BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)	MB Docket 02-277
	)	
Cross-Ownership of Broadcast Stations and Newspapers	)	MM Docket 01-235
	)	
Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets	)	MM Docket 01-317
	)	
Definition of Radio Markets	)	MM Docket 00-244
	)	
Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area	)	MB Docket 03-130

PETITION FOR RECONSIDERATION of THE FUTURE OF MUSIC COALITION

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Summary

The Future of Music Coalition ("FMC") is a Washington, DC based nonprofit research group that examines the critical issues at the intersection of music, law, technology, policy and economics. In November 2002, the FMC published "Radio Deregulation: Has It Served Citizens and Musicians?" This report analyzed the effects of the 1996 Telecommunications Act on the radio industry, citizens, and musicians; it was submitted to the FCC during the comment phase of the Broadcast Ownership rulemaking.

This Petition for Reconsideration addresses the changes to the local radio ownership rules proposed in the FCC *Report and Order* of June 2nd, 2003 ("Order"), pp. 94-130. The FMC seeks to highlight five issues raised by the Order on which we feel the FCC has not ruled properly or has misinterpreted rulings by the D.C. Circuit.

1. **Diversity and localism are important and distinct policy goals.**
   The FCC Order treats diversity and localism as though they are subsumed by competition as a policy goal, and states that localism is not served by the local radio ownership rules. We disagree with this approach and urge the Commission to adopt distinct and unique methods of measuring diversity and localism in radio markets. Diversity and localism each deserve attention on their own; they are not equivalent or subordinate to competition.

2. **The FCC should revisit the legal responsibilities of the biennial review as reflected in the DC Circuit rulings and apply that understanding consistently. In addition, it must provide clearer and more accurate evidence to support its actions.**
   The *Fox* case (280 F.3d 1027, D.C. Circuit, 2002) does not ask the FCC to abandon diversity and localism. Rather, it emphasizes the need for the FCC to provide evidence to support its assertions about media ownership rules supporting those two goals. In addition, we urge the FCC to cite better, clearer, and more accurate evidence to justify their rules. To do otherwise jeopardizes the media ownership rules in the DC Circuit.

3. **Marketplace entry is handled inconsistently in the Order.**

   At one point in the Order the FCC admits that there are currently barriers to entry in the radio marketplace; later the FCC treats the current radio market structure as a model of a "competitive marketplace" that allows for new entrants. This contradiction highlights the problem when rules are predicated on economic theories instead of a reflection of the current reality of the radio marketplace.

4. **Noncommercial stations should not be counted in the Local Radio Ownership Rule methodology.**

   The FMC disagrees with the Commission regarding the counting of noncommercial stations to determine market size, both because of the lack of evidence cited in the Order and because of the process by which a regulatory change of this magnitude was implemented. It is evident that this concession has no relation to the public interest or the goals of competition, diversity, and localism.

5. **The Order seeks to defend the current Local Radio Ownership Rule against those who would repeal or relax it – without responding to calls that the local radio ownership caps be tightened.**

   The situation in local radio is dire – in terms of competition (i.e. market structure), diversity, and localism (e.g. local news and local musicians). We think that such evidence exists to support the Local Radio Ownership Rule, and the FCC's Order could have provided more evidence to justify its decisions. We advocate that the FCC consider arguments that the Rule has become too relaxed, and that tightening the local ownership caps would be in the public interest given the highly consolidated nature of almost every local market in the United States.

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PETITION FOR RECONSIDERATION
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Introduction

The FUTURE OF MUSIC COALITION hereby submits this Petition for Reconsideration in response to the FCC *Report and Order* of June 2nd, 2003 and various Broadcast Ownership proceedings; Dockets 02-277, 01-235, 01-317, 00-244 and 01-244.

The Future of Music Coalition ("FMC") is a Washington, DC based nonprofit research group that examines the critical issues at the intersection of music, law, technology, policy and economics. In November 2002, the FMC published "Radio Deregulation: Has It Served Citizens and Musicians?" This report analyzed the effects of the 1996 Telecommunications Act on the radio industry, citizens, and musicians; it was submitted to the FCC during the comment phase of the Broadcast Ownership rulemaking.

This Petition addresses the changes to the local radio ownership rules proposed in the FCC *Report and Order* of June 2nd, 2003 ("Order"), pp. 94-130. The FMC seeks to highlight five issues raised by the Order on which we feel the FCC has not ruled properly or has misinterpreted rulings by the D.C. Circuit.

1. Diversity and localism are important and distinct policy goals.

The section of the Order pertaining to radio treats diversity and localism as though they are subsumed by competition as a policy goal, and furthermore dismisses localism as a goal of the local ownership rules. We disagree with this approach. Nothing in the Telecommunications Act of 1996 or recent decisions by the D.C. Circuit[1] requires the FCC to abandon or de-emphasize its longstanding goals of diversity and localism or to equate them with competition. To the contrary, the law requires the FCC to provide evidence whenever it seeks to retain a rule on the grounds of diversity or localism or competition. Requiring evidence is *not* equivalent to eliminating the policy goals.

It is clear throughout the Order that the FCC has chosen to use "competition" as the primary measuring for its rules, including those goals relating to localism and diversity. In paragraph 239, the Order states:

> Although we primarily rely on competition to justify the rule, we recognize that localism and diversity are fostered when there are multiple, independently owned radio stations competing in the same market; our competition-based rule, therefore, will also promote those public interest objectives.

In paragraph 287, the Order states:

> Having discussed the relevant product and geographic markets for radio, we now undertake our obligation under Section 202(h) to determine whether the current limits on radio station ownership are necessary to promote the public interest in competition. [607]

[1] 280 F.3d at 1043 ("[W]e do not agree with the networks that this reason is unresponsive to § 202(h) -- as we have said, that section allows the Commission to retain a rule necessary to safeguard the public interest in diversity . . .").

Footnote 607 explains this interpretation further:

> Although the numerical limits in the local radio ownership rule traditionally have been focused on ensuring "Local Radio Diversity," *see* 1996 Act, § 202(b), we rely primarily on our competition goal to justify the rule. *See Fox Television*, 280 F.3d at 1042.

Furthermore, the Order states in paragraphs 303, 304 and 306 that both localism and diversity are adequately served when regulations that promote competition are in place. The Order discusses competition not as one of the three goals of regulation, but the primary measurement of the necessity of existing rules.

Such an understanding blurs the distinction between the three concepts. Competition is an economic concept, specifically a type of market structure (i.e. a large number of firms in a market offering very similar products). In theory, a competitive market structure has certain implications for prices, product offerings, and profits. Economic theories suggesting links between competition and diversity of programming do exist, though not all such theories imply that more competition leads to more diversity. Theories relating competition and diversity of viewpoints and localism can also be constructed.

But mere theories do not ensure that diversity and localism exist in radio. Diversity and localism stand as distinct goals that involve *evaluating the actual outcomes* resulting from the activity of companies in the radio industry. The FMC's study found that the deregulatory efforts undertaken in the attempt to create a more competitive marketplace may have had a negative impact on both localism and diversity.[2]

To treat diversity and localism as a byproduct of competition fails to recognize the difference between theory and evidence. The FMC considers this new mindset at the FCC as troubling, first because it reflects a dramatic shift in the stated areas of concern for the agency and second because of the use of fallacious transitive logic. Competition is

[2] DiCola, Peter and Kristin Thomson, "Radio Deregulation: Has It Served Citizens and Musicians?" See p. 30 for a discussion about economic efficiencies, and pp. 32-35 for the impact of oligopoly market power on local programming decisions.

a necessary measure, but not a sufficient one to ensure the FCC's other two central goals. Diversity and localism are too important and too unique to be measured solely through the lens of competition.

Furthermore, it seems strange and unjustified that the FCC thinks that local ownership rules do not serve localism, as is stated in paragraph 304. Radio is, by its very nature, a local media source, and the rules that determine ownership levels at the individual market level are the fundamental means of protecting and fostering localism.

For example, the FMC's study indicates that many Arbitron markets are now controlled by a four-firm oligopoly.[3] Oligopolies lead to market power, and market power has a significant impact on advertising prices. Nationwide, 82 percent of radio advertising comes from local clients.[4] Radio advertisers generally do not bid for advertising nationwide, which would drive prices down to competitive[5] levels. Rather, most advertisers are local, facing advertising prices set within their own locality. The high level of consolidation in every geographic market means more danger of radio companies charging local businesses higher prices. This is only one of many logical and negative results that come from oligopolistic control of the market, none of which were addressed in the FCC ruling.

Recommendation

The FCC cannot assume that the creation of a competitive marketplace will automatically address localism and diversity goals. Therefore we urge the FCC to establish multiple

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[3] DiCola and Thomson, pp.34-35.

[4] The local/national figures vary by market category as follows: Markets 1-10, 74%; Markets 11-25, 75%; Markets 26-50, 80%; Markets 51-100, 82%; Markets 101-285, 83%. Source data: Media Access Pro, BIA Financial Networks, data as of May 16th, 2002.

[5] Here, by "competitive" we refer to the economic concept of perfect competition, or something approaching it, in which a multitude of firms compete against one another. This is the storied "supply meets demand" scenario. In this theoretical context, no one firm can charge a premium above cost. Perfect competition represents the ideal situation for "consumers," in this case radio advertisers, who might pass some of the benefits onto the public.

measures of localism and diversity in order to ensure that these important, and unique, policy goals are being met.

2. The FCC should revisit the legal responsibilities of the biennial review as reflected in the DC Circuit rulings and apply that understanding consistently.

The FCC's current interpretation of its duties misrepresents the D.C. Circuit's rulings in *Fox Television Stations, Inc. v. FCC,* 280 F.3d 1027 (D.C. Cir. 2002) ("*Fox")*, *rehearing granted*, 293 F.3d 537 (D.C. Cir. 2002) ("*Fox Rehearing*").

Paragraph 11, p. 5 of the Order states "Section 202(h) requires the Commission to determine whether its rules remain 'necessary in the public interest.'" Such a statement, or any statement of certainty about the standard of justification the FCC must meet with regard to its media ownership rules, misreads the law.

The central holding of *Fox Rehearing* was to set aside the statements in *Fox* to the effect that the FCC must meet the standard of "necessary in the public interest" in its biennial reviews of its media ownership rules. The D.C. Circuit decided upon rehearing that the standard of justification required of the FCC in Section 202(h) was ambiguous on the face of the statute, and that a decision on the standard's interpretation was unnecessary to the ruling in *Fox*. The court decided to revise its earlier opinion in *Fox* and leave the question open.[6]

[6] *Fox Rehearing* reads in relevant part:

> We agree with the Commission that the subject paragraph is itself not necessary to the opinion and should be modified. The court's decision **did not turn at all upon interpreting "necessary in the public interest" to mean more than "in the public interest"**: It was clear the Commission failed to justify the NTSO and the CBCO Rules under either standard. Moreover, as the Commission points out, the question was not fully briefed by the parties. . . . **In these circumstances we think it better to leave unresolved precisely what § 202(h) means when it instructs the Commission first to determine whether a rule is "necessary in the public interest" but then to "repeal or modify" the rule if it is simply "no longer in the public interest."** Thus, we decline the Commission's and the intervenors' request that we interpret "necessary" in their favor at this time, and we accept the Commission's alternative invitation to modify the opinion in order to **leave this question open**.

It is imperative for the FCC to adopt a consistent stance and to provide the best evidence possible to show that the Local Radio Ownership Rule (along with other rules) is in the public interest. *Fox* does not require the FCC to abandon diversity and localism, as explained above.[7] Rather, it emphasizes the need for the FCC to provide evidence to support its assertions that its media ownership rules support those two goals. The Order does neither.

Throughout the section on the Local Radio Ownership Rule (pp. 94–130), the Order adopts different interpretations of the standard of justification the FCC must meet under Section 202(h) of the Telecommunications Act of 1996. In paragraph 237 (p. 95), the Order uses "necessary in the public interest" to describe the Rule. In paragraph 239, the Order uses "'necessary in the public interest,'" in quotes, which implies that the FCC is merely citing the statutory language without actively arguing that, in truth, the Rule is necessary. Later, in paragraph 288, the Order finds the Rule's ownership tiers "represent a reasonable means for promoting the public interest as it relates to competition."

Recommendation

Certainly the FCC should adopt a consistent position about the standard of justification it must meet. The FMC recommends that the FCC advocate a standard of "in the public interest", as opposed to "necessary in the public interest", and utilize it consistently in its orders. Given the legal uncertainty, we also advise the FCC cite evidence that could also meet a higher "necessity" standard.

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293 F.3d at 540 (emphasis added).

[7] *See* 280 F.3d at 1043.

A. The FCC must provide clearer and more accurate evidence to support its actions.

The FMC has found several examples in the Order where the FCC has failed to provide sufficient, clear, or accurate evidence to support the rule changes.

- In paragraph 235 (p. 94), the Order provides no evidence for its claim that larger station combinations were "efficient" and had been prevented by the more stringent, pre-1996 Local Radio Ownership Rule. In theory, a larger radio company could be more inefficient or more efficient (i.e. there could be diseconomies of scale and/or economies of scale). Alluding to theory is insufficient; the FCC must provide evidence for any claim that bigger is better.[8]

- Paragraph 304 discusses how the Local Radio Ownership Rules support localism. Yet the Order never addresses key aspects of localism like local news or programming being produced, or local musicians receiving airplay. Not only does the Order treat localism as subordinate to and subsumed by competition, but the Order fails to cite mounting evidence that the relaxation of the local ownership caps has harmed local news and local musicians (such as the FMC's own study of radio deregulation).

- In paragraph 289, footnote 609 (p. 114), the Order does not specify what it means by "competitive market performance." Here, the studies cited by the FCC could be referring to price, quantity, quality, product choice, or other economic concepts. Furthermore, as we have explained, any of these increased "competitive

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[8] The FMC study by Peter DiCola and Kristin Thomson, "Radio Deregulation: Has It Served Citizens and Musicians?," found preliminary evidence, based on the "power ratio" (revenue share divided by ratings share), that bigger radio companies are no more efficient than smaller radio companies. The industry data shows a weak relationship, if any, between the size of the radio station group owner and its power ratio. Groups owning fewer than 50 stations perform similarly to groups owning more than 100, in as much as a station's performance is measured by the power ratio. The advantage of having more than 10 stations, versus having fewer than 10, appears to be approximately 5 percent better performance. This suggests that large radio groups may be no more profitable than small to mid-size radio companies. It also suggests that, for a group owner, being large may be only slightly more profitable than being small or being an independent owner. See pp. 30-32.

market performance" indicators do not necessarily imply increased benefits in localism or diversity and could imply just the opposite.

- A footnote explaining economic theory in paragraph 242 appears to get the theory backwards. Footnote 513 states that in the case of close substitutes "a slight price increase in one will induce shifts of demand away from the other," when the last phrase should read "*toward* the other."

Recommendation

Section 202(h) does put the burden of justification on the FCC, however, orders that are not backed up by studies or other evidence further jeopardize the media ownership rules in the D.C. Circuit. The FCC's Order should adopt a consistent stance toward its standard of justification and must provide clearer and more accurate evidence.

3. Marketplace Entry is Handled Inconsistently in the Order.

At one point in the Order the FCC admits that there are currently barriers to entry; later the FCC treats the current radio market structure as allowing enough entry.

In paragraph 288, the FCC describes the current radio licensing environment:

> *In radio markets, barriers to entry are high* because virtually all available radio spectrum has been licensed. Radio broadcasting is thus a closed entry market, *i.e.*, new entry generally can occur only through the acquisition of spectrum inputs from existing radio broadcasters.[608] The closed entry nature of radio suggests that the extent of capacity that is available for new entry plays a significant role in determining whether market power can develop in radio broadcasting. Numerical limits on radio station ownership help to keep the available capacity from becoming "locked-up" in the hands of one or a few owners, and thus help prevent the formation of market power in local radio markets. [emphasis added]

Then in paragraph 291, during an explanation of the current local radio ownership caps, the FCC accepts that the current radio station marketplaces have sufficient room for new entrants:

> By capping the numerical limit at eight stations, we seek to guard against consolidation of the strongest stations in a market in the hands of too few owners and to ensure a market structure that fosters opportunities for new entry into radio broadcasting. [625]

Note the contradiction in these statements. First, the FCC acknowledges that the radio market has high barriers to entry because of the scarcity of licenses, and explains that the local ownership caps "help to keep available capacity from being 'locked up' in the hands of a few owners." Then in paragraphs 297 and 300, the FCC relies on the notion that radio is a competitive market that presumably has acceptable barriers to entry to justify that the existing local ownership caps foster a competitive marketplace.

This contradiction is troubling for two reasons. First, the FCC bases its local ownership caps on economic *theories* about competitive forces and new entrants, instead of the practical reality of the current radio ownership marketplace, where new full-power licenses are virtually unavailable and current stations cost millions to acquire. Clearly, entry in this marketplace is severely limited by these conditions.

Second, we note that this is another area in which the FCC neglects to consider *lowering* the current local radio ownership caps. It follows logic that in local markets where only a small handful of dominant firms each own a number of stations, a policy that lowered the ownership limits would improve the chances of new entrants.

Recommendation

We ask the FCC to adopt a consistent and coherent position with respect to new entry in the radio industry. Just how many "new entrants" there have been in the marketplace since 1996? How many of them are commercial stations? Are they able to compete? Answers to these questions would shed further light on whether the Local Ownership

Rule should stay where it is (at a level at which the Order purports to be concerned about entry) or should be tightened to foster more entry by new players. Failing to do this basic research results in an unwarranted bias to the benefit of large, incumbent radio companies.

4. Noncommercial stations should not be counted in the Local Radio Ownership Rule methodology.

The FMC disagrees with the Commission regarding the counting of noncommercial stations to determine market size, both because of the lack of evidence cited in the Order and because of the process in which a regulatory change of this magnitude was implemented.

Section 202 (b)(1) of the 1996 Telecommunications Act clearly states that market size and the related ownership caps are based on the number of *commercial* stations in a market. However, in paragraph 287 of the Order the FCC states that the local ownership rule put in place during the 1996 Telecommunications Act "improperly fails to consider the effect that noncommercial stations can have on competition in the local radio market. We accordingly modify the rule to count noncommercial radio stations in determining the size of the radio market."

The FCC outlines its rationale for including noncommercial stations when determining the size of the radio market in paragraph 295:

> Although noncommercial stations do not compete in the radio advertising market, they compete with other radio stations in the radio listening and program production markets.[632] Indeed, noncommercial stations can receive a significant listening share in their respective markets.[633] Their presence in the market therefore exerts competitive pressure on all other radio stations in the market seeking to attract the attention of the same body of potential listeners. In television, we have recognized the contribution that noncommercial stations can make to competition by counting noncommercial stations in determining the size of the television market. We see no reason to treat noncommercial radio stations differently.

We must question why this new counting regime is being proposed now, by whom, what evidence the FCC is using to justify this rule change, and who stands to benefit from this dramatic departure from existing regulation. The Commission spent many months considering various changes to radio rules, and asked for comments from citizens and groups on a number of issues, but to our knowledge this new counting regime was never discussed publicly. According to the footnotes in the Order, the primary source for information for this particular rule change -- which will undoubtedly affect the market size of almost every radio market -- was two *ex parte* filings from Viacom (see footnotes 632 and 633), each filed less than thirty days before the vote on the rulemaking.

An *ex parte* letter from Viacom from May 7, 2003 states:

> "…these [noncommercial] stations are potential sources of competition in the market and cannot be ignored. The inclusions of all stations licensed to communities with the Metro in question, regardless of market share, reflects actual market conditions. The signals of these stations are available in the Metro and either compete or have the potential to compete for listeners and therefore ad dollars. Even though stations may not garner enough listening to be reportable in the Arbitron Book, these stations do exert competitive pressure and represent unrealized potential that would be relevant to a forward-looking competitive analysis." [Viacom May 7, 2003 Ex Parte at 2]

What Viacom is urging in this letter is for noncommercial stations to be included in the count of the number of stations in a market. For Viacom and other radio groups that have purchased or wish to purchase a number of stations in a market, it is beneficial to them for the total number of stations in the market to be as high as possible, since the addition of noncommercial stations in a market's count could bump the market up into a higher tier that allows one owner to purchase additional commercial stations in the market.

Viacom's language that they are "competing for listeners and therefore ad dollars" is disingenuous. Where is the evidence? Since Arbitron surveys don't produce data on the listenership of noncommercial stations, and BIA Financial Networks' database seldom has revenue estimates for noncommercial stations, it is untenable to argue that Viacom "competes" with noncommercial stations.

Recommendation

The FMC recommends that the FCC reconsider this change in the local radio ownership counting method. The FCC should retain the current counting methodology that does not include noncommercial stations. It should only amend the counting methodology to include noncommercial stations if Arbitron, BIA and other systems that measure listenership and revenue shares hold noncommercial stations in the same regard. If the FCC is to count noncommercial stations as "competitive" voices, as Viacom contends, then the FCC and the radio industry must accept this as well and provide the public and the advertising industry with regular data that measures listenership and revenue shares.

5. **The Order seeks to defend the current Local Radio Ownership Rule against those who would repeal or relax it – without responding to calls that the local radio ownership caps be tightened.**

The situation in local radio is dire – in terms of competition (i.e. market structure), diversity, and localism (e.g. local news and local musicians). The FCC has not explained why its local ownership rules have regulated radio companies appropriately to serve these three goals.

The FMC's analysis of the radio industry following deregulation found discouraging consequences for the public interest. From the national perspective, ten parent companies now dominate radio with a two-thirds share of the market of both revenue and listenership. Two companies – Clear Channel and Viacom – stand out as dominant players. Large radio companies now possess oligopolies in every geographic market and in almost every radio format.[9]

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[9] DiCola and Thomson, pp. 17-31.

At the local level, four firms dominate almost every Arbitron market with at least a 70 percent total market share. A vast majority of markets are dominated by four firms with 80 percent share.[10] In local markets, competitive market structures no longer exist. Competition – the kind that benefits the public – has decreased as a result of deregulation.

The newly oligopolistic market structure of radio markets has resulted in music and news formats being increasingly programmed at a regional or national level.[11] This means that fewer gatekeepers decide what reaches the airwaves. The loss of local programmers leads to fewer opportunities for local musicians to get on the air. This is a critical problem in an industry, which historically has depended on local and regional hits to build careers. The negative implications for local news are similar as newsrooms consolidate. Employment in the average radio newsroom has declined from 4.5 individuals per newsroom in 1994 to 1.95 individuals in 2001.[12] Fewer local reporters means less local news reporting, less on-the-scene coverage, less knowledge of the community, and fewer antagonistic, competing voices in the marketplace.

The new structure of the radio industry has not met the FCC's goals of competition and diversity in radio. The only beneficiaries of radio's deregulation are the few large radio companies that resulted from it.

Recommendation

These two important metrics of localism – access for local musicians and the existence of local news programming – have received far too little attention in the Order. While we applaud the FCC for refuting arguments to further relax the Local Radio Ownership Rule, we urge the FCC to consider seriously the arguments for tightening the Rule.

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[10] DiCola and Thomson, pp. 32-35.

[11] For a discussion of the implications for music radio, *see id.* at 61-63.

[12] The Radio-Television News Directors Association and Foundation (RTNDAF) has conducted yearly studies on staffing levels and salaries documenting a decline in radio news staffs post-consolidation. *See* http://www.rtnda.org/research/research.shtml (visited April 15th, 2003).

Support for Two Provisions of the Order

Despite these five areas of concern, the FMC is pleased that the FCC recognized the drastic levels of consolidation that have occurred in the radio marketplace since the passage of the 1996 Telecommunications Act. The FCC was right to disagree with commenters that wished to see a further elimination of local media ownership rules.

In addition to applauding its general support for the Local Radio Ownership Rule, the FMC would like to praise the FCC for two specific policy changes in particular contained within this rulemaking on radio.

First, we support the FCC's change in market measurement from a contour measurement to one based on Arbitron markets. As quoted in the Order, "radio stations compete in Arbitron markets, " thus it makes sense for the FCC's market definitions to align with the Arbitron market definitions. Radio companies have used the market definition loophole to circumvent the ownership caps in over 90 of the 289 Arbitron markets.[13]

Second, the FMC supports the rulemaking on JSAs. It is appropriate to utilize a more realistic measure of "control" when evaluating compliance with the Local Radio Ownership Rule.

Conclusion

We urge the FCC to consider its public interest goals – competition, diversity, and localism – very seriously. Diversity and localism each deserve attention on their own; they are not equivalent or subordinate to competition. While we maintain that the FCC does not have to meet a "necessity" standard under Section 202(h) of the Telecommunications Act of 1996, we do encourage the FCC to cite better, clearer, and more accurate evidence. We think that such evidence exists to support the Local Radio

Ownership Rule, and the FCC's Order could have provided more evidence to justify its decisions. Finally, we advocate that the FCC consider arguments that the Rule has been too relaxed, and that tightening the local ownership caps would be in the public interest given the highly consolidated nature of almost every local market in the United States.

Respectfully submitted,

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