Arts Industries Policy Forum
THE CURB CENTER AT VANDERBILT

Radio Deregulation and Consolidation: What Is in the Public Interest?

Overview

Radio broadcasting in the United States first experienced government regulation early in the twentieth century in response to the problems that arose as too many interested parties aired signals on a limited electromagnetic spectrum. Initially, Congress, the Federal Communications Commission (FCC), and the courts focused their efforts on establishing radio as a medium that encouraged business competition, promoted a diversity of viewpoints, and served local communities. In pursuit of these policy goals, the FCC strictly limited radio ownership during the medium's first 60 years.

From the beginning, radio regulation has utilized the language of social policy to describe a set of public interest outcomes. However, while remaining faithful to the language of social benefit, regulators have increasingly employed the economic strategy of deregulation to achieve long-stated policy goals. Today, a few major companies dominate America's national and local radio markets. Is this good for business? Is this in the public interest?

The assumption that an unfettered radio marketplace will serve the public interest has been defended by media companies, but challenged by courts, a cross-section of advocacy groups, and some members of the U.S. Congress. The subject has been contentious: by late-2003, the FCC had received two million public comments objecting to its most-recent relaxing of ownership rules. In June, 2004, the U.S. Court of Appeals for the 3rd Circuit returned new set of rule changes to the FCC, forcing the agency to either revise its plans for further deregulation, or appeal the Circuit decision to the U.S. Supreme Court.

This AIPF Background Report reviews the history of radio regulation, discusses key components of the "public interest" argument, and reviews conflicting economic evidence of policy outcomes. Finally, this paper will suggest options for possible next steps and further study.

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I. Radio Today — An Overview

On February 8, 1996, President Clinton signed into law the Telecommunications Act. The law had passed overwhelmingly in the House of Representatives (414-16), and in the Senate (91-5).[1] As the first major piece of communications legislation in 62 years, it was intended to dramatically reshape the playing field of the communications and entertainment industries. At the Library of Congress signing ceremony, the President said:

> Today, our world is being remade yet again by an information revolution, changing the way we work, the way we live, the way we relate to each other. But this revolution has been held back by outdated laws, designed for a time when there was one phone company, three TV networks, and no such thing as a personal computer. Today with the stroke of a pen our laws will catch up with our future. We will help to create an open marketplace where competition and innovation can move as quick as light.[2]

The Telecommunications Act sought to create an industry in which all telecommunications companies could compete head to head in all markets with as little government regulation as possible. Specifically, the Telecommunications Act sought to promote competition in the telephone and cable markets while easing controls on cable prices and broadcast station ownership.[3]In theory, the removal of the regulatory barriers separating different media types would encourage the competition and convergence, bringing new communication technologies to the public at more affordable prices.

The Telecommunications Act focused on telephone, cable and television issues. The 128-page bill scarcely addressed radio broadcasting with one exception: the Telecommunications Act rewrote rules affecting radio station ownership. Nationally, owners were no longer limited to a maximum of 20 AM and 20 FM stations. Locally, the bill set caps based on the market size. In a market of 45 stations, an owner could buy up to eight stations, rather than only two AM and two FM stations per market. As a result ownership consolidated within two years, transforming an industry comprised of local, small businesses into an enterprise dominated by large national media corporations.

Despite consolidation and the vast proliferation of competing electronic media, radio stations are more numerous today than ever. As of December 31, 2003, there were 13,563 radio stations operating in the United States.[4] The number of commercial stations increased from 10,257 to 11,011, a 7.5-percent jump since the passage of the Telecommunication Act of 1996. Educational noncommercial radio also saw an increase in numbers. The number of noncommercial radio stations more than doubled since 1985, growing from

1,172 to 2,552 stations.[5]

Several large corporations now control blocks of radio stations. The largest corporate owner of radio stations, Clear Channel Communications, owns just under 10 percent of all stations in the United States. Together with nine other companies, Clear Channel reaches a two-thirds share of the nation's radio audience.

The financial performance of the industry is strong. Defying a sluggish economy, radio advertising revenues increased from $12.3 billion to $19.6 billion in 2003, a rise of over 59 percent,[6] and many radio stocks are stronger performers than in the early 1990's. Judged by profit margins alone, loosened ownership regulations of the Telecommunication Act successfully stimulated radio to both earn higher profits and increase the number of stations and formats to serve listeners.

Radio programming is more diverse than ever before, historically a key policy goal of radio regulation. According to a 2002 Bear Stearns report, there are now 254 different radio formats, a 7-percent increase since the Telecommunications Act.[7] Hispanic programming also grew after 1996; today there are 45 formats in Spanish for United States audiences as opposed to a handful prior to 1996.[8] The number of full-time Spanish language stations grew as well, from 533 in 1998 to 645 in 2003.

Radio reaches 99 percent of households, and 78 percent of all adults tune in every day.[9] Despite the proliferation of other entertainment and information media, the average American home has nine radio receivers (including automobiles), making radio more accessible than any other communications technology.[10] The typical American household has access to 25 broadcast stations, and can access an additional 100 channels by subscribing to XM or Sirius satellite radio.

The National Association of Broadcasters (NAB) supports further removal of ownership restrictions, arguing that consumers are not concerned with who owns the airwaves, and therefore radio ownership should not be limited by the FCC.

Opponents of further deregulation argue the recent changes in the radio landscape are only advantageous to stockholders and a cluster of major corporations. These proponents of government regulation note that while the number of radio stations increased since the Telecommunication Act, the number of owners of commercial stations decreased by one-third between 1996 and 2002. Media critic Robert McChesney writes:

> In other industries, like computers or automobiles, there might be arguments that having fewer owners is necessary for economies of scale that will eventually translate into product innovation and lower prices for consumers. No such claims can be made in radio. All the

> advantages accrue to the owners, none to the public.[11]

Overall, opponents of deregulation argue that further consolidation is not in the *public interest*, a longstanding tenet of U.S. communications regulation.

Regular review of ownership issues is mandated by Section 202 (h) of the Telecommunication Act ("Further Commission Review"):

> The Commission shall review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the public interest as the result of competition. The Commission shall repeal or modify any regulation it determines to be no longer in the public interest.

The FCC conducted biennial reviews in 1998, 2000, and 2003, and it recently amended the Telecommunications Act to allow for quadrennial reviews.

In two post-1996 court decisions, *Fox Television Stations, Inc. v. FCC* and *Sinclair Broadcast Group, Inc. v. FCC*, the courts ruled that Section 202 (h) creates a stance in favor of repealing or modifying ownership rules.[12] Furthermore, the courts directed that FCC decisions should "be based on a solid factual record and consistent analytical framework."[13] Maintaining the status quo, according to the courts, does not serve the public interest.

II. Historical Background

Radio regulation began at sea with the Wireless Ship Act of 1910, but the Radio Act of 1912 was the first legislation enacted to control the general use of radio.[14] At the time of the Radio Act of 1912, the medium was still in its infancy. Radio signals were two-way communications between specific listeners rather than "broadcast" to the general public. The 1912 act established the Federal government's control over the airwaves by issuing licenses through the Department of Commerce and apportioning the broadcast spectrum according to government priorities. Not anticipating that usable broadcast frequencies would be filled quickly, Congress granted the Secretary of Commerce licensing power, but not the authority to reject applications.

The Radio Act of 1927 was the next major piece of radio legislation. Since the Radio Act of 1912, radio emerged as America's most popular entertainment and communication medium. However, progress was stalled as broadcasters vied for frequencies on the crowded airwaves. Key provisions of the Radio Act of 1927 included:

- the establishment of a five-member Federal Radio Commission (FRC), the first Federal agency specifically charged with regulating radio and the forerunner of the FCC.
- stipulations that each commissioner would represent a different geographic region and that radio service should be made available equally across the United States, marking the beginning of regulations concerned with "localism."
- classification of the broadcasting spectrum as a "scarce" resource because the number of people seeking licenses exceeded the quantity of available frequencies.
- the declaration that the public at large owned the radio spectrum, but the Federal government, acting on behalf of the people, could license stations to individuals and corporations for limited periods.
- the characterization of radio station owners as "public trustees" privileged to use a scarce public resource. In return for the use the public airwaves, all licensees would be required to serve "the public convenience, interest, and necessity."

In 1934, the Communications Act brought the regulation of radio, telephone, telegraph, and other communications technologies under one agency. Although the new bill repealed and superseded the Radio Act of 1927, it essentially restated earlier regulation.[15] Provisions included:

- replacing the FRC with the FCC to regulate radio, telephone, and telegraph services.
- reiterating the importance of equality of radio transmission facilities, reception, and service. This reflected the FCC's longstanding commitment to localism and the importance of broadcasters catering to local listeners.[16]
- reaffirming the standard of "public interest, convenience, and necessity."
- maintaining a three-year license term for station owners.

Despite the Communications Act's importance in the growing business of radio broadcasting, the bill attracted minimal attention outside of Congress: "When it was covered, it was characterized as a 'New Deal in Radio Law' that was aimed at 'curbing monopoly control in radio' and that boldly harnessed antagonistic private power and forced it to act in the public interest."[17]

The provisions of the Communications Act of 1934 remained in place for 60 years. The FCC exercised tight control of radio and television broadcasting, and strict regulation remained remarkably stable until the late 1970's.

As evidenced in the timeline, FCC national ownership restrictions eased before the 1980's. However, as a tide of deregulation swept Washington, the

FCC further eased ownership limits and alleviated content regulations. Nonentertainment (news) requirements for radio, guidelines limiting advertising minutes per hour, and the Fairness Doctrine (requiring that stations give opposing political viewpoints equal time) were all repealed.

Increasingly, the FCC assumed that the marketplace would protect the public interest, arguing that stations that failed to serve the public would lose listeners, ratings, and ultimately advertising. Early in the Reagan Administration, FCC chairman Mark Fowler expressed the free market approach to broadcasting:

> Put simply, I believe that we are at the end of regulating broadcasting under the trusteeship model. Whether you call it "paternalism" or "nannyism"—it is "Big Brother," and it must cease. I believe in a marketplace approach to broadcast regulation . . . . Under the coming marketplace approach, the Commission should as far as possible, defer to a broadcaster's judgment about how best to compete for viewers and listeners, because this serves the public interest.[18]

Key Concepts

Scarcity of a public resource

The concept of "scarcity" substantiates the Federal government's control over broadcasting on behalf of the public. Thomas Hazlett writes that "the 'physical scarcity' of the electromagnetic spectrum dictates that not all who wish to broadcast may do so; hence, the government must, in its simple custodial role, employ some discretion in selecting licensees."[19] The broadcast spectrum is a public resource in short supply that is licensed to station owners who are then expected to air programming that satisfies the "public interest, convenience, and necessity." Though this concept underlies the Radio Act of 1927 and the Communication Act of 1934, "scarcity" was not articulated as a legal principle until the 1943 case of *NBC v. the United States*.[20]

Although airwave availability is no longer the concern it was in 1927, when 732 stations attempted to use 90 available channels, the courts maintain the concept of "scarcity" as a rationale for government control of radio broadcasting. In 1969, the Supreme Court stated:

> Before 1927, the allocation of frequencies was left entirely to the private sector, and the result was chaos. It quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government. Without government control, the medium would be of little use because of the

cacophony of competing voices, none of which could be clearly and predictably heard. Consequently, the Federal Radio Commission was established to allocate frequencies . . . in a manner responsive to the public "convenience, interest, or necessity."[21]

The courts never repudiated the scarcity concept, but the idea was increasingly under attack in the 1980's and 1990's. For opponents, cable television, satellite television, and the Internet proved that scarcity was no longer a legitimate issue. Mark Fowler summed up the argument:

> The traditional spectrum scarcity argument… has become increasingly less valid as new technologies and the proliferation of existing broadcast facilities has made the diversity of opinion available to the public via radio as plentiful as that available via print media.[22]

Bates and Chambers note:

> By definition, all resources are scarce, and the scarcity of the airwaves is imposed by law and regulation more than by the nature of the commodity. Thus, there was nothing special about broadcasting except for the fact that broadcasters were given access to a valuable commodity for free.[23]

During the 1980's and 1990's station owners demanded that ownership controls be loosened or abolished to allow radio to compete with other large media entities.

Regardless of whether scarcity actually exists in the broadcast spectrum, United States law still classifies airwaves as a public resource; to broadcast, one must still possess a license from the FCC. In this respect, the "real estate" of radio is defined as "scarce."

Timeline of Radio Ownership Rules

1941 - ***Local Ownership Rule***: The FCC ruled that no person or entity could own more than one radio station. The intention behind the rule was to discourage monopolies and encourage business competition; in addition, it was believed that more owners would create more diverse points of view for radio consumers. Cross ownership of one television station and one FM radio station per market was allowed.

1950 - ***Rule of Sevens***: The FCC relaxed its *national* ownership restrictions of one station per owner to a maximum of seven per service band. Thus, a single owner could operate as many as seven AM radio stations, seven FM radio stations, and seven television stations across the nation.

1970 - ***One to a Market Rule***: The FCC adopts the Duopoly, or One To a Market Rule, which specified that an owner can have only one radio station per service band (one AM and one FM). This action is viewed as an effort to prevent the formation of broadcast monopolies.

1982 - The FCC **eliminated** the so-called ***"anti-trafficking rule,"*** which required owners of broadcasting stations to own stations for a minimum of three years before selling to a new owner.

1985 - **Rule of Twelves**: The FCC relaxes national ownership rules again to permit ownership of up to 12 stations per service band (AM radio, FM radio, and television).

1992 - The FCC permits radio **duopolies**: owners may buy two AM radio and two FM radio stations in major markets.

1992 - The FCC relaxes **national ownership limits** to a maximum of 18 per service band (AM radio, FM radio, and television).

1994 - The FCC relaxes **national ownership limits** to a maximum of 20 per service band (AM radio, FM radio, and television).

The Public Interest, Convenience, and Necessity

Sharon Zechowski of the Museum of Broadcasting states:

> The obligation to serve the public interest is integral to the "trusteeship" model of broadcasting—the philosophical foundation upon

> which broadcasters are expected to operate. The trusteeship paradigm is used to justify government regulation of broadcasting. It maintains that the electromagnetic spectrum is a limited resource belonging to the public, and only those most capable of serving the public interest are entrusted with a broadcast license.[24]

The phrase "public convenience, interest, and necessity" first appeared in nineteenth century railroad regulation. Since that time, the standard of public interest has applied to regulate activities involving both government-granted monopolies and to control the use of public resources by private individuals or entities for personal gain.[25] Viewing the airwaves as a public utility, radio broadcasting legislation adopted the idea of public interest.

In 1925, Secretary of Commerce Herbert Hoover articulated the principle of public interest in a speech for the Fourth Annual Radio Conference of 1925: "The ether is a public medium, and its use must be for a public benefit. The use of a radio channel is justified only if there is public benefit,"[26] a position that led to the concept's adoption in the Radio Act of 1927. The Communications Act of 1934 reaffirmed the principle, mentioning "public interest" twice as often as the previous bill.

As with "scarcity," the FCC and the courts never repudiated the public interest standard. However, though "public interest" is the cornerstone of United States communications policy, the phrase was not defined until the Telecommunications Act of 1996. Undefined for most of the century, "public interest" morphed to mirror dominant political viewpoints.

During Democratic administrations, the FCC invoked the public interest standard in promulgating the Public Service Responsibility of Licensees (the so-called "Blue Book") of 1946 and the "Programming Policy Statement" of 1960. Each document specified content guidelines for broadcasters. For example, the "Blue Book" addressed public issues and the control of excess advertising, while the later "Programming Policy Statement" discussed matters such as the use of local talent, educational programs, and service to minorities.

Republican and business-oriented administrations tended to assume that station owners would automatically gravitate to the public interest, a view in the ascendancy over the past 20 years. According to Bates and Chambers, "The decision represented the policy shift from the trusteeship model (where it was difficult for the government to define the public interest), to the marketplace model (where the industry would rely on market forces to determine the public interest)."[27]

Diversity, Competition, and Localism

The FCC employs longstanding public policy goals of diversity, competition, and localism as tests to determine whether broadcasting ownership rules serve public interest.

1. Diversity

According to the Supreme Court, diversity in broadcasting advances the values of the First Amendment. In *Associated Press v. United States of 1944*, the Supreme Court cited the value of the "widest possible dissemination of information from diverse and antagonistic sources."[28] Fifty years later, the Supreme Court reaffirmed this policy in *Turner Broadcasting System v. FCC*, stating, "It has long been a basic tenet of national communications policy that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public."[29] Historically, the FCC ruled that ownership limitations encourage ownership diversity, and ownership diversity stimulates content variety. Following the deregulation of the 1980's, however, the FCC suggested that if a multifarious communications marketplace with many media voices exists, the absence of ownership diversity within a single medium is of less concern.

2. Competition

For many years FCC policies suggested that an increased number of station owners intensified business competition, considered essential for consumer satisfaction. The Supreme Court recognized that regulation of broadcasting was designed to preserve competition and prevent monopoly, stating in *Red Lion Broadcasting Co. v. FCC*, "It is the purpose of the First Amendment to preserve an uninhibited market place of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee." However, as with the "decency" standard, the FCC and the courts have recently found cross-media competition to be more important than rivalry within an individual medium.[30]

3. Localism

The FCC defines localism as "programming that meets local communities' needs and interests,"[31] a concept of localism dating to the Radio Act of 1927. The Communications Act of 1934 reaffirmed localism, underscoring its importance in serving public interest. In August 2003, FCC chairman Michael Powell announced a new FCC Localism Task Force to conduct hearings across the country. Powell stated:

> I created the Localism Task Force to evaluate how broadcasters are serving their local communities. Broadcasters must serve the public interest, and the Commission has consistently interpreted this to require broadcast licensees to air programming that is responsive to the interests and needs of their communities.[32]

Much like public interest itself, radio's component principles of diversity, competition, and localism have been interpreted in a variety of ways over time.

The Telecommunications Act of 1996

By 1996, the communications industries had changed radically since the adoption of the Communications Act of 1934. In the intervening years, communications and entertainment technology boomed, adding television, cable television, cellular phones, satellite television and radio, and the Internet to the media roster. By the early 1990s, despite numerous revisions, the Act of 1943 was regarded as technologically and economically outdated.

The Telecommunications Act presented an opportunity to equalize competition among the many technologies competing for audiences and consumer dollars. The bill's stated purpose was "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunication consumers and encourage the rapid deployment of new telecommunications technologies."[33] Unfettered competition would allow technological integration and convergence, which would then produce innovation. Ultimately, consumers would benefit from better communications options at lower prices.

President Clinton and then-FCC chair Reed Hundt each expressed high hopes for the new law. Clinton stated on the eve of signing the bill:

> For the past three years, my administration has promoted the enactment of a telecommunications reform bill to stimulate investment, promote competition, provide open access for all citizens to the Information Superhighway, strengthen and improve universal service and provide families with technologies to help them control what kind of programs come into their homes over television. As a result of this [act], consumers will receive the benefits of lower prices, better quality and greater choice in their television and cable services, and they will continue to benefit from a diversity of voices and viewpoints in radio, television and the print media.[34]

Chairman Hundt's similarly optimistic outlook added a note of caution regarding competition:

> This bill creates the promise of good, high-paying jobs for millions of Americans and the promise of competition and its benefits of lower prices, higher quality and better service to us all. The bill vests serious responsibilities in the FCC to make competition a reality in as many markets as possible.[35]

The Telecommunications Act was primarily directed toward local, long distance, and cable television markets. To facilitate convergence, it repealed cross-ownership rules for telephone/cable, cable/broadcast, and cable/network combinations. The Telecommunications Act completely removed restrictions on national radio ownership, and it regulated ownership based on the size of the radio market. No longer would an owner be limited to owning only two AM and two FM stations per market; now in a market of 45 stations (the largest category) an owner could own up to eight stations.

The NAB had good reason to lobby against ownership restrictions. Between 1980 and 1990, commercial radio stations increased in number from 7,713 to 9,335, a 21-percent jump. As a result, more stations competed for advertising revenue from a static number of advertisers. According to a 1992 study published by Mass Media Bureau, more than half of all radio stations lost money in 1990.[36] "There was a proliferation of too many outlets competing for the same demographic, [which] subdivided the advertising too thinly for any of them to stay functioning and profitable," FCC chairman Michael Powell explained.[37]

During the 1990's, the FCC granted radio broadcasters the changes for which they lobbied. Victor Miller, broadcasting analyst for the investment firm Bear Stearns, stated in written testimony before the FCC:

> The FCC's 1992 radio duopoly rules combined with the Telecommunications Act of 1996 helped permanently preserve the radio business; 50%-60% of radio stations' recorded operating losses in 1991. And radio can now compete more effectively with all other media.[38]

Despite its pro-business character, the Telecommunications Act reaffirmed the public interest standard for broadcasting. For FCC commissioner Michael Copps, language mandates action:

> My job is to implement the law as passed by Congress. Now, it's not always 100 percent clear what the intentions are there. But I think by and large it is. And I think what really motivates and gives life and gives force to that Telecommunications Act is the fact that 112 times in that law appears the term 'public interest.' My job is to protect the public interest. Not the financial interests of any group, not anybody else's interests but protect the public interests.[39]

General Effects of the Telecommunications Act

The Telecommunications Act produced immediate and dramatic effects on radio broadcasting. In 1996 and 1997 more than 4,400 stations were bought and sold as large companies moved into a highly regulated business of small local operators.[40] By 2002, one out of every three previous station owners exited[41] and 21 companies grew beyond the pre-1996 40 station national limit.

Six of those companies, American Family Association, Entercom, Viacom, Citadel, Cumulus, and Clear Channel, each owned more than 100 stations.

Today Clear Channel, which grew from 40 stations in 1995 to 1,240 in 2003, is the largest owner in radio broadcasting. Though 1,240 stations represents less than 10 percent of the total 13,563 stations, Clear Channel owns stations in 247 of the 250 largest markets and several stations in most large markets. In particular, Clear Channel dominates Rock, broadcasting to 60 percent of the format's listening audience.[42]

According to a 2002 Future of Music Coalition (FMC) study, Clear Channel and nine other companies now control a 65-percent share of listeners across the country, replacing a local broadcasting model with a regional and national one. Clear Channel and Viacom together reach 42 percent of U.S. listeners.[43]

Top Radio Station' Market Share as of 2002

Listener Rank	Parent Company	Number of U.S. Stations	Arbitron Listeners (in millions)	National Share
1	Clear Channel	1,233	103.4	27.0%
2	Viacom	248	59.1	15.4%
3	Cox	206	13.2	3.5%
4	Entercom	103	13.1	3.4%
5	ABC Radio	64	12.6	3.3%
6	Radio One	64	11.3	2.9%
7	Emmis	24	10.6	2.8%
8	Citadel	206	10.5	2.7%
9	Hispanic Broadcasting (now Univision)	55	8.7	2.3%
10	Cumulus	248	7.2	1.9%

Source: Radio Deregulation: Has It Served Its Citzens and Musicians, Future of Music Coalition, November 18, 2002

Congress anticipated consolidation within the radio industry after the passage of the Telecommunications Act, but few expected overnight change. "I don't think anybody anticipated that the pace would be so fast and so dramatic," William Kennard, then-chairman of the FCC, told USA Today in 1998. "The fundamental economic structure of the radio industry is changing from one of independently owned operators to something akin to a chain store."[44]

Overall, the Telecommunications Act of 1996 greatly stimulated business growth in radio. The number of commercial stations increased 7.5 percent, from 10,257 in 1996 to 11,011 in 2003. In spite of a sluggish economy during the early 2000's, radio advertising revenues rose nearly 60 percent, from \$12.3 billion in 1996 to \$19.6 billion in 2003.[45] In addition to higher profits, radio's share of the total advertising market grew from the traditional 6 percent to 8 percent in 2002, an annual gain of about \$4.7 billion.[46] Additionally, rates charged for radio advertising increased nearly 90 percent between 1996 and 2002.[47]

In 1996, many radio stocks traded at about nine times on a price/free cash flow (P/FCF) basis.[48] By 2003, radio stocks traded between 21 and 26.5 times P/FCF, a strong showing during an economic downturn.[49] Radio stocks outperformed the broader market from 1996 to 2000, and the underperformance of radio stocks in 2000 and 2001 was most likely a consequence of a drop in radio advertising rates due to a lagging economy.[50]

Expansion enabled consolidated systems to find economies of scale across multiple stations. Between 1995 and 2001, for example, Clear Channel and Viacom saw their share of radio industry advertising revenues rise from 1.3 percent to 20.2 percent and 1.2 percent to 12.7 percent.[51]

How do merged and local stations differ? Traditionally, a local station develops an area of expertise and strives for maximum audience by connecting to listeners through local air personalities, musicians, weather, and traffic. Stations pride themselves on being "live and local." For example, Nashville's WSM-AM, the only station owned by Gaylord Entertainment and the home of the Grand Ole Opry Saturday night country music show, advertises itself as "America's Country Music Station." WSM's announcing staff features acknowledged experts in country music and local weather and traffic.

In contrast to stations like WSM, a Clear Channel office will typically contain facilities for several separate stations. Each station broadcasts a different musical or talk format intended to reach as many separate demographics and distinct market shares as possible. No single Clear Channel station in the community needs to capture the most listeners. Instead, the stations work together to divide and conquer the listener market. Multiple-station operations enable advertisers to reach a variety of audiences with a single "buy," including alternative media such as television, billboards, and concert venues.

According to a recent *Fortune* article, approximately 15 percent of radio programming is "voice tracked," or piped to communities from remote studios.[52] A 1998 *USA Today* article described how voice tracking works:

> Capstar, for example, uses an Austin, Texas, studio to assemble customized programming for evening and overnight shows on 37 of its stations, primarily in Texas, Arkansas and Louisiana. Local affiliates write scripts for between-song breaks, weather and traffic reports and ship them to Austin over the company's computer network. A stable of ten announcers records the dialog onto the computer network and ships it back to the local station. The process can take just a few minutes. So, when listeners in Lubbock, Texas, hear a disc jockey announce a song, at certain times of the day, the voice really is coming from Austin. The advantage: big-city quality.[53]

A 2002 *Washington Post* article about Clear Channel's five stations in Pittsburgh summarizes the benefits of voice tracking and other economies of scale:

> By consolidating functions, five stations can be run almost as cheaply as one. There's no need for each station to have its own engineers, receptionists and salespeople when these positions can be shared by the group. It takes just 200 full-time employees to keep Clear Chan-

> nel's local stations on the air around the clock. As [Clear Channel executive Bennett] Zier points out, "Everyone here has at least two or three jobs."[54]

Competition Since 1996

In lobbying for ownership limitations to be loosened in the Telecommunications Act of 1996, the NAB and radio owners sought to establish a level playing field for radio with respect to other media, by efficiently offering local advertisers attractively discounted packages to be broadcast across several stations within one single market while offering national advertising customers economical ad packages for entire regional and national chains.

The Telecommunications Act appears to have delivered the radio station owners' desired media parity. As reported above, the number of commercial stations increased, radio advertising revenues rose, and radio's share of the total advertising market grew by billions. Surely, supporters of radio deregulation argue, the free market enhances competition and allows owners to offer diverse radio formats that meet the needs of listeners.

Despite the apparent financial health of the consolidated radio industry, some charge that corporate radio became glaringly anticompetitive after 1996. In May 2002, for example, a diverse coalition comprised of the American Federation of Musicians (AFM), the American Federation of Television and Radio Artists (AFTRA), the Future of Music Coalition (FMC), the National Academy of Recording Arts and Sciences (NARAS), the Recording Industry Association of American (RIAA), and other organizations issued a joint statement to the FCC and Congress calling for an investigation of the "anti-artist, anti-competition, and anti-consumer" practices in the industry.[55] What evidence suggests that the radio business became anti-competitive, and how does the alleged lack of competition affect the public interest?

Concerts

An unforeseen consequence of the Telecommunications Act was that one corporation consolidated both the radio and live concert industries. In April 2000, Clear Channel bought SFX Entertainment, the world's largest operator of concert venues, for $3.9 billion. In the process, Clear Channel acquired 120 concert and sports venues and America's leading concert promotion business.[56]

By 2002, Clear Channel dominated the live music market, selling 70 percent of all concert tickets, owning or exclusively booking 135 concert venues. The company also owns stations in 247 out of the 250 U.S. radio

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markets.[57]The cross-media promotional opportunities are staggering, as are the legal pitfalls.

In a 2001 lawsuit against Clear Channel, an independent Denver music promoter, Nobody in Particular Presents (NIPP), alleged that the company, which owns eight of Denver's 50 radio stations and all three of Denver's Rock stations, denied airplay to acts unless they authorized the company to book their concerts. In addition, NIPP charged that Clear Channel refused to play advertisements that NIPP bought to promote one of its tours.[58]The lawsuit claimed that Clear Channel violated antitrust laws by using its radio stations to gain an unfair competitive edge over rival promoters in Denver. The suit was settled in June 2004 for an undisclosed amount.[59]

There have been other allegations of anticompetitive practices.[60] Rep. Howard Berman (D-California) asked the Justice Department to investigate whether "Clear Channel has 'punished' recording artists, including Britney Spears, for their refusal to use its concert promotion service, Clear Channel Entertainment, by 'burying' radio ads for their concerts and by refusing to play their songs on its stations."[61]

But Clear Channel's Brian Becker, CEO of its entertainment division, told Salon.com: "Our policy is absolutely clear: We don't offer or take away airplay for concert properties. Period. It's illegal."[62]

Ticket Prices

Radio and concert consolidation is suspect in the recent dramatic rise in concert ticket prices. The cost of arena concert tickets increased nearly 60 percent between 1996 and 2001, while inflation increased just 2.5 percent and medical costs rose 4.2 percent.[63] Denver rock promoter Rick Fey claims that for a Denver Bonnie Raitt concert, the difference between his $100,000 offer and Clear Channel's $250,000 bid meant that tickets he would charge $30 for were priced at $45 by Clear Channel, a 50-percent jump.[64] According to the Wall Street Journal, rock concert revenue increased 19 percent between 2003 and 2004 as a result of elevated ticket fees.

On the other hand, economist Alan Krueger argues that his research of Pollstar and Arbitron indicates no correlation between Clear Channel's share of radio listeners in various markets and the rise in ticket prices in those markets. Krueger also notes that concert ticket prices have risen sharply in Canada and Europe over the same period. He suggests that the more likely cause of rising ticket prices is the additional compensation from concert revenues sought by recording artists to counteract lagging record sales.[65]

Advertising

Critics of radio consolidation claim that larger station groups are better positioned to control the flow of advertising revenue. Eighty two percent of radio advertising in the United States is purchased by local clients[66] and from 1996 to 2002, the share of revenue earned by the largest station owner in each market grew from 35.6 to 46.8 percent.[67]

In many markets, Clear Channel stations control more than 50 percent of listenership. In Waco, Texas, for instance, Clear Channel stations bring in close to 80 percent of radio advertising money.[68] Fewer station owners reduces the competition for advertising dollars. Advertising rates can then be increased at will – a threat to small stations offering a single slice of the audience.

An FCC study found that between 1996 and 2002, the average number of station owners per market decreased from 13.5 to 9.9.[69] According to the FMC, "The high level of consolidation in every geographic market means more danger of radio companies charging local businesses higher prices,"[70] and the figures bear out this assessment: radio advertising rates increased an average of 90 percent between 1996 and 2002, while the number of radio station owners decreased by 34 percent.[71] It should be noted, however, that another FCC study conducted on consolidation and advertising prices in local radio markets found that increased concentration of ownership accounted for only three to four percent of the growth in advertising rates.[72]

Localism Since 1996

At a town hall meeting of the FCC Localism Task Force, Chairman Michael Powell defined localism and its relationship to the public interest:

> Generally speaking, localism is the responsiveness of a broadcast station to the needs and interests of its community. Promoting localism is one of the principal reasons the FCC regulates broadcast television and radio. Before a radio or television station can go on the air, it must receive a broadcast license from the FCC. If the FCC determines the applicant is qualified to hold a license, one is issued. In return, however, the licensee promises to serve the public interest through its property. A key part of the public interest is that the broadcaster air programming that is responsive to the community of license.[73]

One obvious effect of radio consolidation has been the decrease in the number of local radio station owners. Ownership is one component of localism, but the concept also suggests a broadcast content tailored to a community. Although the term is used in regulatory rhetoric, the existence of an FCC Localism task force indicates a continuing search for definition.

News and Public Affairs

One measure of localism in broadcasting is the extent to which local radio stations reflect and serve their communities through local news and public affairs programming. In response to deregulation, McKean and Stone surveyed local radio and television stations to determine the amount of local news programming offered by individual stations absent an FCC mandate. Their study found that fewer stations continued to offer local news after deregulation,[74]perhaps because news programming is more expensive for stations to produce.[75]

If the amount of local news coverage has decreased on stations primarily dedicated to music formats, deregulation has led to a corresponding increase in stations devoted to the News/Talk format. In 2004, 2,076 stations (mostly AM) programmed the News/Talk format.[76] Bates and Chambers suggest that this would "tend to support the arguments of deregulation that the public's interest in news and public-affairs programming is being served, if not by every station, at least by stations in many markets."[77]

However, the News/Talk format is dominated by four national companies (Clear Channel, Viacom, ABC Radio, Entercom) that controlled 66.6 percent of the News/Talk format in radio in 2002. Two of those companies, Viacom and ABC, also own television networks and cable television channels.[78] The proliferation of consolidated talk radio may not provide communities with public affairs programming.

Emergency Broadcasting

One unintended consequence of radio ownership deregulation was the increased challenge of connecting radio with local emergencies. In January 18, 2002, an early morning railroad accident released 300,000 gallons of deadly anhydrous ammonia in Minot, North Dakota. Six of the eight local radio stations in Minot are owned by Clear Channel, and when local emergency officials tried to alert these stations to the accident so that they might inform their listeners, no one answered the telephones at the individual stations. "At that time of the morning, everything is run by computers and satellite networking," Lieut. Frank Debowey of the Minot Police Department told National Public Radio's Morning Edition. "There's one technician on at one station. And we tried to call the station also by telephone, and there was no answer."[79]

Mansfield, Ohio, suffered similar problems in the spring of 2003. Eleven of the 17 radio stations in the town are owned by Clear Channel. According to the Center for Public Integrity, only one Mansfield station aired tornado reports and put local callers on the air with storm updates.[80]

Clear Channel issued the following response to the Minot incident:

> The public-notification failures connected with the Minot train derailment were a direct result of the local authorities' failure to install their Emergency Alert System equipment. Clear Channel absolutely had staff working that night and Clear Channel employees went above and beyond their professional responsibilities in responding to this serious situation, during and after the incident occurred.[81]

Music

Recorded music has been the dominant form of radio programming since the 1950's. Despite the popularity of the News/Talk format, radio remains a music-driven medium.[82] Radio is the key media platform for introducing recording artists and their music to the public, and it remains the chief promotional vehicle relied upon by record companies for the sale of recordings. "Even with the ascendancy of the Internet, radio airplay is still the most important factor in an artist's career, and this is especially true for new and younger artists," said rock singer Don Henley.[83]

Fifty years ago, Elvis Presley's career was launched when his first record, "That's All Right, Mama," was played repeatedly by local Memphis disc jockey Dewey Phillips on AM station WHBQ. The response was almost instantaneous: within a couple of hours, the station received 14 telegrams and 47 phone calls regarding the record. Because of local airplay, Elvis Presley became a popular artist in Memphis, popularity which translated into national appeal within two years.[84]

Disc jockeys like Dewey Phillips no longer decide which records to play; since the 1960's program directors draw up playlists for individual stations. In a 2002 study, the FMC noted that radio stations are increasingly putting programming decisions in the hands of fewer programmers, and many are programmed by program directors not based in a station's home city.[85] Local musicians have difficulty getting played.

During a 2003 FCC hearing on localism, recording artist Tift Merritt voiced complaints about the barriers to gaining airtime on local radio stations. Merritt, a singer who received significant notice from *Time, Vanity Fair* and *Billboard*, and who appeared on CMT and *CBS's Late Night with David Letterman*, said she made no progress in her attempts to be played on local radio stations:

> In North Carolina I've sold as many records as people like Toby Keith and Alan Jackson. My local country affiliate knew about this. People called in and requested me. And because I'm local, a lot of them told me about it. You would think that because I was making such major inroads nationally that the station would have been thrilled to support me. Not once. In fact, the people who called in were told by the

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> DJs that the DJs wanted to play me, but management was going to have to change the programming. . . . Radio conglomerates claim that programming is localized, and I don't see how this can be true in this case. And deregulation proponents claim that the airwaves are public. But how, when a station disregarded listeners in the signal range, how can that be true?[86]

At a San Antonio localism hearing in January 2004, musician Ray Benson voiced a similar complaint. Over his career, which spans 35 years and 29 albums with his band Asleep at the Wheel, Benson observed distinct changes in radio:

> When I started making records in the early 1970's, things were a lot different. Stations had larger play lists that were sprinkled with records from independent, small, national, and regional labels. People got to hear a variety of music, and regional stars were made all over the country. Some of these regional artists would break into the mainstream by having success one city at a time. I can cite numerous hit records were started by one DJ having success with a record in his market, thereby giving other markets the idea that this might work for them. Today, because a single company owns so many stations, the access has been limited to four major record labels, a small handful of consultants and independent promoters.[87]

Some stations find ways to air local music. Ray Benson, though concerned, noted two leading Austin radio stations (owned by major corporations) continue to play area musicians.[88] During the FCC Localism hearing in Charlotte, Debbie Kwei, general manager of WCHH, indicated that her station, owned by Radio One (a conglomerate of 66 radio stations), aired a weekly program of local music, and program directors from her station met regularly with local recording artists and independent record label executives.[89]

Diversity Since 1996

The courts and the FCC have consistently affirmed that diversity of viewpoints and of programming in broadcasting are essential to serving the public interest. However, the FCC's policies for promoting diversity have changed since the advent of deregulation.

In the 50 years that followed the Communication Act of 1934, the courts and the FCC maintained that diversity of ownership was essential for encouraging diverse viewpoints (in news, editorials, and public affairs programming) and diverse programming. To encourage diversity in ownership, the FCC initially imposed strict ownership limitations. Since the 1980's, however, the FCC pursued a marketplace model of regulation, with the expectation that public demand and market forces will provide enough diversity of viewpoints and programming to satisfy the public interest. "Diversity" denotes programming, viewpoints, minority concerns, and foreign language broadcasts. Like "localism," "diversity" remains somewhat undefined.

Formats and Playlists

The marketplace view of diversity is advanced by economist Peter Steiner, who argued in 1952 that competition can lead to program duplication in markets with a limited number of stations and barriers to entry.[90] Competing radio stations will vie for the largest market segments (for example, the rock music audience) instead of offering alternative programming and programming for niche listeners (such as jazz audiences). On the other hand, Steiner argued, a company that owns several stations will likely program each station with a different format to target as many different audience segments as possible.

Since deregulation, much of what Steiner predicted has occurred, according to a report by Berry and Waldfogel.[91] Chain broadcasters with several stations within a market are offering different formats for each station. Additionally, a 2002 Bear Stearns report indicates an increase in the number of radio formats. There are currently 254 formats, a 7-percent increase since 1996.[92]

But does it necessarily follow that more formats generate more programming diversity on radio? This question was examined in a 2002 study by the FCC, examining the number of songs played within each format; an increase in playlist length per format would suggest greater diversity. The study was limited to Top Ten chart lists and stations top tier markets (which reach 60 percent of all radio listeners), comparing numbers of unique songs played in 1996 versus 2001. The study concluded that formats such as Country, Urban Adult Contemporary, and Alternative increased the number of unique songs in their playlists, while other formats such as Rock, Contemporary Hit Radio, Pop, and Jazz showed a decrease in the number of songs. Though the number of stations sampled had decreased by 4.6 percent between 1996 and 2001, the number of unique songs played across all formats had dropped only 1 percent. Overall, the FCC study concluded that song diversity remained stable between 1996 and 2001. The study also found that while playlists appeared to have grown slightly more homogeneous nationally, competition in local markets often caused stations to become slightly more diverse.

In contrast, the FMC argues that the net result of radio consolidation has been less diversity of programming and increased homogeneity. "Format variety," says the FMC, "is not a substitute for true measure of diversity . . . . Format variety is a surface measure. It measures the variety of labels on programming—not the diversity of actual programming content."[93]

In addition, a 2002 FMC study suggested that music formats which appeared to grow more diverse had not. In what the FMC labeled faux-mat variety, stations changed the names of their formats slightly without modifying playlists. In format homogeneity, some formats with differing names maintained very similar playlists. In format redundancy, the FMC found "hundreds of instances" in which Steiner's ownership theory was contradicted; that is, parent companies operating two or more stations with the same format in the same area.[94]

The FMC tabulated record charts from Radio & Records and Billboard Airplay Monitor during several years (1994, 1998, 2002), tracking songs played on radio in 13 major music formats. Findings suggested that more than one-third of the songs played on radio were shared across various formats. When Country, Smooth Jazz, and Contemporary Christian music formats, which don't typically share songs with other formats, were excluded from the study, the duplication was more pronounced: 42 percent of the songs were shared. Some formats—such as Contemporary Hit Radio (CHR) Rhythmic and Urban formats—were found to overlap by as much as 76 percent.[95]

Music formats on radio developed more overlap after consolidation. Rock formats had 12 percent more overlap in 2002 than in 1998 and 25 percent more than in 1994. CHR Pop and Urban formats had 20 percent more overlap between 1998 and 2002. CHR Rhythmic and Urban formats had 18 percent more overlap. The result, according to the FMC, is increasing musical homogeneity on the radio airwaves.[96]

Banned Songs: Free Speech and Censorship Issues

Within days of the September 11, 2001, terrorist attacks, a list of 150 recordings alleged to have been compiled by Clear Channel Communications was circulated on the Internet. The list, purported to be a guide to songs that should not be aired following the disaster, included John Lennon's "Imagine," Simon & Garfunkel's "Bridge Over Troubled Water," and Cat Stevens' "Peace Train." According to the New York Times, the list appeared to originate from the corporate offices of Clear Channel, though in a different form.

Anonymous Clear Channel staffers told the Times that "a smaller list of questionable recordings was originally generated by the corporate office, but an overzealous regional executive began contributing suggestions and circulating the list via e-mail, where it continued to grow."[97] There was no national directive from Clear Channel to ban the songs; KYSR in Los Angeles banned all of the songs on the list, while other stations completely ignored the list.[98] In a statement, the company said the list was not generated at corporate headquarters but emerged from a "grass-roots effort that was apparently circulated among program directors."[99]

On March 10, 2003, criticizing the war in Iraq, singer Natalie Maines of the Dixie Chicks told a London concert audience, "Just so you know, we're ashamed the President of the United States is from Texas." Two radio chains, Cumulus Media and Cox Radio, responded by banning all of the Dixie Chicks' recordings from their country stations. Cumulus owned 270 stations in 55 cities; Cox owned 78 stations in 18 cities.

For Cumulus CEO Lewis Dickey, the ban served audiences: "This was driven by listeners, and we were responding to their hue and cry," Dickey said. "Cumulus has no political agenda."[100] Nevertheless, Sen. John McCain, chair of the Senate Committee on Commerce Committee, labeled the ban an attack on free speech. "'Because orders came down from headquarters, that's an incredible, incredible act," McCain told Dickey at a Commerce Committee hearing. ''The erosion of the First Amendment is in progress."[101]

In an environment of consolidated ownership, a single home-office decision can coordinate the content of hundreds of stations. However, if programming on even one station runs afoul of regulation or public opinion, outrage and penalties flow back up the chain of command, jolting the parent company. Early in 2004, when radio host Howard Stern was fined for indecency, Clear Channel felt the pain, and with one quick action took him off six stations. Whether viewed as a constraint of free speech or as a public good, consolidated ownership facilitates homogeneous content, while simultaneously providing critics with a big, stationary target when a broadcast happens to offend.

Impact on Minorities

The FCC has considered minority service and ownership an important component of broadcasting diversity. In its 1960 "Programming Policy Statement," the FCC listed "service to minority groups" as one of its 14 "major elements usually necessary to the public interest."[102] More recently, in a July 2003 report published in the Federal Register, the FCC stated that "encouraging minority and female ownership historically has been an important Commission objective and we affirm that goal here."[103]

Though minorities represent some 29 percent of the current U.S. population, minority broadcasters own only 3.5 percent of all the nation's radio and television broadcasting stations, a decline of 14 percent between 1997 and 2001. Between 1991 and 2001, the number of minority owned radio companies declined from 173 to 149—a drop of 14 percent.[104] As of 1998, only 4 percent of all commercial radio stations were minority owned—248 AM and 178 FM of 10,577 total commercial stations.[105] Between 1998 and 2000, the

National Telecommunications and Information Administration (NTIA) also found that the number of stations owned by Asian-Americans increased by 18 (for a national total of 24) and the number of stations owned by Native Americans increased by three (for a national total of 15).[106]

Not all minorities appear to have been affected equally by radio consolidation. The Hispanic community has seen marked gains. Since 1996, Hispanic programming and formats have increased; today there are some 45 formats in Spanish for U.S. audiences, as opposed to a handful prior to 1996.[107] The number of full-time Spanish language stations has grown as well: from 533 in 1998 to 645 in 2003. Between 1998 and 2000, the number of Hispanic radio station owners also increased from 130 to 187; as of 2000 Hispanics owned 1.8 percent of all radio stations.[108]

The dominant corporation in the Hispanic radio market is Univision, owner of 50 television stations, the Galavision cable channel, and 63 radio stations. The second largest corporation in the Spanish language market is the Spanish Broadcasting System, which operates 27 stations, and is Hispanic owned.

Initial investment is an obstacle to minority ownership. According to Black Enterprise, the cost of an AM or FM station in a mid-sized market is between $1 million and $5 million; the cost of an AM station in a Top Ten market is between $30 and $80 million; and the cost of an FM station in a Top Ten market is $500 million.[109] Prior to consolidation, radio stations sold for between seven and 12 times projected cash flow; now they sell for between 20 and 22 times projected cash flow.[110]

According to the Ivy Group study, conducted on behalf of the FCC's Office of General Counsel, minorities often face difficulties gaining access to the necessary capital to buy stations. Large station groups often can afford to trade stations, and they can use stock purchases to buy and sell stations or even entire station groups.[111] "As the prices of stations go up, small businesses—women and minorities—are finding it harder and harder to buy properties, especially in major media markets," Larry Irving, Assistant Secretary of Commerce, told *USA Today*.[112]

The Public Interest

How does the public respond when asked about the changes in radio since 1996? According to the NAB, a recent Arbitron/Edison Media Research study of 3,000 respondents found that:

- almost 70 percent said that radio provides them with news and

information they value;
- almost 75 percent said that "radio does a good job of playing the kinds of music they like";
- 66 percent said that radio is where they turn first for music;
- 75 percent said they use radio every day and 95 percent weekly;
- radio trails only television as the medium consumers consider "most essential" to their lives.[113]

Such a poll seems to suggest overall consumer satisfaction with radio since deregulation. The FMC, however, has argued that the NAB's survey methodology was flawed. Instead of using a random sample of consumers, it used a random sample of Arbitron diary keepers, those who were willing to fill out a weekly calendar of radio listening in return for a $1-5 payment. The FMC argued this skewed sample left some demographic groups underrepresented.

The FMC commissioned its own telephone survey of 500 radio consumers in May 2002. Among its findings:
- 51 percent said they only occasionally heard the music they liked the most on radio;
- 60 percent said that radio had too many ads;
- 76 percent said they favored giving local disc jockeys more airtime to play songs they think their listeners would like (as opposed to being "required to play mostly the songs of artists and recording companies who have paid to get their songs played");
- 38 percent said radio played too little of local musical artists, and 42 percent said local acts had the right amount of airplay;
- 78 percent said they preferred long playlists (more variety) as opposed to short playlists;
- 80 percent said they favored government action to preserve or increase the number of locally-owned radio stations.[114]

An additional radio industry survey, conducted independently by Duncan's American Radio (owned by Clear Channel) and released in September 2002, reported that the percentage of Americans listening to radio during any given quarter hour hit a 27-year low, dropping nearly 17 percent since 1989.[115]

Arbitron data over the years seems to confirm the decline in radio listening. In 1994, Arbitron tracked average listening at 23 hours per week in its top 94 markets; in 2003, listening was down to 20 hours per week—a 15-percent drop.[116]

Could the change in American's listening habits (listening to radio primarily while commuting, rather that listening in the home) account for the studies showing a drop in radio listenership? United States census data from 2000 indicates Americans spend more time commuting than ever: in 2000, the average one-way drive time to work was 25.5 minutes; in 2000, the commute averaged 22.4 minutes in 1990.[117] The trend towards longer commutes does not appear likely to be reversed any time soon.

The amount of advertising on radio may play a role in listener dissatisfaction and "tuneout." One in three listeners between the ages of 12 and 24 told Arbitron they were listening to less radio because of the commercial overload.[118] According to media critic Robert McChesney, "With little competition, the amount of advertising is up to 18 minutes per hour, according to one industry trade publication, well over the figure for a decade ago."[119]

Free market advocates maintain that deregulation serves the public interest because consumers will regulate businesses with their preferences. But advertisers are radio's true customers. According to the FMC, "Radio stations receive the bulk of their revenue from advertisers; more than individual listeners, advertisers are the direct customers of today's radio firms."[120]

Clear Channel's CEO and founder confirmed this in a 2003 interview with Fortune: "If anyone said we were in the radio business, it wouldn't be someone from our company," says Lowery Mays, 67, originally a San Antonio investment banker. "We're not in the business of providing news and information. We're not in the business of providing well-researched music. We're simply in the business of selling our customers products."[121]

The tilt of radio programming toward the requirements of advertisers may undercut the public interest.

New Radio Alternatives

The sheer cost and difficulty of gaining access to capital markets creates barriers to many who would choose to own and operate radio stations. However, since 1996 three new alternatives in radio have become available to consumers and potential broadcasters: satellite radio, low power FM stations (LPFMs), and Internet webcasting.

Satellite radio

Satellite Radio is modeled financially on cable and satellite television. Digital signals beamed from a satellite are received by subscribers equipped with dedicated receivers. Currently two companies offer satellite radio service, XM and Sirius. XM, launched in late 2001, listed 1.36 million subscribers as of spring 2004. Sirius, launched a few months later, has 400,000 subscribers. Each service offers more than 100 channels, compared to the average of 25 broadcast radio stations available in most American cities. The services air no advertisements on their music channels and only two minutes of advertisements per hour on talk channels. Current subscription rates are $12.95 per month for Sirius, and $9.95 per month for XM. In addition, the cost of a dedicated player for the car or home runs between $120 and $300.

XM and Sirius were licensed to provide national programming; both services, however, now deliver local traffic and weather information in 20 metropolitan areas. Each of these channels is available nationally. Threatened by competition, the NAB lobbied against authorizing XM and Sirius permission to further customize local and traffic weather reports.[122]

From a consumer point of view, satellite radio provides more programming diversity and competition. It has some potential to deliver local news, weather, traffic, and other programming, but because it is subscriber-based not all consumers will have satellite radio. There exists no easy mechanism for local entrepreneurs to "own" satellite radio.

Low Power FM

Low Power FM is an FCC initiative that offers a renewed commitment to the importance of localism in broadcasting.

Beginning in 1978, the FCC began to increase the minimum power requirement for new stations. By the 1990's, however, a number of "pirate" low-power microbroadcasters, operating without FCC licenses, took to the airwaves. In 1999, in part as an effort to deter pirates, the FCC announced a new microbroadcasting license for 100- and 10-watt low power FM stations (LPFMs).[123]

The 100-watt stations are capable of broadcasting 3.5 miles, while the 10-watt stations broadcast one to two miles. According to FCC rules, LPFM stations are licensed exclusively to non-for-profit local organizations for the first two years of license availability; afterwards, non-local not-for-profits are eligible for licenses. Each licensee may own only one station in any given community. After three years, however, a licensee may own up to 10 stations nationwide. The cost to build an LPFM station is estimated at between $5,000 and $8,000.[124]

Some 3,000 people and organizations wrote to the FCC in support of LPFMs in 1999 and 2000, including the Green Party, the United States Catholic Conference, the Library Association of America, the ACLU, Native American tribes, the United Church of Christ, the NAACP, the Rev. Jesse Jackson, and the National Organization for Women.[125] The FCC initially proposed licensing about 1,000 LPFMs across the country. Although 300 were licensed, further licensing was halted by the passage of the Radio Broadcasting Preservation Act of 2000.[126]

The legislation, supported by both the NAB and National Public Radio

(NPR), required that LPFMs be separated by fourth-adjacent channel positions from existing FM stations. (Radio stations broadcast at odd-numbered decimal points on the dial; each decimal position is a channel. A channel at 92.9 has fourth-channel adjacency from one at 92.1.) Although the rationale for the legislation was to prevent interference between channels, as a practical matter it meant that "community broadcasters would exist only in the most remote of rural locales."[127]

However, the Act also required a new official study of interference issues, economic impact assessments, and a new round of public comment with a full FCC report to Congress. In February 2004, the FCC announced the results of a new study that showed interference would not be a problem at third-channel adjacency and moved for licensing additional LPFMs. On June 4, 2004, Senators John McCain and Patrick Leahy introduced a bill—The Low Power FM Act of 2004—aimed at restarting the LPFM licensing process.

Low power FM stations are inherently local. However, legislation limits range and restricts ownership to non-profit organizations.

Internet Radio

In 2002 nearly 60 percent of the United States population had Internet access at home.[128] From a handful of stations in 1995, the number of Internet radio broadcasters peaked in 2001 with 5,710 stations broadcasting online. By 2002, the number had declined 31 percent to 3,940.[129] The reasons for the decline are not technological but legal and financial.

In October 1998, Congress passed the Digital Millennium Copyright Act (DMCA) which specified that owners of sound recordings (i.e., record companies) must be compensated for digital transmissions of their products. The DMCA held that once rates were established, amounts due from Internet radio broadcasters would be retroactive to the October 1998 passage of the DMCA. Royalty rates were determined by a three-person Copyright Arbitration Royalty Panel (CARP).

In June 2002, the Librarian of Congress set rates for digital transmission that represented a compromise between the groups. A year later, after pressure from Congress, the RIAA and its royalty agent, Sound Exchange, negotiated further with various webcasters on rates. Despite negotiation and some compromise, royalty payments – based on the number of listeners—outstripped advertising revenue, and a large number of Internet radio broadcasters signed off.

An attorney representing the 300-member Webcaster Alliance stated in 2003 that "existing royalty rates structures would force as many as 90 percent of small commercial Internet radio stations to close."[130] Absent an unlikely increase in advertising revenue, record company and licensing organization royalties are too high to allow the growth of music radio on the Internet.

Future Options

Radio Ownership Limits

In its 2002 Notice of Proposed Rule Making regarding media ownership limits, the FCC indicated it considers the entire media marketplace when determining the level of competition. Because the number of media options appears plentiful, the FCC has favored striking down ownership limits since 1996. In the case of broadcast radio, however, a case may be made that because of radio's special qualities, ownership limitations should remain in place. Radio is a medium with unique access to Americans, particularly in cars and in the workplace, and because of its portability, has special implications for "localism." Arbitron found that 66 to 75 percent of all radio listening happens outside the home.[131] Additionally, radio remains an unrivaled medium for introducing musicians and their music to listeners. To encourage continuing emphasis on localism and diversity in radio, maintaining ownership limits at their current levels might serve the public interest.

Incentives for Local Broadcasting

In his testimony for an FCC Localism Hearing in San Antonio, musician Ray Benson noted Canadian broadcasters' longstanding regulations prescribing certain percentages of Canadian content. Benson suggested a "hybrid solution" that would allow commercial broadcasters to succeed financially while using tax incentives to encourage more local music, news, and public affairs.[132]

Broadcasting scholars Bates and Chambers echoed Benson's sentiments:

> News and other information with high social value is underproduced, in the absence of regulation, because private markets do not take social benefits into account. This "social economics" approach argues that regulation can be justified in terms of bringing such social-value considerations into the marketplace. From a First Amendment viewpoint, the government might not be able to mandate specific types of programming. However, it could reward stations choosing to offer various types and amounts of public-interest programming such as local news, public affairs, children's shows, and various other types of programs, or it could penalize those engaging in behaviors with significant social costs.[133]

Questions for Further Study

Define and measure localism

How we choose to define localism will ultimately define the rules of the game. Will we define localism through the research and terminology of economists, sociologists, folklorists, or other specialists? In seeking public response, the FCC's Localism Task Force will advance our understanding of the issue. A comprehensive survey of radio listeners to determine what <u>kinds</u> of local content—such as news, traffic, weather, and local musicians—and what <u>amounts</u> of local programming they would expect or desire of their local stations would also aid the policy process. Is accurate traffic and weather, for example, really the only local content that listeners want from radio? We must also assess the current level of local programming on radio in selected, representative markets. If the historical data can be found, it would be useful as well to compare previous levels of local programming on radio and determine if in fact localism has diminished through the years.

The current relevance of radio

Radio has evolved from an experimental medium homesteaded by entrepreneurs and hobbyists in the 1920's, to a medium dominated by national networks in the 1930's and 1940's, to a locally oriented small business from the 1950's through the 1980's, to its most recent incarnation as, once again, a largely national medium dominated by a few major firms. In the meantime, a dazzling array of new telecommunications media blossomed, and radio is no longer a unique platform for reaching large numbers of the pubic instantaneously. It still retains, however, a special capacity to reach people in their cars; it is still the most effective medium for introducing musicians and music to the public. Balancing the social benefits of a regulated media against the efficiencies of unfettered enterprise constitutes the regulatory challenge of the next decade.

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