of the pre-1996 system. A band or act may receive inordinate attention from a lone radio station. The interest in that city in the act may be enormous because of the attention of the lone station, and oftentimes this attention would act as a catalyst for stations in other cities to add the song to their playlist. This would have a cascading effect, and all of a sudden a new act would achieve national success that would have otherwise been denied it in today's radio world. The possibility of an act "breaking out" on a singular station or in a singular market has been severely diminished because of consolidation. The power to independently program—once a staple of the radio industry—has been replaced with more centralized programming that works against the dynamic of a "breakout city." Thus, many new acts will never achieve success due in part to this new restrictive atmosphere.

In addition to the problems that consolidation and centralized playlists have brought to individual artists, one should not overlook the cultural damage this is inflicted by these practices. One has to wonder whether any of the great musical trends in contemporary music could have happened in today's radio environment. Would the Motown or Stax sounds have ever been heard, would the Beach Boys have exploded out of Southern California, would the grunge sounds from Seattle ever ignited a new generation of music lovers. Many of the most important musical styles have been ones that developed and matured locally and were brought to the forefront by local radio stations, championing their local music.

I have always understood that there was to be an element of social responsibility between a radio station and the community that licensed that station the right to use the public airwaves. Whether that be by providing a strong local news service, fostering debate and dialogue of issues important to the community or promoting the arts created by and, or programmed and produced shows, where the only "local" aspect is the advertising sales team, are lacking in all of these responsibilities.

I am sure many of you are aware of the controversy surrounding the Dixie Chicks. This incident received a good amount of press coverage. As a result of statements made by a member of the Dixie Chicks at a concert, two radio networks, Cox and Cumulus, banned the Dixie Chicks from their playlists at a chain level, while many other stations across the country banned them at a local/station level, and many did not. In Colorado Springs, Colorado, two DJs were suspended for violating that ban when they played Dixie Chicks records.

Whether you agree with my client's statements or not, I know you support the First Amendment. Unfortunately, radio consolidation has provided radio networks with enormous opportunity to undermine free speech by boycotting records while they wage political wars with artists and labels. I appreciate that the networks also enjoy the same First Amendment rights as my clients. But we must remember that those who crafted the original limitations on ownership feared conglomerates exercising this kind of control over political speech. Ownership limits were intended, in part, as a way to prevent such a monopoly of thought and discourse. The public airwaves were to be used to promote a marketplace of ideas. A marketplace of ideas, the cornerstone of this democracy, can only be nurtured and sustained within a system promoting ownership diversity, not ownership consolidation. Even the perception of a radio network using power in this way, clearly demonstrates the potential danger of a system of unchecked consolidation that ultimately undermines artistic freedom and cultural enlightenment. What happened to my clients is perhaps the most compelling evidence that radio ownership consolidation has a direct negative impact on diversity of programming and political discourse over the public airwaves.

Some in the radio industry have suggested that the recent FCC rule changes actually restrict radio networks from continuing their drive toward consolidation. I am not convinced that is the case. Some serious analysts have concluded that the intricate market rule changes do not make it harder to acquire new stations. I am attaching to my testimony comments from the Future of Music Coalition setting forth their conclusions.

My personal view is that the recent FCC rule changes in market definition are relatively insignificant. This is not a local market problem. This is a national problem. As such, I hope the Committee will consider implementation of new "national" limits on ownership. Only by placing national limits on ownership, and perhaps limits that are more reflective of the pre-1996 world, will the harm caused by radio consolidation tend to diminish and hopefully disappear.

I hope the Committee will also explore the harm caused by radio networks owning affiliated live promotion companies, venues, agencies, public relations companies, and management companies. As my colleague Don Henley stated "This institutionalized conflict of interest places the artist in a vastly uncompetitive and weak position. What happens when an artist refuses to perform in a venue owned by the radio station or network? Will the artist records be played on the station or will the company reduce or eliminate radio airplay? Most artists cannot afford to find out."

The music industry and the radio industry must strive to create a healthier and more balanced relationship. Otherwise, the music industry, and particularly, the recording artists, will continue to suffer. I hope this Committee will help restore that balance. This can only be accomplished by stopping and perhaps even reversing the trend toward unchecked radio consolidation.

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

ATTACHMENT

FMC's Comments on the Radio Market Definition

As part of the changes to its media ownership rules announced on June 2, the FCC has altered its method for defining radio markets. According to a preliminary analysis being conducted by the Future of Music Coalition, the effect of the redefinition of radio markets is inconclusive. In some markets, the effective local ownership cap will be lower, but in other markets the effective local ownership cap will increase.

The FCC claims that by moving from contour to Arbitron measurements it is closing a loophole that radio companies have used to sidestep market ownership caps. This is true but it is only half the story. Based on the FCC's June 2 rulemaking, now commercial and non-commercial stations are counted to determine a market's size, whereas before only commercial stations were counted. By including non-commercial stations in the market count the FCC is measuring the same markets in a way that, in many cases, now increases the number of stations in each market. Thus in most markets the ceiling for setting ownership caps will rise. This will very

likely open the door to *more* "legal" purchases by those same large radio conglomerates that had previously employed the loophole that the FCC just eliminated.

Another concern is the status of markets where owners have exceeded the legal cap according to Arbitron definitions. Unless radio owners are forced to divest the stations owned in excess of the current caps, the recent policy change will not redress any of the harms of radio consolidation in dozens of markets.

The FCC eliminated the contour measurement to protect citizens from corporations that were using this loophole to get around the local market caps that were established with the 1996 Telecommunications Act. We applaud the FCC for protecting the public in this way and support this new standard. We do not, however, support the new market calculation that includes non-commercial stations. This second adjustment might eliminate the benefits the public would sustain from the institution of the first.

It is clear that more research is required to understand exactly what the FCC's policy change for radio will bring. It is the FCC's responsibility to bring forth actual numbers to prove that these changes reduce media concentration, not increase it.

Recording Artists' Coalition

Bryan Adams
Christina Aguilera
Gregg Allman
Beck
Bee Gees
Clint Black
Ruben Blades
Michelle Branch
Kathleen Brennan
Jonatha Brooke
Jackson Browne
Lindsey Buckingham
Jimmy Buffett
Solomon Burke
Mary Chapin Carpenter
Lester Chambers
Eric Clapton
Chris Cornell
David Crosby
Crosby Stills & Nash
Sheryl Crow
Dave Matthews Band
Neil Diamond
Dixie Chicks
Howie Dorough (Backstreet Boys)
Fred Durst
John Fogerty
Glenn Frey
Godsmack
The Estate of Benny Goodman
Robert Goulet
Nanci Griffith
Hanson
Emmylou Harris
Sophie B. Hawkins
Don Henley
The Estate of Woody Herman
Hootie & The Blowfish
Bruce Hornsby
Janis Ian
Enrique Iglesias
Jimmie's Chicken Shack
Billy Joel
Elton John
Tom Jones
Wynonna Judd
Jurassic 5
Toby Keith
Kenna
Carole King
Denny Laine
Frankie Laine
Linkin Park
Lisa Loeb
Jeff Lynne
Madonna
Aimee Mann
Tony Martin
matchbox twenty
Brian May
Martina McBride
Reba McEntire
Tim McGraw
John Mellencamp
Joni Mitchell
Sam Moore
Alanis Morissette
Randy Newman
Nickelback
Stevie Nicks
No Doubt
The Offspring
Ozomatli
Patti Page
Pearl Jam
Michael Penn
Tom Petty
Puddle of Mudd
Bonnie Raitt
REM
Kenny Rogers
Roy Rogers
Linda Ronstadt
Joe Sample
David Sanborn
Boz Scaggs
Timothy B. Schmit
Seal
Shea Seger
Social Distortion
Ronnie Spector
Bruce Springsteen
Staind
Static-X
Sting
Stone Temple Pilots
Donna Summer
Matthew Sweet
Steven Tyler
Tom Waits
Joe Walsh
Roger Waters
Dar Williams
Trisha Yearwood
Dwight Yoakam

The CHAIRMAN. Thank you very much, Mr. Renshaw.

Mr. Kolobielski.

STATEMENT OF ALEX KOLOBIELSKI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FIRST MEDIA RADIO, LLC

Mr. KOLOBIELSKI. Thank you, Chairman. Good morning. My name is Alex Kolobielski. I am President and CEO of First Media Radio——

The CHAIRMAN. I apologize for the mispronunciation of your name. I apologize.

Mr. KOLOBIELSKI. I am President and CEO of First Media Radio. It is a privately held radio company and I've spent a lifetime in small market radio. Since 2000, First Media has acquired 13 FM and AM small market radio stations in several mid-Atlantic states.

We have acquisitions pending in North Carolina and Virginia. All but three of our radio stations are in unranked, non-Arbitron markets.

The FCC's decision to change the definition of radio markets and its proposal to extend those changes to unranked markets will have disastrous effects on small market operators such as ourselves. Small market radio is unique. The biggest problems we face are attracting good staff and adequate capital.

Experienced employees avoid small markets, seeking more lucrative jobs in large cities. We must recruit from other fields and then we must offer extensive training. We are constantly at risk of having our stars recruited by large market stations. Small market operators also have difficulty attracting capital. Our sales volume and investor returns are usually more modest than those from large chains or markets.

At the same time, small market radio plays a very important role in society. We are truly the voices of our local communities and are dedicated to serving local needs. On average, 75 percent of our programming is locally originated. Over 90 percent of our advertisers are local firms. We go door to door, store to store.

Providing quality, locally originated radio programming is expensive. We must employ on-air talent for most shifts, and our advertising rates are a fraction of those in larger markets. Yet our fixed costs are the same as in large markets.

A contour-based approach to defining markets is fair for all stations, no matter what the market size. It consistently measures station signal reach and the confines of advertising markets. Moreover, contours are seldom changed and only after extensive FCC review. With a contour-based approach, competitors can rest assured that changes will occur infrequently, as part of an FCC-regulated process.

The FCC's decision to adopt an Arbitron markets definition in all ranked markets will make the legality of existing station clusters vulnerable to changes in Arbitron methodology, which do not take place in an open public forum. Moreover, Arbitron subscribers may designate whether they are to be listed in one Arbitron market or another. While the FCC's new rule says an owner must wait 2 years before it can rely on the benefit of such changes, the FCC proposal does not consider the detrimental unintended consequences of such changes on other market operators who may unexpectedly find the number of stations in their market reduced, throwing them into noncompliance.

For non-Arbitron markets, the FCC has proposed to abandon the contour-based approach and substitute definitions based on political or cellular market boundaries that bear no relationship to radio signal strength or advertising markets, putting small market radio operators at risk for unintended consequences. In these smaller markets, the FCC has said it will temporarily continue to utilize contours to define markets, adopting protections to avoid anomalies like those in Minot, North Dakota.

The FCC's new market definition and its proposed change for non-Arbitron markets will drastically disrupt the radio industry. New entrants must have the opportunity to develop efficient clusters of stations under the same rules previously used to build

mega-companies. Large mega-owners can spread the risk of a major change across markets. Small owners cannot.

We suggest the following: First, at least in small, non-Arbitron markets, allow radio operators to continue to define markets based on contour overlaps. If some change is necessary, make permanent the interim policy the FCC has proposed for small unranked markets. That approach involves continued use of contours, but with adjustments that address alleged problems with the contour system. The FCC excludes certain stations a buyer proposes to buy from the total number of stations counted in defining a market.

In addition, to address the Minot problem, the FCC excludes from the market count any station that has a transmitter site more than 58 miles from the area of proposed common ownership, more accurately depicting the market.

Second, do not apply any new modified market definition approach to pending deals filed before June 2 that were negotiated based on the old rules. Retroactive application is particularly tough on small companies.

Finally, grandfather all nonconforming clusters. For small companies, there should be unlimited opportunities to grow and transfer their clusters intact. Any other approach would create uncertainty, instability, and lower station values.

Thank you for your time. I am available for any questions you may have about small market radio.

[The prepared statement of Mr. Kolobielski follows:]

PREPARED STATEMENT OF ALEX KOLOBIELSKI, PRESIDENT AND CHIEF EXECUTIVE OFFICER, FIRST MEDIA RADIO, LLC

My name is Alex Kolobielski, and I am the President and CEO of First Media Radio, LLC ("First Media"), a privately held radio broadcasting company headquartered on Maryland's Eastern Shore. I have worked in broadcast programming, news, production, sales, and station management in small market radio all my professional life.

Since January 2000, First Media Radio has acquired 13 FM and AM small market radio stations in Maryland, Pennsylvania, West Virginia, and North Carolina. In addition, we have radio station acquisitions pending in North Carolina and Virginia. With the exception of three of our stations, all First Media's radio stations are located in unranked, non-Arbitron markets. (A listing of all of First Media Radio, LLC's radio stations is attached.)

Given my small market radio background, I never in a million years would have dreamed that I would be called upon to appear before Congress to discuss the Federal Communications Commission's ("FCC's") regulation of radio ownership. But I feel so strongly that the FCC's recent decision to alter the definition of radio markets and possibly extend those changes to very small radio markets will have such disastrous effects on small market radio operators like First Media that I jumped at this opportunity.

Small market radio, which is generally the province of smaller companies and ignored by the large radio consolidators, is unique. The biggest problems faced by small market operators are attracting good staff to operate profitably and adequate capital to grow. Experienced radio employees usually shy away from small markets, seeking more lucrative opportunities in larger cities. We generally have to recruit our staff from other fields and then train them extensively in the details of radio sales and operations. Once our "stars" develop, we are constantly at risk of having them recruited by stations in larger markets. Small market operators also find it difficult to attract capital since the volume of sales and the ultimate pay-offs for investors are usually more modest than those available from stations in large chains or larger markets.

At the same time, small market radio plays a very important role in our society. Small stations in small markets are truly the voices of our local communities. First Media, like many of our counterparts, is dedicated to serving local needs. On aver-

age, 75 percent of the programming we present every day on our stations is locally originated. Over 90 percent of our advertising is drawn from businesses in the communities we serve. All of our stations have an "open mike" policy, and we encourage and air viewpoints from our listeners.

Providing such quality, locally originated radio programming is expensive. We must employ on-air talent for all our locally originated shifts. On the sales side, we have between four and six local sales reps per market cluster. The advertising rates our markets will bear are a fraction of those in nearby large markets even though our fixed costs for electricity, equipment, and software are the same as those faced by stations in the larger markets. For instance, the stations in our closest cluster to the Nation's Capitol, Easton, Maryland, find that for a:60 spot they can charge no more than 5 percent of the rate charged by the Top 20 stations located in Washington, D.C.

As you know, since 1992, the FCC has been defining radio markets by reference to radio station contours. This definition was introduced at the time the FCC liberalized its local radio ownership rules to allow one entity to own more than one AM and one FM station per market. When Congress expanded the local radio caps in 1996, the FCC retained this contour-based approach to define which stations constitute a market for purposes of applying the new caps.

A contour-based approach to defining markets is fair for all stations, no matter what the market size. It consistently measures the strength and reach of a particular station's signal and the confines of its advertising market. Moreover, contours may only be changed after an extensive FCC process involving the submission, review, and then grant of construction permit applications. This process usually takes at least six months before a radio owner receives FCC permission to modify its facilities. The physical construction usually takes many more months. Thus, with a contour-based approach, other competitors in a market usually have ample warning before changes occur, and they can also rest assured that changes will only take place as part of an FCC supervised and regulated process.

The FCC has now decided to define radio markets in Arbitron ranked markets based on Arbitron's market definitions. This approach will make the legality of existing station clusters vulnerable to changes in Arbitron methodology, which unlike the FCC's construction permit process, do not take place in an open public forum. Moreover, stations subscribing to Arbitron may designate whether they are to be listed in one Arbitron market or another. While the FCC's new proposal says a group owner must wait two years before it can rely on the benefit of any such change to expand the number of stations it may own, the FCC proposal does not consider the detrimental and unintended consequences such changes may have on other station clusters in the market. Those stations may easily find the number of stations in their market reduced and themselves thrown into noncompliance through no fault of their own.

For smaller communities in non-Arbitron markets, the FCC has also proposed to abandon the contour-based approach. Instead, the FCC has launched a rulemaking to substitute definitions based on political boundaries, or even cellular market boundaries, neither of which bear any relationship to radio broadcast signal strength or the advertising markets stations' serve. Such a system would put small market radio operators at risk for unintended consequences over which they have no control. On an interim basis, in these smaller markets, the FCC has said it will continue to utilize contours to define markets but has put in place several protections to avoid the anomalies that occurred in some of the political "hot potato" situations, like Minot and Pine Bluff that have been discussed extensively in the trade press.

The FCC's new market definition and its proposed change for non-Arbitron markets will drastically disrupt the radio industry, particularly since the changes are being put in place at a time when, unlike 1992, the FCC is not liberalizing the local radio caps. The industry has adapted to the current radio market definition, and entities such as First Media, that entered the market since 1996, have based their competitive strategies on the existing approach. These new entrants and other growing companies must have the opportunity to develop efficient clusters of stations under the same rules that have been used to build the existing mega-companies. Small market and small company players, in particular, will be disproportionately harmed by any change in market definition. Large, mega-owners can spread the risk of a major change across one or more of their markets. Small owners seeking to compete with them cannot. The loss of a single station or a small company's inability to transfer intact even a single cluster could have devastating effects.

So, if Congress were to send any kind of signal to the FCC or adopt legislation in this area, what is it that small market players, like First Media, would want?

- First, at least in small markets outside of ranked Arbitron markets, allow radio operators to continue to define markets based on contour overlaps just as we do today. (While I am testifying principally about small market concerns, as a matter of policy, we think the FCC should have kept the contour-based approach in all markets.)
- If Congress disagrees and believes some changes to the contour-based approach are necessary, we think it should make permanent the interim policy the FCC has proposed for small, unranked markets. That approach involves continued use of contours but with adjustments that address what have been seen as some of the more troublesome aspects of the contour-based system. Under these adjustments, the FCC, to address the Pine Bluff problem, will exclude certain stations a buyer proposes to buy from the total number of stations that it counts in defining a market. In addition, to address the large signal anomaly, the Minot problem, the FCC will exclude from the count of stations in a market any station that has a transmitter site more than 92 kilometers or 58 miles from the area of common ownership of the stations being acquired, an approach that accurately depicts stations' true markets.
- Second, do not apply any new modified market definition approach to pending applications that were filed before June 2, 2003. Those deals were structured and negotiated based on the rules that applied before June 2. To apply the new standards, as the FCC has decided to do, to pending deals would be unfair to all parties. Such retroactive application of new rules is particularly tough on small companies that cannot spread the disadvantages that may result over numerous properties.
- Finally, grandfather all non-conforming clusters. At least for smaller companies, there should be unlimited opportunities for them to bring in new investors, grow, or go public and at the same time be able to transfer their station clusters intact. Any other approach would create uncertainty and instability and lower station values.

I appreciate the opportunity to appear before you today, and I am available to answer any questions you may have about small market radio.

First Media Radio, LLC's Radio Stations [1]

WEMD(AM), Easton, Maryland
WCEI–FM, Easton, Maryland

WZWW(FM), Bellefonte, Pennsylvania (#246 State College, PA)
WLAK(FM), Huntingdon, Pennsylvania
WIEZ(AM), Lewistown, Pennsylvania
WMRF–FM, Lewistown, Pennsylvania
WOWQ(FM), DuBois, Pennsylvania

WJLS(AM), Beckley, West Virginia (#282 Beckley, WV)
WJLS–FM, Beckley, West Virginia (#282 Beckley, WV)

WRMT(AM), Rocky Mount, North Carolina
WSAY–FM, Rocky Mount, North Carolina
WDLZ(FM), Murfreesboro, North Carolina
WWDR(AM), Murfreesboro, North Carolina

First Media Radio, LLC's Proposed Acquisitions

WLGQ(FM), Emporia, Virginia
WSMY–FM, Alberta, Virginia

WPTM(FM), Roanoke Rapids, North Carolina
WCBT(AM), Roanoke Rapids, North Carolina
WSMY(AM), Weldon, North Carolina
WZAX(FM), Nashville, North Carolina
WYTT(FM), Gaston, North Carolina
WKTC(FM), Pinetops, North Carolina

The CHAIRMAN. Thank you, Mr. Kolobielski. Thank you for being here today and thank you for representing a very important voice in America.

[1] Unless shown below, the First Media stations are located outside of Arbitron markets.

Mr. Dickey, Mr. Renshaw referred to your banning, your network banning the Dixie Chicks after comments made by one of the Dixie Chicks concerning the war in Iraq. What do you have to say about that?

Mr. DICKEY. Mr. Chairman, first of all, Mr. Renshaw refers to radio companies as networks and we are not networks. We are a confederation of 270 individual stations in 55 cities. There is nothing network about our operation. We own and operate individual radio stations.

Now, with respect to the Dixie Chicks, some time when the Dixie Chicks were over in Europe on their tour, and I believe it was the London stop—I am not quite sure——

The CHAIRMAN. We are aware of what happened with the Dixie Chicks. Please proceed.

Mr. DICKEY. All right. After the remarks were made, there was a groundswell of negative reaction by our listeners against the band, and we had never seen anything like it before. Calls were coming in to Atlanta from our individual program directors throughout the country saying that there was—the "hue and cry" from our listeners regarding those remarks was unprecedented and, in their words, "over the top."

So we had to make a decision as to what we were going to do about it and, after conferring with our program directors in the field—these are the people who make the decisions on a local level—we made the decision that it was not in the best interests of our country stations at that point in time to be playing the Dixie Chicks' records.

Now, I say that, I say that also realizing that at the same time our Top 40 radio stations in the same markets, in the same company, continued to play the Dixie Chicks. We did not have the hue and cry from our listeners. Much the same way elected officials listen to their constituents, we listen to our listeners. They did not complain about the Dixie Chicks, so we continued to play them.

The CHAIRMAN. But you made a decision from corporate headquarters that was binding on your DJ's?

Mr. DICKEY. Well, it was on our program directors. They are the ones that make the decisions.

The CHAIRMAN. On your program directors, who set what the program is.

Mr. DICKEY. Well, Mr. Chairman——

The CHAIRMAN. And just prior to that, you say that you are a group of independent radio stations. That is a total contradiction, Mr. Dickey.

Mr. DICKEY. Well, I would respectfully disagree, because what we have—the purpose of our corporate headquarters is to provide quality control——

The CHAIRMAN. Did you or did you not order from corporate headquarters that the program managers not play the Dixie Chicks' music?

Mr. DICKEY. After a groundswell of response——

The CHAIRMAN. Why did you not leave it up to the stations themselves, if you are just a confederation of stations?

Mr. DICKEY. Well, sir, we did at the end of the day.

The CHAIRMAN. Oh, at the end of the day. But at the beginning you ordered the Dixie Chicks' music not to be played.

Mr. DICKEY. Well, if I can respond.

The CHAIRMAN. I am not preventing you from responding, Mr. Dickey.

Mr. DICKEY. All right, sir. The program directors on a local level came back to us. We did not initiate this. They came back to us and said the hue and cry——

The CHAIRMAN. No, but you made the decision.

Mr. DICKEY. Just to give you an example of how volatile this was——

The CHAIRMAN. Did you make the decision or not?

Mr. DICKEY. Yes, we did make the decision, based on their response.

The CHAIRMAN. Suppose, Mr. Dickey, that I or any member of the U.S. Senate said or did something that your program managers found incredibly offensive. Would you then make a decision that our name—that my name not be mentioned on your news programs because there was such a hue and cry?

Mr. DICKEY. No, sir, we would not.

The CHAIRMAN. You would not do that?

Mr. DICKEY. No, that is a different——

The CHAIRMAN. Then why would you do that to a group of entertainers?

Mr. DICKEY. This was a group we were playing five or six of their records on the air on our country stations at that time. As I say, just to give you an example, when the Dixie Chicks made their interview—we invited the Dixie Chicks to come on, on the air, and talk to our people and give their side of the story. They did an interview with Bob Kingsley.

ABC radio network and their host Bob Kingsley, ABC radio network called Cumulus to say: Kingsley would like to do an interview with the Dixie Chicks after the 20/20 interview and we are not sure that we even want to touch this; is this going to hurt Kingsley's reputation in the industry? That is how bad it was at that point.

We recommended that Kingsley do the interview and then Cumulus aired the interview, which is the Dixie Chicks' side of the story, not once, but twice on all of our 50 country radio stations, to get their side of the story out. And after we did, Mr. Chairman, the hue and cry was even greater to keep them off the air.

Then when they returned from Europe and started their tour in the U.S., we told the program directors it was up to them and they could do whatever they wanted.

The CHAIRMAN. Why did you not say that to start with, that it is up to the program managers themselves? That is the crux of the problem, Mr. Dickey. A decision was made at corporate headquarters that was binding on the program managers. That is what is wrong here, Mr. Dickey. If the program managers themselves had made the decision, it is one thing. But when it comes down from corporate headquarters, then that in my view is an incredible, incredible act.

I was more offended or as offended as anyone by the statement of the Dixie Chicks, but to restrain their trade, restrain their trade because they exercised their right of free speech, to me is remark-

able. It is remarkable. And it is an argument, it is a strong argument, about what media concentration has the possibility of doing, because if someone else in another format offends you and there is a huge hue and cry and you decide to censor those people, my friend, the erosion of the First Amendment in the United States of America is in progress.

Mr. Renshaw, do you have anything to say about that?

Mr. RENSHAW. I appreciate your remarks, Senator. One of the things that we had always believed was that there is a degree of social responsibility between the radio stations and the public. The radio station is, after all, as I understand it a licensee of a public asset and is utilizing the publicly owned air waves to conduct business.

When all of the uproar was going on, the one thing that we had reached out to a number of the stations and to a number of the radio groups, some of whom were very, very understanding and very cooperative, was we explained to them what was going on, we explained to them why they were getting so many phone calls, we explained what was happening, which was that there was an organized campaign going on to vilify the group in the eyes of the media.

A lot of people, a lot of radio groups, responded very responsibly.

The CHAIRMAN. Mr. Renshaw, did you receive threats and e-mails concerning your artists and the people you represent?

Mr. RENSHAW. Oh, we have had everything from death threats——

The CHAIRMAN. What about from the broadcasters themselves?

Mr. RENSHAW. If I may, I will read you an e-mail. This is a——

The CHAIRMAN. A broadcaster?

Mr. RENSHAW. This is an e-mail dated April 22, from a gentleman by the name of Mr. Jay Michaels, who is a Program Director/Music Director with Clear Channel in Tuscaloosa, Alabama. I do not actually know Mr. Michaels. I received this e-mail out of the blue the day after an artist by the name of Bruce Springsteen published a statement on his website in support of the Dixie Chicks and their First Amendment rights.

I turned on my computer that morning and I was greeted by the following e-mail from a Clear Channel program director: "Maybe Bruce didn't read what they said. Let him say it and watch what happens. Jay Michaels, Program Director, Clear Channel."

This, I could not believe it when I had this. I mean, now I have—now I'm being warned by radio as to what will happen if certain people speak up about certain things.

I forwarded that e-mail to Mr. Springsteen and his manager and I informed Mr. Michaels that I had received his warning and I had passed it on to the people that needed to receive it.

The CHAIRMAN. My time has expired. We will have another round. I would note again, the National Association of Black-Owned Broadcasters support the amendment that was passed here, which would force divestiture of those that exceed ownership limits. I am sure the National Association of Broadcasters, a wholly owned subsidiary of Clear Channel, will not support that amendment.

But we will move to Senator Lautenberg, and I will try and adhere to the time and we will have a second round.

Senator LAUTENBERG. Thank you, Mr. Chairman. First I ask consent, unanimous consent, to insert my opening statement for this panel and an article written by Paul Krugman in the *New York Times* dated March 25, 2003.

The CHAIRMAN. Without objection.

[The information referred to follows:]

The New York Times—Published: March 25, 2003

"CHANNELS OF INFLUENCE"

By PAUL KRUGMAN

By and large, recent pro-war rallies haven't drawn nearly as many people as antiwar rallies, but they have certainly been vehement. One of the most striking took place after Natalie Maines, lead singer for the Dixie Chicks, criticized President Bush: a crowd gathered in Louisiana to watch a 33,000-pound tractor smash a collection of Dixie Chicks CD's, tapes and other paraphernalia. To those familiar with 20th-century European history it seemed eerily reminiscent of . . . But as Sinclair Lewis said, it can't happen here.

Who has been organizing those pro-war rallies? The answer, it turns out, is that they are being promoted by key players in the radio industry—with close links to the Bush administration.

The CD-smashing rally was organized by KRMD, part of Cumulus Media, a radio chain that has banned the Dixie Chicks from its playlists. Most of the pro-war demonstrations around the country have, however, been organized by stations owned by Clear Channel Communications, a behemoth based in San Antonio that controls more than 1,200 stations and increasingly dominates the airwaves.

The company claims that the demonstrations, which go under the name Rally for America, reflect the initiative of individual stations. But this is unlikely: according to Eric Boehlert, who has written revelatory articles about Clear Channel in Salon, the company is notorious—and widely hated—for its iron-fisted centralized control.

Until now, complaints about Clear Channel have focused on its business practices. Critics say it uses its power to squeeze recording companies and artists and contributes to the growing blandness of broadcast music. But now the company appears to be using its clout to help one side in a political dispute that deeply divides the Nation.

Why would a media company insert itself into politics this way? It could, of course, simply be a matter of personal conviction on the part of management. But there are also good reasons for Clear Channel—which became a giant only in the last few years, after the Telecommunications Act of 1996 removed many restrictions on media ownership—to curry favor with the ruling party. On one side, Clear Channel is feeling some heat: it is being sued over allegations that it threatens to curtail the airplay of artists who don't tour with its concert division, and there are even some politicians who want to roll back the deregulation that made the company's growth possible. On the other side, the Federal Communications Commission is considering further deregulation that would allow Clear Channel to expand even further, particularly into television.

Or perhaps the quid pro quo is more narrowly focused. Experienced Bushologists let out a collective "Aha!" when Clear Channel was revealed to be behind the pro-war rallies, because the company's top management has a history with George W. Bush. The vice chairman of Clear Channel is Tom Hicks, whose name may be familiar to readers of this column. When Mr. Bush was governor of Texas, Mr. Hicks was chairman of the University of Texas Investment Management Company, called Utimco, and Clear Channel's chairman, Lowry Mays, was on its board. Under Mr. Hicks, Utimco placed much of the university's endowment under the management of companies with strong Republican Party or Bush family ties. In 1998 Mr. Hicks purchased the Texas Rangers in a deal that made Mr. Bush a multimillionaire.

There's something happening here. What it is ain't exactly clear, but a good guess is that we're now seeing the next stage in the evolution of a new American oligarchy. As Jonathan Chait has written in The New Republic, in the Bush administration "government and business have melded into one big 'us.' " On almost every aspect of domestic policy, business interests rule: "Scores of midlevel appointees. . .now oversee industries for which they once worked." We should have re-

alized that this is a two-way street: if politicians are busy doing favors for businesses that support them, why shouldn't we expect businesses to reciprocate by doing favors for those politicians—by, for example, organizing "grass roots" rallies on their behalf?

What makes it all possible, of course, is the absence of effective watchdogs. In the Clinton years the merest hint of impropriety quickly blew up into a huge scandal; these days, the scandalmongers are more likely to go after journalists who raise questions. Anyway, don't you know there's a war on?

Senator LAUTENBERG. I was interested, Mr. Dickey, in your earlier, your opening statement about how you were able to better bring service to localities with this larger group of—I am afraid to use the word "network" because you shied away from it so strongly. The fact of the matter is that you did talk about, and I think kind of proud of the fact, that this larger company which you and your family own were able to influence the quality of local programming.

Well, is you or ain't you? I mean, do you have control there or are they a bunch of free-floating stations that make their own decisions?

Mr. DICKEY. Senator Lautenberg, the way we program on a local level is we conduct extensive market research. So we constantly poll our listeners to determine what they are looking for, what music they like. Similarly, we test music in all of our markets. If a song comes back with 20 percent burn, which means listeners are tired of hearing it, one-fifth of the listeners, we pull that off the playlist.

That is not censorship. It is just that we try to deliver to our listeners what they want to hear. And that is conducted on a local level. So all of our play lists reflect the local tastes of our local listeners.

Senator LAUTENBERG. But you did not object to the banning of the Dixie Chicks by KRMD, one of your stations. Did you, pursuant to the Chairman's question, did you, your station, help organize the smashing by a 33,000 pound tractor, smash a collection of Dixie Chicks CDs, tapes, and other paraphernalia, which is alleged in the article written by Paul Krugman, that that is the way it was done? Did that also come with your knowledge? It was obviously a promotional stunt of sorts.

Mr. DICKEY. That is correct. No, sir, that did not come with our knowledge. That was done—here is the perfect example. That was done on a local level by our crew at KRMD in Shreveport, Louisiana, where the hue and cry seemed to be particularly greater than in a lot of other of our markets, where the listeners were showing up at remote broadcasts where we were selling cars, helping car dealers to sell cars, and throwing the CDs away in front of us.

So one of our program directors in that market came up with the clever idea, if this is what our listeners are doing, let us allow them to do it all together en masse. So it was a radio promotion to enable them to do that.

But that was not sanctioned nor was that developed or strategized by corporate. It is another example of how these individual markets behave and act on their own.

Senator LAUTENBERG. Well, since they are under our ownership and guidance, I would have thought that you had advance knowl-

edge, A; and B, that somebody at headquarters kind of thought this was a good idea. Did it pass muster at the home office?

Mr. DICKEY. No, sir, that particular one did not, Senator. As I say, they did that on their own volition and then we heard about it.

You know, one of the things, the nice things about having 55 cities and 270 radio stations is the ability to share ideas and communicate and provide our people with a chance to move from one market to another and give them upward mobility in the industry. The level of communication, because we have all of our country PD's, for instance, program directors, on the air—excuse me—on a conference call on a regular basis, they share the ideas and they talk about what is going on in their markets and how the listeners are responding to these remarks.

As I say, this was no censorship by Cumulus or something that top management felt, because we played them on our Top 40 stations in the very same markets. So we did not censor this group nor this band. This was driven by the listeners and we were responding to their hue and cry.

To Chairman McCain's question, why did it happen at that time, this was unprecedented that we ever did anything like this from Atlanta and asked that we put this ban on the group for a short time, and it was 30 days. The crisis was so great that ABC was even calling us saying: Should we even interview this group? Is that going to hurt Bob Kingsley, who is the country commentator? Should we even talk to them?

We asked them to do so and then we aired it on our stations to give their side of the story, and our listeners still did not buy it and were still very upset.

Senator LAUTENBERG. At what point do we in this society of ours, this free speech, freely speaking society, run the risk of curbing that free speech if we cave in to one group or another group? Because the cardinal principle here is do people have a right to express themselves, to express differences?

We know very well that lots of our people were on the ground fighting, the country thought it was the thing to do, and people like John McCain did whatever they did bravely, even if they disagreed with the policy. The fact of the matter is that our policy is to permit free speech whenever it occurs, and if you cannot stand the heat then, as they say, you know, you have got to get out of the kitchen.

I understand the objection of the other members of the panel very clearly. I am worried about this amassing of power, and what I did not quite get in your commentary was you were concerned about Clear Channel and that is kind of the pot calling the kettle black. I mean, you want more opportunity, but you do not want them to have more opportunity, if I understood it.

Mr. DICKEY. "Them" meaning Clear Channel?

Senator LAUTENBERG. Yes.

Mr. DICKEY. Well, Clear Channel has 1,000 more radio stations roughly than we do and about $3.2 billion more revenue than we do. So we are a very, very small potato compared to that company.

What we were saying is that the new FCC rules changed the ground rules that have enabled them to assemble that great plat-

form that they operate and we would like to be able to continue to do so to compete against that scale, in order to compete for capital and talent.

Senator LAUTENBERG. Well, what do you think Mr. Kolobielski's view is relative to Cumulus? You think they are a pretty good-sized company?

Mr. KOLOBIELSKI. Yes, Cumulus is a good-sized company, Senator.

The CHAIRMAN. Very good-sized. If you had a chance to buy Clear Channel, I bet you would do it.

Thank you very much, Mr. Chairman.

The CHAIRMAN. Senator Sununu.

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

Senator SUNUNU. Thank you, Mr. Chairman.

I would like to pick up on that point because as I listened to the testimony of both Mr. Kolobielski, who has the best voice of any witness we have ever had testify, and Mr. Dickey, both talked about unintended consequences. I think that is a very important phenomenon here, that as the FCC looks to change its regulations, any time we look to change regulations, we must be mindful of what we are attempting to achieve and what the unintended consequences may be.

In trying to address that, you listed a number of recommendations: allowing those smaller markets to use the contour as opposed to Arbitron. I think you pointed out one of the weaknesses that I see, what little I know about the Arbitron methodology, is one of the subscribers can actually petition to move from one area to another. That is obviously somewhat arbitrary and driven by people with a vested interest. That is a concern to me.

You listed a number of recommendations. My question is really for Mr. Dickey regarding those recommendations or those ideas or recommendations that you would support and that you feel would limit the unintended consequences of this new regulation.

Mr. DICKEY. Well, Senator Sununu, what we are advocating is that there are no changes. We are advocating, with the exception of that 58-mile contour that cures the anomalies, the infamous Minot and the Pine Bluff—so in other words, 8,000 or so transactions have been consummated under the old rules that date back to 1991 to consolidate the industry, with only a few anomalies to show for it.

So we think the industry has consolidated pretty efficiently, save a few anomalies, and that would cure it.

Senator SUNUNU. So your preference would be to maintain the market definitions using contour?

Mr. DICKEY. Yes, sir, with that filter, with the 58 miles.

Senator SUNUNU. And would that be your preference as well, Mr. Kolobielski?

Mr. KOLOBIELSKI. Yes, with contours and with the 58-mile exclusion.

Mr. DICKEY. We are in agreement on that.

Senator SUNUNU. I never thought I would hear quite so much about Minot, North Dakota. I never thought that it would be such a power in the world of media. It absolutely is.

But barring that reversion to contours, you would support the recommendations that you made?

Mr. KOLOBIELSKI. Yes, Senator.

Senator SUNUNU. Do you have any objections to the recommendations that he made?

Mr. DICKEY. No, sir. We are on board with it exactly.

Senator SUNUNU. Thank you.

Mr. Dickey, do you view the decision that was made by Cumulus and by the program directors in your country stations not to air the Dixie Chicks' music as a political decision or a business decision?

Mr. DICKEY. Purely as a business decision.

Senator SUNUNU. And at the end of the day, how many stations kept their music off the air?

Mr. DICKEY. Well, we have about 50 country radio stations and they were all off the air for about a month, and then when the tour resumed, I think it came back into South Carolina——

Senator SUNUNU. All 50 country stations participated at some level?

Mr. DICKEY. At some level they did. And then when they had the option of going back on, in other words when there was no restriction on it, about a third of them elected to stay off of it because they continued to poll their listeners with websites and telephone calls and the listeners were vehemently opposed to them.

Senator SUNUNU. Mr. Renshaw, do you think that program directors ever have the right to select the music that they play or to select their programming based on the quality of the songs, the actions, activities, or public statements of the entertainers?

Mr. RENSHAW. Absolutely, I do, yes. I mean, I think a program director has, obviously has the right to listen to music and to look at an artist and to establish whether the music and the artist and what is going on with that is appropriate.

Senator SUNUNU. I guess, to what degree was that not exactly what was done? Whether this was a bad business decision, a dumb move, bad PR, that may or may not be the case, but to what extent is that not what these program directors or this company, big or small, was doing?

Mr. RENSHAW. What happened, what happened I think with the Dixie Chicks was a little bit different from that. This was, this clearly entered into the realm of an issue of politics and free speech. This was not a situation where it was, you know, a group of people behaving badly, getting into trouble. No. This was they had unwittingly entered into the world of politics.

What was happening at the local radio station level was the radio stations were targeted by a group of right wing political Internet lobbies who—and we showed this to the radio stations—who went out and manipulated the polls and the websites.

Senator SUNUNU. Let me just be clear. I do not care what their ideology was, right, left. It makes no difference to me. I am just trying to get at the issue of whether or not it is or is not right for any program director to make this decision based on someone's ac-

tions or public statements or, obviously, the political content of their music.

Now, originally you said yes, but then you seemed to say but not in this case. Which is it?

Mr. RENSHAW. Personally, I do not believe that radio programmers should be in the business of political censorship. I do believe that they should be in the business of encouraging and promoting political discourse, but I do not think that is the same as political censorship. I think in this case there was a great deal of political censorship occurring.

Senator SUNUNU. So you do not think that program directors should have the right to limit the play based on the activities or public statements or political message of the music that the entertainer has created?

Mr. RENSHAW. I do not believe that they should be in the political censorship business.

Senator SUNUNU. I do not think—I am belaboring this point because it is an important one. Either they have the right to make that decision or they do not. And obviously, if they do not then we are arguing about a First Amendment right to have your new record played, whether you are the Dixie Chicks or Marilyn Manson or any other group.

Mr. RENSHAW. Right. As I said, I believe that they have the right to make the decisions about whether they do play something or they do not play something. But I think that what we were seeing that was going on at the time was people were making decisions in a politically censuring mode. It did not have anything to do with the music.

At the time what they were doing was they were banning a record that was a song about a soldier who had gone off and lost his life in Vietnam. It was the number one record in the country at the time, that could not be more pro-troops, more supportive of the American military, and that song was pulled overnight. It was not pulled for any other reason than as an act of political censorship.

Senator SUNUNU. Mr. Dickey, did you pull a specific song or did you pull all the music?

Mr. DICKEY. No, we pulled the Dixie Chicks from our country stations only, as I said. They still remained on the air on our Top 40 stations.

Senator SUNUNU. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. You know what is remarkable. In all due respect, Senator Sununu, it was not the programmers that made the decision. The decision was made by Mr. Dickey at their headquarters. If the programmers or program managers themselves had made the decision, that in itself is one thing. But for a 30-day moratorium to be imposed at corporate headquarters, I do not think there has ever been anything quite like that, at least not in the years that I have been a Member of this Committee.

Mr. DICKEY. Mr. Chairman.

The CHAIRMAN. Go ahead, please, Senator Dorgan.

Senator SUNUNU. I think that was Mr. Dickey.

Mr. DICKEY. I think that mischaracterizes it. As I mentioned, this was a collaborative decisionmaking process from all of our program directors.

The CHAIRMAN. A collaborative decision process? Was the decision made at corporate headquarters for a 30-day moratorium or not?

Mr. DICKEY. Yes, sir, after the vote from the program directors to do so. Everybody fell in line. This was a unanimous, overwhelming decision.

Senator BOXER. "Everybody fell in line."

The CHAIRMAN. "Fell in line," I understand.

Senator Dorgan.

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

Senator DORGAN. Mr. Chairman——

The CHAIRMAN. I am sure we are belaboring this issue. There are a lot broader issues here. But this is really quite something. Senator Dorgan.

Senator DORGAN. Mr. Chairman, having worked for a fairly large corporation at one point in my life, I can tell you that once a decision is made everyone falls in line. That is the point of working for the company.

But let me ask this question, and it is a hypothetical question. Assume for a moment, unlikely as it would seem, that my friend Senator Sununu said something that was incomprehensibly offensive, just incomprehensibly offensive. Could you, could you, as a corporate entity decide, say we do not want Mr. Sununu on our stations for the next 30 days? We find what he said incomprehensibly offensive and we have decided he is not going to be on our stations in the next 30 days; could you make that decision?

Mr. DICKEY. Senator, I think you just saw that happen with the Opie and Anthony Show in New York City when they made the reference to something very vulgar in St. Patrick's Cathedral. So I think that——

Senator DORGAN. The answer is yes?

Mr. DICKEY. No, sir. You asked me a question about Cumulus. The answer would be no. As I said to Mr. Chairman McCain that this had never happened before, this was a groundswell based on our listeners.

Senator DORGAN. I understand that.

Mr. DICKEY. It is important to take that on board.

Senator DORGAN. Let us assume there is a groundswell, let us assume there is a groundswell of your listeners. And you have used the word "hue and cry" five times this morning. Let us say there is a hue and cry as well, that what my friend Senator Sununu did was incomprehensibly offensive, and you, by God, just do not want him on our stations for the next 30 days. What would prevent you from making those decisions?

Mr. DICKEY. As a recording artist? I am not sure I understand the analogy. As a recording artist, if he was——

Senator DORGAN. No, I am just saying that you do not want him interviewed on your stations for the next 30 days. You found what

he did offensive. What would prevent you from making that decision?

Mr. DICKEY. We would not make that decision. If we found him offensive we would have him on the air because it would create controversy, discourse, and dialogue, and it would be healthy.

Senator DORGAN. And why was the same not true, for example, of a singing group that you found offensive?

Mr. DICKEY. Because our listeners asked us to pull the group.

Senator DORGAN. And if your listeners asked you to pull references and interviews for Senator Sununu, would you at that point decide that your listeners were correct and you as the company are going to make that decision?

Mr. DICKEY. I do not think the analogy holds.

Senator DORGAN. Why do you not think that?

Mr. DICKEY. Because he is not a recording star.

Senator DORGAN. So then I understand it. Your corporate policy applies only to recording stars; is that correct?

Mr. DICKEY. No, we do not have a corporate policy on this issue.

Senator DORGAN. All right, let me ask it a different way. You support localism, I assume, because one of the basis for owning a radio station is you have to support localism, competition, and diversity. Let me ask how this squares with the issue of localism when in fact, instead of letting your local program directors at the stations make the decision, you had apparently a vote and then you made a corporate decision that, we are going to keep these artists off the air for 30 days.

I ask this question, not because it has anything to do with the artists; it has to do with the company and why you might do in the future, not with respect just to entertainers, but others. So why, if you believe in localism, why would you not have simply let the local stations make the judgment?

Mr. DICKEY. Well, in essence we did, Senator Dorgan. There was not a—there was not a decision to keep them off the air for 30 days. We monitored this situation on a daily basis with all of our program directors.

This is where I think everybody is misunderstanding. This was a collaborative effort that went on every day with all of our program directors across the country as they got feedback in various polls via telephone, websites, and in talking with their listeners on the request lines, to ask, and so we can serve our communities and deliver what they are looking for.

They did not want to hear the Dixie Chicks and we simply responded to their needs on a local level. It just so happened that this was a unanimous feeling across the country. However, in our Top 40 stations we did not have that unanimous backlash against the group and we never took them off the air. So there was no censorship and there was no corporate edict to try and silence or hush a group or their political position. It simply is not true.

Senator DORGAN. Mr. Dickey, you should be in politics. Did you listen to that answer you just gave me? You essentially said that, we did not make a decision, but then we polled the program directors and did make a decision. Now I do not understand what you are saying to me.

Again, this goes to the question of what if you decide or what if Clear Channel or what if someone else decides that this advertising is offensive, this statement by a political person is offensive, this entertainer is offensive, and all of a sudden we have decided just by corporate fiat, by a corporate decision, that this group or that group or this body of thought is no longer welcome on 600 stations, 200 stations, or 2,000 stations if someone acquires them.

That is the reason you are being asked these questions. I do not know Cumulus from anything, but, you know, I think——

The CHAIRMAN. Cox also did the same thing.

Senator DORGAN. And the reason you are being asked the questions this morning is concern that we have about substantial accumulation of corporate power in broadcasting and then the decisionmaking based on that to decide what people will hear or see.

I think my colleague Senator Sununu asked a very important question: Do you have the right to decide someone is a bad artist, you do not want to play? Of course you have that right, absolutely. You have substantial opportunity to make these judgments. But the Chairman asked the question originally, and I was interested in asking the same question: When you make a corporate decision that someone said something offensive, an entertainer in this case, and you are going to keep them off the air for 30 days as a corporate decision, I will tell you, that sends some ominous signals to people, at least in decisionmaking capabilities, and around the country, I would think.

You say you are almost a mom and pop, you have a couple hundred stations. You are right, Clear Channel has over 1,200 stations. They want more, you want more, Mr. Kolobielski wants more.

Did I get that right?

Mr. KOLOBIELSKI. Yes, sir.

Senator DORGAN. Good. And so we are grappling with this question about concentration in the media. One piece of concentration in the media has to do with what the American people will see, hear, and read in the future and how that will be transmitted to them. I will tell you, it just sends a chill down my spine to hear. It could have been an offensive remark by somebody with whom I have substantial disagreement or with someone whom I disagree, or with whom I agree, but I am worried about a corporate decision that says, let us do this, let us sanction, censor, this person.

Let me ask you one final question if I may. I know my time is up. Because I want to talk about Minot and one company owning six stations in a market where there are only six commercial stations with the exception of one religious station. I have raised that issue many times. It has now become a description of what was wrong with the FCC rule.

But let me ask this question: Mr. Dickey, if you had it to do over again, would you decide to let all of your local radio stations make judgments about what they want to make judgments about about a controversial entertainer, or would you still make a corporate decision? In other words, do you think it was a mistake?

Mr. DICKEY. If we had it to do over again, we would have allowed that decision to be made by each of the individual program directors and the result would have been exactly the same. But if we had it to do over again, to avoid this we would have done that.

The CHAIRMAN. Mr. Mandel, you wanted to make a comment.

Mr. MANDEL. I know it is not nearly as glamorous because it is commercial speech, but I will point out that we have had many examples where we have had some of these giant companies refuse to sell us advertising for a given product category on a nationwide basis, irregardless of the local community interest.

We have a major consolidated media company that charges by definition a 50 percent premium for anything that they feel competes in any way with any of their divisions, whether they are competitive or not, and in fact has extended that reach down into the Comcast Cable that they are not associated with. On networks that they run on Comcast Cable, this media company has the right to refuse advertising on a local basis, even though it is not their system.

It is not hard to imagine that, with a billion dollars spent on issue advertising, that it is not a far leap to see something coming down corporately.

Senator DORGAN. Mr. Chairman, that is the reason——

The CHAIRMAN. For example, Comcast refused to run Quest advertising.

Go ahead.

Senator DORGAN. Mr. Chairman, that is the reason I raised the point, not just about entertainment, but about political discourse, about advertising, about a range of information that would reach the American people through broadcasting, and the question of who controls that and who makes those decisions. I think it is a very important issue for the Committee.

The CHAIRMAN. Senator Smith.

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

Senator SMITH. Thank you, Mr. Chairman.

It just seems to me that when people get into politics, even if they are entertainers, it has consequences. Any statement you make can irritate half the people any time you make them. I think of Dr. Laura Schlesinger. She is an Orthodox Jewish woman who made comments about homosexual lifestyles and she lost her television program over that. She made a decision politically to speak and it had a business consequence to her. I think that is what Mr. Dickey is saying. I know it has a consequence.

But I think it would be wrong to characterize this as just coming from the right. It happens from the left all the time. And I think entertainers increasingly after this Iraq conflict are now recognizing that their involvement in politics does have a political fallout in terms of business to them.

So I just wanted to make that point. This has been going on for a long time, and it is called freedom. Freedom is a two-way street, and I think that that is what we saw in the case of Dr. Schlesinger, that is what we see now in the case of the Dixie Chicks, and that will continue.

But that was not the line of questioning I wanted to make. I wanted to ask, Mr. Kolobielski, because I missed your testimony, I believe it is your contention that small market stations should be

treated differently than large market stations under the FCC ownership rules. Is that correct?

Mr. KOLOBIELSKI. Yes, Senator. A perfect example has been the last half-hour of discussion. As you have been discussing the Dixie Chicks, it is our major concern in small market radio that we are getting the Dixie Laundromat in Rocky Mount, North Carolina, on the air right now, and that the Dixie Girl Scouts are getting their announcement on, and that we are telling people about the Dixie Bypass when that is going to be closed. That is our lifeblood.

Senator SMITH. Is it your contention that the FCC should do more to protect small radio stations than they are doing now?

Mr. KOLOBIELSKI. I do not know if the word "protection" is correct, but in my opinion the FCC, what is necessary for small market broadcasters is to come to some finality on the rules issue, and that right now we are in flux because we believe that the interim rules that the FCC proposed on June 2, are absolutely fine with First Media Radio. I went over that with Senator Sununu and we certainly believe in the contour measurement, we believe in the 58-mile exclusivity perimeter, and we feel that some finality in the rules will enable us to go forward as small market radio broadcasters, continue to grow our companies and let our employees flourish.

Senator SMITH. Do you believe it is unfair, that the FCC's decision not to allow unlimited grandfathering of noncompliant clusters hurts small market radio operators? Is that what you are saying?

Mr. KOLOBIELSKI. It is unfair. These broadcasters built their companies by the rules, many of them legendary small market radio broadcasters. They built their companies by the rules in the nineties and to have them divested because of a regulation that might come on later is absolutely unfair to the hard work they did over the past decade.

Senator SMITH. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Boxer.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Thank you, Mr. Chairman.

I am going to continue the line of questioning about punishing Americans who perhaps disagree with corporate headquarters or the listeners as expressed in a moment, because I think it is so important and is very much related to how much power an individual network has to reach Americans. I am sure that it has come out, but again I think it is worthy of more probing.

Americans were punished in the fifties and in Hollywood it was called "blacklisting." That may seem to be the way we do things in America, but I would hope not. I would hope not. I think it was one of the darkest chapters, because when people are blacklisted they are finished, they are through.

When I heard about what had happened to the Dixie Chicks, I was literally stunned. Now, you said you were stunned, too. You said: My goodness, there was this hue and this cry over what had happened. Well, in this country every single day there is a hue and cry over something, because this is America and there is a hue and

cry every day. I mean, you should hear the hue and cry every time I give a speech about pro-choice. You should hear the hue and cry every time I give a speech about why I do not think Americans should have the right to carry Uzis or assault weapons. There is a hue and a cry.

That is what this country is about, a hue and a cry. It is a beautiful sound of freedom. And of all the places that should not be crushing it, it is the radio business, for God sakes.

You know, I just wonder about, Mr. Dickey, your sense of history. I am sure you know, because you are obviously a very bright man, a very articulate man, that one of the first things communist dictators do when they take over is strip out all the works of art that they do not agree with, take the books out of the libraries, get rid of them. Recording artists that talk about freedom in their music, they are out. And the Nazis, what is the first thing they did? Mr. Chairman, they burned books. And guess what, the people loved it. They were whipped up.

When I heard that albums—there are no more albums; I am dating myself—CDs of the Dixie Chicks were destroyed, that is what I thought of. Do you not think, make that connection at all, Mr. Dickey?

Mr. DICKEY. Senator Boxer, I think it was unfortunate, what happened and what the listeners, how they chose to vent their frustrations with that group. But Cumulus has no political agenda, as evidenced by the fact that we continued to play their music on our Top 40 stations. We are merely responding to our local constituents and what their feelings are toward a particular group.

I would not expect or ask you to ask us to play, as we test our music on a local level, to find the records that are the most offensive to our audience and play them.

Senator BOXER. OK, OK. I think that you are not understanding the bigger picture, so let me try another way, because I am going to pick up on what Senator Dorgan said, using Senator Sununu as an example. I will use as example a Presidential candidate. Let us take it out of this election. Let us take a future election. There is a war going on, it is a hot war, and a Presidential candidate is running on a peace platform: I want to end this war.

And your listeners in your country stations just really disagree, and they say: Do not put—I do not want to hear them on the news, I do not want to hear anything about it. Listeners demand it. What would you do?

Mr. DICKEY. That would be unprecedented. We would obviously cover the news stories. We owe that to our local constituents, to cover the news, both sides of it, and that is what we would do.

Senator BOXER. Even if they said, we do not want to hear this candidate because we think he or she is quite offensive? It is unprecedented.

Mr. DICKEY. It is unprecedented. From a business standpoint, controversy, as you may or may not know, actually sells well. So it would actually be good business to put somebody like that on the air, to cover those issues.

Senator BOXER. But it was not good business for you to play the Dixie Chicks, right? And it was good business for you to allow one

of your stations to join in and lead the fight of rolling over CDs, destroying, destroying something of value?

You know something, Mr. Dickey? I do not think you get it, and I do not think you make the connection. What you have done, you motivated a lot of us to take a look at this consolidation issue. So you have hurt yourself in terms of what you want, because it is a frightening thought. And for you to say everyone fell in line, that is a dead giveaway. And Senator Dorgan is right because—I will not go with an expression I know about, but the fact of the matter is the one at the top sets how people feel, because you are going to be much happier with your folks if they agree with you or they don't.

Well, I assume you agree with freedom of speech; is that correct?

Mr. DICKEY. Yes, Senator Boxer, we do.

Senator BOXER. I assume you agree that individuals should have the right to express their views?

Mr. DICKEY. Absolutely.

Senator BOXER. Good. Even if you disagree with them?

Mr. DICKEY. Absolutely.

Senator BOXER. Even if your listeners disagree with them, they have a right to say what they want, right?

Mr. DICKEY. And our listeners have the right to vote, just as they do for an elected official.

Senator BOXER. They do not have to buy their CDs, right?

Mr. DICKEY. Obviously.

Senator BOXER. Clearly.

Mr. DICKEY. And they do not have to listen to their music. And where country stations—remember, most of our markets where we have country stations, we generally have another country station across the street competing with us.

Senator BOXER. Do you think what you did sent any type of a chilling message to people, that they ought to shut up and not express their views one way or the other?

Mr. DICKEY. I would hope not.

Senator BOXER. Let me conclude on this. I think it does send a chilling message, and I think you are fooling yourself or you are not looking at what you did.

So let me say this. Every single day in this country there is a hue and a cry. I am telling you this because I am trying to get you to think about the future. When Rush Limbaugh calls women members of the Senate "femi-Nazis," it is a hue and cry among certain people who take great offense at that. But you know what, it is part of the—he has a right to say it.

And—who wrote that book, "Rush Limbaugh Is a Big Fat" whatever? He has a right to say that.

Senator DORGAN. Al Franken.

Senator BOXER. Thank you. Al Franken. He said "Rush Limbaugh Is a Big Fat Idiot." He has a right to say that, and people have a hue and cry: How could you call this man such a thing? And how could you call women Senators "femi-Nazis"? Hey, that is America.

I think it would have been far better if you used this as an opportunity to have people just talk it out, talk it out, talk it out. Think about that for the future, because I will tell you what you

have done now is given me tremendous pause about radio consolidation and media consolidation.

Mr. DICKEY. Senator Boxer, to your point, what we did do during that 30 days was we, as I say, we aired the Bob Kingsley interview with the Dixie Chicks twice. We promoted it very heavily, and we had the request lines and the listener lines open. We had a great deal of dialogue and discourse on our radio stations throughout that 30 days. We did not push this into a corner and simply ignore it. So we were all over this.

They did not want to hear the music, so we pulled the music, similar to what we would do in a music test when it does not test well. But we talked about it, we talked about it aggressively, and there was a great deal of dialogue and discourse throughout that time period, and there still is today on our radio stations regarding this band.

Senator BOXER. And that CDs were rolled over by a tractor is not a good message about America when our soldiers are out there right now fighting for the right for the people of Iraq to say what they want to say about whomever they want to say it. I hope you will think about it. I think what is anti-American here is sometimes confused.

Mr. RENSHAW. Senator, to your point, one of the most chilling episodes of this whole affair was shortly after we were in London we were in Germany doing a couple of concerts and some television shows. We were in Munich and I was at a venue with the group and all of a sudden the German promoter came up to me and he said, listen, he said: Thomas Gottschalk's here; he wants to see the girls; it is really important.

Thomas Gottschalk is a German television personality somewhat akin to a Johnny Carson. I mean, the guy is larger than life, a very, very important media personality in Germany. He spends a lot of time in America. The Dixie Chicks are by no means as popular in Germany as they are in the states, so I was a little amazed that out of the blue we would have this huge television personality arrive at a concert, demand to meet the Dixie Chicks. Being I had seen his show a few times, I absolutely knew who he was, so I took him back and introduced him to the girls. And he had literally just got off a plane from America. He had been in the states for a couple of weeks. He got off a plane from America, he picked up a local newspaper, he saw the Dixie Chicks were playing in Munich, and he had to come over to talk to them.

He came over and wanted to meet with them and spent half an hour and sat with them and talked to them to express his support for them and for their rights of freedom of speech. He said something that put a chill in the room. He said, you know, I have just come back from America and I have just seen what they are doing to you in America, and I am reading about these people are throwing CDs away and they are crushing CDs.

He said, let me tell you something. He said, you know, in Germany our media would never allow that to happen again. He said, the last time we did that was 70 years ago. He said, we have never forgotten it and we will never forget it, and it will never happen in this country again.

That was a truly chilling moment in all of this. There was someone who speaks to your historical references and it struck a very large note.

The CHAIRMAN. Let me just be clear about my concern about this. If a local station, an independent station or a local station, made a decision as to what should be aired, who it should be, what it is, that is something that I think is what localism is all about, which is what we are trying to get.

When a corporate decision is made concerning a large number of stations, not only including yours, Mr. Dickey, but also Cox, that they will not play a performer's record because of their political expression, then that is something, it is very, very serious and brings us back to this issue of media concentration, because if there had been a thousand stations, Mr. Dickey, or 200 individual stations and those individual stations had made that decision on their own, it would have been one thing. But when the corporate headquarters got involved, then it was entirely something else, because then it was not a local decision, it was a corporate and national decision.

Mr. Mandel, your statement about Clear Channel owning one of the radio rep firms that sells ad time to competitors concerns me. Let me just—and I would like you to elaborate, but let me just mention. In our hearing with Clear Channel it was clear that they promote concerts, they sell tickets, they had a form of payola going, which they then abandoned when there was going to be a hearing about it in another Committee, and also repeated allegations as to the playing of artists on Clear Channel being related to them taking part in concerts and the promotion for those concerts.

So would you comment a little bit about that, including your statement that one of the radio rep firms sells ad time to competitors?

Mr. MANDEL. What they do is, they sell ad time for competitors. So they have—they know their own pricing. The way Clear Channel is set up, historically at radio companies, television companies, the sales manager reports to the program director because he needs higher ratings to sell more. The sales managers at Clear Channel report to a sales manager for the entire market, so they can what is politely referred to as "jam the stations" into media buys that are not appropriate.

In addition to that, they rep through joint sales agreements several other stations in the markets they own radio stations. To be honest with you, we had a hard time going back to the information that we found in June because—I am sorry, in May—because some time in the mid-May to end of June period, their website, somehow all the JSA's they had disappeared from their website.

The CHAIRMAN. What is a "JSA"?

Mr. MANDEL. Joint sales agreement. You are my competitor, you have a radio station; I sell my time and I sell your time together.

Further, the rep firm is—there are two major rep firms. A rep firm is, for instance, if First Media wanted to get some national advertising, they cannot afford to have somebody in New York to come call on me or my counterparts, so they have advertising sales rep firms. There are two big ones. Clear Channel owns one of the big ones. So if you wanted to go, if First Media wanted to go and

sell to me, they have to—50 percent of their choice is to have essentially a competitor sell their media time.

So they know everybody's pricing. They essentially set the pricing where they want it, not where the market will bear, and the smaller guys do not have a choice in that, the independents.

The CHAIRMAN. Mr. Renshaw, can you comment on the allegations that were made concerning the concerts, promotions, playing of artists on Clear Channel, etcetera?

Mr. RENSHAW. I work on a daily basis with Clear Channel. A number of my clients are promoted by Clear Channel in their concert division. We have a close working relationship with a number of the Clear Channel radio formats in terms of soliciting and obtaining air play.

I personally have never been put in a position by Clear Channel where I have been threatened or cajoled into: you either provide an artist to do this or you are not going to get that. That has never happened. There has never been anything as overt as that.

However, it is clear that if you have a strong working relationship with them and if you scratch their back, they will scratch your back. I mean, these are unwritten rules. These are understood.

I think the interesting thing that I have seen now that is coming out of all of these discussions is, earlier on there were some things being talked about with payola and independent promotion, and all of a sudden everyone said, well, that has got to stop and that is going to come to an end right now. Yet, I have recently concluded recording agreements for three artists, two established artists and one new artist, where we have been doing their recording agreements, and in all three recording agreements the provisions still exist for the record companies to recoup independent promotion money. So the independent promotion money is still out there, it is still getting paid to radio stations in some shape, size, fashion, or form.

With respect to Clear Channel——

The CHAIRMAN. It is a form of payola.

Mr. RENSHAW. Which is a form of payola, absolutely. I mean, it is absolutely still continuing. Despite what everyone says, it is still going on.

People are now taking greater efforts and are going to greater pains to disguise it. I am no longer involved in conversations with people about how much money is going to who, that is going to where, to get what. Those conversations are now very much handled within the record companies and are kept very privy within those circles.

I think that, with all due respect, I feel that Clear Channel sometimes gets a bad rap. They are the biggest without a doubt, you know, but I have a very good working relationship with them. In the case of the Dixie Chicks, there was a situation where it would have been—one would have thought when one reads and hears everything about Clear Channel that they would have been the very first people to turn around and issue some sort of ban.

In fact, exactly the opposite was true. They went out and were very proactive at a local level with all of their stations in trying to make sure that people did act on a local basis and did take into

consideration what the local market was demanding. But there was nothing done at a corporate level with them.

Do they exert pressure? Yes, they do exert pressure. And they have a lot of leverage on the artists that they did not use to have. It is not a healthy situation. As I said, our belief is that the best thing that could happen is if the radio consolidation process could in fact be rolled back as opposed to rolled forward, to pre-1996 levels.

I spent the last weekend, because I knew I was coming here, I spent some time over the weekend and called friends of mine at radio stations and at record companies, guys that are music directors and program directors and radio executives that are in charge of radio promotion strategies and relations with radio chains and with individual radio stations.

I called about ten people over the weekend, all of whom have been in this business a very long time, and I asked them all the same two questions. I said, since 1996, is it a better world in radio now than it was then or is it worse? Without a single exception, every single person said: No, it is worse.

I asked the guys at the record companies, I said, would you say that it is harder now than it ever was to expose a new artist's music on the air, and would you say that it is more expensive now than it ever was to expose a new artist's music on the air? And to both of those, both of those questions, the answer was absolutely yes with every single person I asked.

So in my business, in the music industry, in the business of representing artists and trying to promote new and young talent, consolidation has not been—forget the controversy of the Dixie Chicks, but consolidation in terms of building and developing new careers, consolidation has been very bad for our business and continues to be bad and is getting worse.

The CHAIRMAN. Recently, the *Chicago Tribune* wrote, "Play lists around the country continue to shrink, with only about 20 songs a week played with any regularity, most from the best-funded major labels. Some of the same records are being played in the same formats from Miami to Seattle."

Senator Sununu.

Senator SUNUNU. Thank you very much, Mr. Chairman, and thank you for putting together this hearing. It has been a very impressive hearing, and I want to thank the witnesses for their testimony.

These are tough issues. They do affect the question of free speech and political speech, changes in the media industry that have an enormous impact on your own livelihoods, but of course also on the people you represent, Mr. Renshaw. I appreciate in particular what I think has been a substantive, balanced perspective of how this consolidation has affected, for good or for bad, an important industry and one that I think the American people have a very personal feel for. We all love these entertainers. We all have our favorite artists. We all have our particular memories that are driven by our perceptions of the entertainment industry or those entertainers that we have enjoyed for years.

I think it is important that the Members of this Committee have an understanding of how these changes in both technology and reg-

ulations affect all of these different players. So I want to thank the witnesses for their substantive testimony.

Mr. Chairman, you have I think highlighted one of the big concerns for me in talking about the way that this decision was made. In a way, whether it is made at the local level or at the corporate level, the question in my mind is whether it is being done to intimidate or discourage people from speaking out or whether it is being done because it is a business decision.

The problem that I see when these choices are made in a consolidated way or at a corporate level, as, Mr. Chairman, you have described, it becomes very, very difficult to tell the difference.

I think that that is when we run the risk as businessmen or entertainers or politicians, that is when we run the risk of sending the wrong signal and the wrong message, is when it is not clear whether this is being done to stifle an individual's ability or to stifle the choices that they might make to speak their mind, or whether it is simply being done because it is good, thoughtful business. We would want that line to be clear in all cases.

Thank you again.

The CHAIRMAN. Thank you, Senator Sununu.

Senator Dorgan.

Senator DORGAN. Mr. Chairman, I should say that my hypothetical was unthinkable when I talked about Mr. Sununu, Senator Sununu, saying something that was incomprehensibly offensive.

Senator SUNUNU. I was anxiously awaiting a specific statement that might be ascribed to me.

Senator DORGAN. No. I just wanted to make the disclaimer. It was totally hypothetical and almost unthinkable.

Let me go to the other issues, because I think they are also important. There are circumstances—for example, Clear Channel has a station in North Dakota that I am very familiar with. They have a vibrant newsroom, they by and large run that station locally. There are circumstances where I think that someone from the outside has purchased a local station and has kept localism intact.

So I do not think in every circumstance big is bad or small is beautiful. But I do think that we need to continue to pursue the question Senator Sununu and I have talked about from time to time, the issue of localism, diversity, and competition. The question is how is localism served? Because the air waves belong to the American people and we license their use for free, with some caveats, and one of those caveats is that it serves local interests.

I would like to ask, I think, Mr. Dickey. You have—I mean, you are quite correct that you are much smaller than Cumulus—than Clear Channel, rather. You have 200 stations roughly and they have 1,200 stations. Mr. Kolobielski, you have how many stations?

Mr. KOLOBIELSKI. 13, sir.

Senator DORGAN. 13. I want to know, at what point is there a limit on consolidation, if there is a limit in your judgment, and how does one retain the requirement and actually practice the requirement of localism and diversity when you purchase more and more stations? And perhaps I will give you a shot at it first, Mr. Dickey.

Mr. DICKEY. Senator Dorgan, I think it starts with the philosophy at the top. I think that it is incorrect to perhaps use one broadcaster as a proxy for all others. I do not think everybody ap-

proaches it the same way, any more than they do in this business as well. So I think that from our perspective we are a live and local organization. We have, as I mentioned, over half of our personnel is on the program side.

I can tell you that, as I mentioned in my opening remarks, what we inherited, what we acquired, because this company is the byproduct of 130 acquisitions—we basically bought them two at a time. What we acquired were stations that were in tremendous disrepair, stations that did not invest the money, because the industry structure prior to deregulation—we talk about rolling it back to the good old days and the program director might like it because they only have to program one station instead of two or three or four now and everybody's multitasking now.

But the problem is the industry was not profitable back then. You had 60 percent of the broadcasters that were losing money and it was really headed for very, very tough times. Investment in the infrastructure was lacking. As I mentioned, we had to spend tens of millions of dollars just to bring these facilities up to FCC code so we could cover our service areas and do so in a reliable manner.

So I think it all emanates from the top and what your philosophy is when you are running an organization like this. We believe it is good business to be local. We believe it is good business to listen to our listeners and we believe it is good business to respond to their needs and to service them, as well as our advertisers, and that is what we work very hard to do in this company.

Whether we have 55 business units or 155 business units, that does not prevent us from doing that effectively and doing that in the right manner. That is what this company is built on and what we are trying to achieve.

Senator DORGAN. Let me ask both of the broadcasters here about voice-tracking. Voice-tracking seems to me to be antithetical to localism, because voice-tracking is having someone in a basement in Baltimore or their office in their home in Baltimore on the radio in Salt Lake City or somewhere implying that they are in Salt Lake City, and they are reading off the Internet what the weather is and saying: It is sunny outside here in Salt Lake.

That kind of voice-tracking that I know goes on—I do not know who does it. I have seen some articles about it. Is voice-tracking antithetical to localism in your judgment, and do either of you do voice-tracking?

Mr. DICKEY. I believe it is antithetical to localism, and I believe that if it is done in a deceptive way, where you have somebody that is clearly 2, 4, 6, 800 miles away acting like they were in the restaurant last night talking to some patrons, I think that is deceptive and we wholeheartedly disagree with that and we feel that that is not within the manner in the spirit with which we are charged as licensees. We do not participate in that, Senator.

Senator DORGAN. Some do, is that accurate? At least I have read reports of it.

Mr. DICKEY. I cannot comment on what my competitors do. I know that that is not what we do at Cumulus.

Senator DORGAN. But you think it is antithetical to localism?

Mr. DICKEY. Yes, sir.

Senator DORGAN. Mr. Kolobielski?

Mr. KOLOBIELSKI. I agree, Senator. At our company and I think our small broadcasters, small market broadcast competitors, any voice-tracking that is done is done inside that particular market. For example, in Beckley, West Virginia, where we are, one of the smallest Arbitron markets in the United States, number 282 out of 289, any voice-tracking done by our or our competitors is done right there in Beckley. It is talking about Beckley.

Senator DORGAN. Is it conceivable, with the growth and the concentration of ownership, that a company, for example, could grow to 4,000 or 2,000 radio stations, let us say, 4,000 radio stations, and decide voice-tracking is by far the most efficient way to handle these stations and you have a circumstance where localism is largely destroyed over a large part of the country?

Is that conceivable that could happen under the current ownership rules that have been announced by the FCC?

Mr. DICKEY. It is possible, Senator Dorgan, but I do not think it is practical and I do not think it would happen, for the simple reason the incremental acquisitions for some of the largest platforms, a Clear Channel or an Infinity at this point, really are de minimis. They are not material. So for them to go out—and they would have to acquire deeply into the unrated markets in order to buildup that much more mass. It would not add the revenue nor the cash-flow to make it worthwhile and it would just be a lot more management-intensive.

So, though it is possible, I do not think that it is remotely in the cards.

Mr. RENSHAW. I have actually had some conversations with some people in radio recently with a group that has done some voice-tracking, and they found that actually it worked against them. When they were doing voice-tracking on music programs, the ratings started to go down. The lack of the local edge—it did not work. So I know in this one particular instance this group has now turned away from voice-tracking, is going back to local on-air talent and far more localism, because they found that they were actually losing to the local competitor that was staying local in the market. They could not compete with that with voice-tracking.

I think you are always going to have the big satellite syndicated shows, you know, the Howard Stern that goes everywhere, the Rush Limbaugh that goes everywhere, and those kind of national personalities. But I think that from what I have seen anyway is that there is a sense that for radio to work and for radio to really be competitive in a market there has to be localism. I think a lot of the big broadcasting groups are finding that now.

Senator DORGAN. Mr. Chairman, I think these oversight hearings, of this type especially, are very important. I agree with my colleague and I appreciate your having them. I think the witnesses have been really interesting witnesses with a different set of offerings to the Committee. So thank you very much.

I thank the witnesses.

The CHAIRMAN. Thank you.

Senator Boxer.

Senator BOXER. Thanks so much, Mr. Chairman, for this hearing and for your leadership of this Committee. Once again I have a chance to say that.

These issues are hard, but very important. I think everything we have talked about today really gets us to the question of whether it is in the best interests of our fellow citizens to have larger and larger networks out there.

Mr. Renshaw, you I think have been extremely candid with us today and you said you have good relations with Clear Channel, but there are unwritten——

The CHAIRMAN. At least for now.

Mr. RENSHAW. Yes. Who knows about this afternoon?

[Laughter.]

Senator BOXER. Let us hope they continue. But that you had discussed—which we really appreciated, the fact that you spoke to others just to sort of get a sense of what is happening, and people are saying it is harder and harder to get new artists out there.

Coming from a state where there is so much of that talent, you know, I think that America really loses out when the new voices are not heard. Even though a lot of us might not get it, might not understand it, it is important. It is the voice of the next generation. So I worry. Lots of times—and we have heard this from Rupert Murdoch and others in talking about TV in particular: Well, it is no problem now because there are so many outlets, and they always say, Internet.

So I want to ask you a question for the record: Do you see the Internet at this time in any way being comparable, as a comparable mechanism to break in a new artist? Do you think in the future it might be? What is your take on that?

Mr. RENSHAW. Currently it is not, and in the future I have great doubts about it. I think that, you know, one of the ways that I have always thought that radio works is that most people listen to radio when they are doing other things. They are in the car, they are driving to work, they are driving home; they are in the kitchen, they are making dinner.

The act of the radio listener is a passive thing. The Internet is an interactive thing. That is not something that is passive. If you want to go and find music on the Internet, you cannot just turn it on and hit scan and it starts finding music channels for you and you tell it to stop when you find a music channel that you like.

So no, right now the Internet is, much as people would like to say it is, right now it is certainly not a vehicle for introducing new talent to a wide mass audience. That is something that really is the sole domain of radio.

Senator BOXER. Thank you.

Did you want to answer?

Mr. MANDEL. Yes, I would just like to add to that. We decided in the last week of January, the Superbowl week, we did a national survey on line on the Internet about people's usage. It was a statistically correct sample, a couple of thousand people. Now, these are the people that have the Internet, they are highly used to the Internet. They are people that the FCC would be talking about as we will all be like that in 5, 10 years.

Only 25 percent of those people felt it was easier than ever to find news they trust. There was a larger number of people, to bring it back to radio, 29 percent felt the quality of radio was decreasing and only 10 percent felt it was increasing. We could go—we do not

have time here to go through all of it, but it was, quite frankly, a bit of a damning thing on how effective the Internet is, particularly when you consider we are only polling people that had great facility with it.

I will also point out to you that when MSNBC finally did cover the FCC and this Committee's hearings, they ran an on line poll, again people that are very Internet-friendly. When I last checked it on June 9, 87 percent of the people had said that the FCC was wrong in loosening the rule. So what does that say about the Internet?

Senator BOXER. I think it is important, Mr. Chairman, as we go along to recognize that.

Just in closing, again thanking everyone for your statements, including Mr. Dickey, who has been obviously having to defend something that he did, which I think it has been useful for us to have this conversation. I hope you find it so. I have found it so.

I think when Senator Sununu says the important thing is are you doing something because it is good business versus because you want to stop free speech is the question, now, that is a very interesting way to put it, but I would argue that when people were blacklisted in the fifties the movie industry will tell you that it was for business purposes. So it is very tricky.

I would also argue that when you lead a rally, encourage people to bring CDs of a particular group because of what they said, and stand there and roll over these CDs, that I would argue on its face that seems way over the line to me. And I think that your company ought to take a look at what it did and talk about what you felt in a very candid way, what you think fostered American values and what you think maybe did not.

And maybe you can come up with a policy, because you keep saying it was unprecedented. Well, that is our lives. Every day here we are hit with unprecedented issues, and you need to think ahead as to how you are going to deal with them.

So I just again want to say thank you so much, and we want to really make sure that the American people are not—we always get back to this—deprived of a diversity of voices, be it political voices, music voices, all voices.

Thank you.

The CHAIRMAN. Senator Sununu, do you have any closing comment?

Senator SUNUNU. No.

The CHAIRMAN. I want to thank you for your participation in these hearings. There is another issue for another day that is a part of this problem and that is with this consolidation we have an increased—or a decreased participation on the part of minority ownership in the media and we are going to have to start looking at that aspect of it as well.

Usually when we have a hearing of this nature which has aroused a lot of interest or, shall I say, conversation, I like to let the witnesses make a final statement because I know you have thought of something during this process. So I would like to begin with you, Mr. Dickey, and allow the witnesses to make a closing comment along with their opening statement.

Mr. Dickey.

Mr. DICKEY. Thank you, Mr. Chairman. I think, to piggyback off of what Senator Boxer just said, it really was a very new experience, something that was unprecedented, and I think that a lot of our relatively inexperienced troops in the field were certainly caught off guard and by surprise, something of this magnitude, and they had never seen anything like it before.

I think as much as anything they were looking for guidance. Their gut told them what they should do based on the way they program their stations on a daily basis, but I think they were looking for guidance. I think that is where naturally it fell to corporate to make that decision.

As I mentioned, after the fact, when they came back into this country, we obviously allowed the PD's, when things stabilized, to make their own decisions, and that is certainly the way we would conduct our business going forward.

With respect to radio and consolidation, as I mentioned in my opening statement, Mr. Chairman, I think that consolidation has been by and large very good for this industry from our vantage point because of the stations that we have acquired and the condition that they were in and what we have been able to bring to the table. So I think that it has been on balance very much of a positive for our industry to be able to consolidate, take advantage of the efficiencies of scale, to provide more diversity, more localism, more programming investment, more technical investment in these facilities, and be able to provide a service that all Americans can be proud of over the next 10, 20, 30 years.

Thank you.

The CHAIRMAN. Thank you, and thank you for being here today. Mr. Mandel.

Mr. MANDEL. I know it is not as glamorous, the numbers part, but I would like you all to at some point focus on the extreme costs to advertisers and to the local economies, jobs. P.C. Richard, the little local appliance store in New York, what happens to them with this consolidation? What happens to national advertisers? It is a tremendous drag on our economy. The way the FCC has dealt with it will only make it worse.

Thank you.

The CHAIRMAN. Mr. Renshaw.

Mr. RENSHAW. In closing, I would just like to say that one thing that all of these things have kind of led me to really look at and to think about is the whole concept of radio is entrusted with a public asset. It seems to me that what we should all be focusing on is the responsibility that goes along with the utilization of that asset.

It seems that sometimes when you—and I am not talking about present company or anyone that we are talking of today, but just listening to radio and when you hear what is on there, sometimes you have to wonder whether the public is being truly well served by the state of radio. I mean, just how much serious discourse is there? How much attention is there to issues of public importance, and how much is discussion being promoted on radio stations?

Most of the time, to me it seems like in a lot of cases it is fairly bland music separated by a lot of really bland advertising.

The CHAIRMAN. As a father of teenage children, I find it more than bland.

Mr. RENSHAW. And that to me, that to me is shocking.

In closing, I would just make one observation and that is that in everything that I have seen, and including having looked at some of the previous televised hearings on this subject, the only group of people that I can see that are in favor of more consolidation are radio station owners. I do not know. It tells me something.

Thank you very much.

The CHAIRMAN. That is a good opening for you, Mr. Kolobielski.

Mr. KOLOBIELSKI. Thank you, Chairman. I am here to carry the plight of the small market broadcasters and to remind you that the small market radio business model is different from the large market model. In the large market there is the pie and those radio stations are going after that, quote, "advertising pie." In the small market, we are in the back of the radio station cooking the pie, hoping to sell it door to door. It is a completely different business.

Mr. Renshaw has talked about access to large markets and large market radio stations. In the small markets, we have an open door. We have access. We want to keep that open door.

The FCC, if they decide in small markets to define small markets by using political boundaries or by cellular area boundaries, is going to do a tremendous disservice to small market broadcasters. As the FCC proposed in their interim rules, those rules using the contour signals and an exclusion that takes care of the anomaly of Minot, North Dakota, I find them to be fair, they are clear, they are easy to understand, and they are definite. And I encourage you to encourage the Federal Communications Commission to adopt those interim rules.

Thank you.

The CHAIRMAN. Thank you. I want to thank the witnesses.

This hearing is adjourned.

[Whereupon, at 11:51 a.m., the hearing was adjourned.]

A P P E N D I X

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

Thank you, Mr. Chairman. I appreciate your leadership in scheduling this hearing to revisit issues concerning radio ownership. This hearing is particularly timely given the FCC's release of its media ownership order last week. As many have said previously, the radio industry is the coal miner's canary—a warning against further consolidation in the media marketplace. At our hearing on June 4, all five commissioners agreed that there has been too much concentration allowed in the radio market. Today, we will look at the FCC's decision on media ownership and specifically its determination to change the radio market definition from one based on signal contours to a privately-created definition based on geographic markets known as "Arbitron Metros".

Since 1996, there has been massive consolidation in the radio market. The number of radio owners has dropped 34 percent and the average revenue share of the top two owners in a local market is 74 percent. The result has been downsized local staff, elimination of local news and homogenized playlists. Opportunities for local and regional artists have been limited and even some popular artists have found themselves at odds with powerful radio owner groups.

In selecting Arbitron Metros for the new radio market definition, the FCC has chosen to throw out the contour rule in its entirety in favor of a market definition created for the purpose of determining advertising metrics, not radio ownership. Moreover, Arbitron generates its revenues from the very radio broadcasters the FCC seeks to regulate. While the contour market definition was admittedly flawed, replacing it with a new definition with unknown and potentially unintended consequences may create more problems than it solves.

In June, Chairman Powell testified that the overall rule changes were "modest" and that the radio rules were actually "tightened." The new rule, however, fails to eliminate the existing clusters that were permitted under the old rule, and by counting non-commercial stations in determining the total number of stations in a market, may actually allow further consolidation in some markets.

Because the FCC determined not to require divestiture of stations that would exceed the ownership limits under the new rule, it may prevent owners from creating future anomalies such as the Minot, South Dakota situation—where Clear Channel acquired 6 of the 7 commercial stations in Minot, North Dakota, but it will not undo any of the excessive consolidation already permitted in local markets. Thus, the FCC's new rule gives little solace to those living in communities where too much concentration has occurred with the blessing of the FCC's ownership rules and its merger review process.

Thankfully, this committee recently sought to correct this injustice through the adoption of an amendment offered by Chairman McCain that would require orderly divestiture where a single owner would exceed the local ownership limits.

I look forward to the testimony of the witnesses before us, which I hope will further enlighten the Committee on the propriety of the FCC's rule changes regarding radio and the need for further action to combat the harmful effects of consolidation in the radio marketplace.

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

I want to commend Chairman McCain for continuing the Committee's series of hearings on the critically important issue of media consolidation. Of all media markets, the radio market has seen the greatest consolidation since the passage of the Telecommunications Act of 1996. Despite the fact that all five Commissioners agreed before this Committee that too much consolidation has been allowed in radio, the FCC has done little to stem the tide. As a result, it now falls to Congress to ensure that the goals of localism, diversity and competition are preserved.

Over the last several years, station owners have extended their market dominance by acquiring more and more local stations. While there has been a 5 percent rise in the number of commercial radio stations between March 1996 and March 2002, the number of commercial radio station owners has declined by 34 percent over that same period. At the same time, the diversity and the quality of radio content has continued to deteriorate. Since the local rules were relaxed and the national ownership cap was eliminated in 1996, the commitment to community based, local news has declined; local artists have lost their ability to get air time; and programming has become nationalized and generic.

This rampant consolidation in the radio market has transformed locally based stations, and in many cases have put the commercial interests of a few large corporations in front of the public's interest in maximizing diverse viewpoints. The pace of such consolidation has been staggering. In 1996, the two largest radio station groups owned less than 65 stations; in January 2003, the two largest radio station groups—Clear Channel and Cumulus—owned 1,469 stations (Clear Channel over 1,211 and Cumulus with 258).

On June 2 of this year the FCC adopted new rules regulating the media marketplace. Among the various changes is a change in how radio markets are defined. But while the purpose of this rule change was to prevent further consolidation in radio markets, the FCC's new rule grandfathers existing station group owners that fail to comply with local ownership limits, and thus, locks in the undesirable effects of market concentration. While this Committee has already taken important strides to reverse action taken by the FCC, further discussion of these issues is warranted.

With that before us, I look forward to the testimony of the witnesses.

○