

## CHAPTER 5

### CONCLUSION AND POLICY RECOMMENDATIONS

#### Summary of Major Findings

There is no doubt that the national ownership restrictions lifted by the 1996 Telecommunications Act have had a major effect on broadcast radio in the United States. The consolidation that followed the policy change re-characterized an industry from a locally-owned and operated business to a massive, network-oriented corporate structure.

A stated goal of the Telecommunications Act was to stimulate investment in communications technologies. In terms of radio, the new regulations were seen as a catalyst to reinvigorate a stagnant industry. Prior to 1996, financial advisors rated radio a poor-performing commodity and forecasted that broadcast properties would lose value over time as other media vied for audience attention and continued to lure advertising revenue away from stations. By 1997 that prediction quickly changed as the value of many radio stations more than tripled during the post-1996 mergers and acquisitions period (Fratik, 1999). Thus, from an investor's perspective, the investment goals of the act were accomplished. Industry analysts at BIA summarized the transitional years following the act as a measure of financial success: "Overall consolidation had reached into the smaller market areas as the economic benefits have now been clearly established, at least in terms of making money" (n.p.). However, as this dissertation shows, there were additional consequences of the act that influenced far more than investment factors.

Within the paradigm of the corporate control of media, the Telecommunications Act actually failed one of its primary objectives; market competition. Instead, when the dust settled after a period of frenzied mergers and acquisitions, there were far fewer

owners in the market and most small and midsize radio markets in the country were oligopolies with two or three companies owning the majority of local radio stations. Local competition decreased as the number of players in a market competing for stations, advertising dollars and audiences actually declined.

This was also true on the national arena where five radio companies now own 18% of all commercial radio stations in the country.<sup>1</sup> This may seem small compared to the concentration of production and distribution companies in the film industry, for example. However, prior to 1996 no one entity could own more than 40 stations, so five companies would collectively capture less than 2% of all commercial radio stations today. In comparison, Wal-Mart, which accounts for approximately 20% of CD sales, captures enough consumer power to persuade record labels to change the lyrics, packaging and retail price of major label albums (Cohen, 2004). Clear Channel, with 11% of the national radio market and as much as 40% of local stations in some markets, has exerted similar pressure on record labels regarding concert promotions and airplay.

Perhaps more important to understanding the overall picture of radio broadcasting after 1996 however, is not by how much the industry is consolidated, but the way in which consolidation changed how radio operates. Radio is moving toward a network-model of station operations. That is, a majority of programming is managed and provided by corporate headquarters. It is fed to local “affiliates” for broadcast with regional advertising spots and local color, like the time, weather, and area news-bits spliced into

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<sup>1</sup> At the end of 2003, according to Arbitron there were 11,118 commercial radio stations in the U.S. The 18% ownership breakdown is as follows: Clear Channel with 1,260 stations (11%); Infinity Broadcasting with 186 stations (2%); Cumulus Radio with 266 stations (2.5%); Citadel Communications with 213 stations (2%); and Cox Radio with 78 stations (0.5%).

programming. As a result, stations are sounding more alike, particular stations that are part of super group radio companies. This homogeneity is evident in the concentration of radio programming in to a handful of formats nationwide, which are easier to program under centralized control. And among distinct formats there is a significant amount of song overlap, which indicates that even small gains in format differentiation may not create greater content diversity. As the study of rock station playlists revealed, there is reason to be concerned that ownership structure in conjunction with market size does decrease the diversity of content aired on the radio, and thus limits the possibilities for robust cultural expression.

### Radio and Music Today

Since the data collection for this dissertation ended, there continues to be major developments in the radio and the music industries. Significantly, Clear Channel is not only the largest radio broadcaster in the United States today, but also dominates the live entertainment market. Through a series of acquisitions, most notably the purchase of SFX Entertainment in 2000, the company is presently the chief concert promotion and touring force in the country. Clear Channel achieved this position by forging long-term, exclusive contractual relationships with over one hundred U.S. concert venues and working with Ticketmaster, the world's leading ticketing company. As a result, musical artists have little option when developing a concert tour than to book through Clear Channel.<sup>2</sup>

Alternatives to analog radio broadcasting have emerged in the four years since 2000 in the form of digital broadcasting, in particular, satellite radio. Two companies in the U.S., Sirius and XM, are currently competing for subscribers and signing talent

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<sup>2</sup> The implications of this monopoly-like control of music distribution are discussed further below.

contracts with some of radio's most well-known superstars. On the heels of several FCC indecency rulings aimed at parent company Viacom, shock jock radio talk show host Howard Stern signed a deal with Sirius to move his program to commercial-free, digital delivery via the Sirius coast-to-coast satellite network. The company, which offers over 120 channels of music, sports and information, also secured an exclusive contract with the National Football League worth \$220 million to broadcast games starting with the 2004 season. Not to be outdone, XM picked up fired Viacom shock jocks Opie and Anthony, former National Public Radio anchor Bob Edwards, and won the rights to broadcast live Major League Baseball games and classic game rebroadcasts on their network.

The significance of satellite radio is already beginning to influence analog broadcasting, the music and entertainment industries and telecommunications policy. With the move of two shock jock shows, both of which were broadcast on Infinity stations owned by Viacom, industry and legal analysts speculate either the complete exodus of sexually explicit programming from public airwaves to non-public mediums like cable and satellite, or a re-examination of how the various mediums are differently regulated. For example, does it make sense, in an age when the majority of audiences receive television programming via a cable system, to regulate content on HBO differently the CBS?

Another new technology, peer-to-peer file sharing, has also influenced music and entertainment distribution in the U.S. and worldwide. While radio was consolidated at unprecedented rates, this new form of digital distribution, manifest in computer programs such as Napster, Gnutella and KaZaA, among many others, captured the attention of

millions of Internet users. The logic of these file-sharing networks is simple: A user supplies his or her computer files (most often image, music or video files) to thousands of other users, who also offer up the contents of their hard drives, for a massive exchange of digital information. This communal exchange model is facilitated by either a central Internet connection (as with Napster) or distributed across hundreds of user-provided connections (as with Gnutella). In 2000 record companies took Napster to court claiming copyright infringement and won, essentially shutting down that network. While Napster was being dismantled, other peer-to-peer networks gained in popularity, absorbing the abandoned users. Record companies continued to submit legal challenges against file-sharing software groups while also lobbying lawmakers to pass legislation to allow media companies to sue individual users for storing illegal, digital copies of music and films. At the same time Apple Computers, makers of the Macintosh home computer, introduced the iPod, a portable digital music device, and Apple iTunes, a pay-per-song Internet database of thousands of copyrighted songs. These digital downloads are legal because Apple gives a portion of each song sale to the copyright holder, in most cases a major record label.

As the Napster/iTunes phenomenon reveals, the music industry approached the file-sharing “problem” on two fronts: They launched legal attacks based on ownership of content issues (copyright), and at the same time worked to control the distribution channels by making partnership deals with software providers (iTunes) or acquired the offending company outright, as Bertelsmann did with Napster in 2000. Established media organizations are not necessarily opposed to digital music downloading. They are,

however, threatened by the new technology because it falls outside the prevailing corporate media paradigm; that is, a centralized system of production and distribution.

If the technology is subsumed into the dominant media model, which supports the flow of profits to established media organizations, the story of Napster and file-sharing may mirror the history of the VCR.<sup>3</sup> However, the story is not over yet. The legacy of the file-sharing controversy may be the schism to established media's hold on consumers that Napster and KaZaA, among others, eventuated. A public dialogue was born and continues to imagine other models for producing, distributing and consuming cultural products. Artists have since organized union activity to challenge unfair labor practices perpetrated by the music industry for decades and filed lawsuits to negotiate better contracts (Future of Music Coalition, 2001). Academics, policy makers and producers of cultural material are rethinking intellectual property rights theory and debating how to apply or rewrite decades-old copyright and trademark laws. All of these activities, including established media's attempts to control the discussion and policy, are disrupting the heretofore assumed corporate model of cultural production and suggesting multiple, and perhaps fragmented alternatives.

#### Policy Recommendations

Keeping in mind Foucault's notion of governmentality as it encompasses the various fields of social regulation, the policy recommendations offered here suggest not only measures for legislative action within established regulatory structures, namely the Congress and FCC, but also includes political actions and business practices to be taken

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<sup>3</sup> In that case, an established media company (Universal City Studios) sued Sony, the maker of Betamax a home video tape recorder, for copyright infringement. Universal lost the Supreme Court case, but ultimately won as video rental and sales are now a multi-billion dollar segment of film revenues.

up by citizens, radio owners, musicians, and other non-legislative groups. These proposals are presented as alternative visions of citizenship (expressed through the organization of media) that cultivate diverse forms of cultural production and distribution in order to advance a progressive democratic politics.

### Federal Regulations

Since 1912 broadcast media in this country has been regulated differently than other businesses in the United States. During the near-century of communications policy, legislators have frequently remarked that the broadcast media are unique organizations that require special regulations due to the critical role media play in the production and distribution of information. As such, the airwaves were deemed public property that may be provisionally used by licensed broadcasters under the administration of federal agencies.

The deregulation trend, which gained momentum in the 1980s, has tipped the balance of power between corporate control and government oversight toward media companies. The stewardship model of regulation has weakened as broadcast companies push to be treated like just another business, with detrimental consequences to democracy, freedom of expression and cultural variety. To foster these values and hold back the tide of commercialization, a renewed role for federal regulation is necessary. In particular, since radio is moving toward a network programming structure like the 1940s era of ABC, NBC and CBS, the FCC should implement the national audience reach rule which is used to regulate television networks. Rolling back the lifted national ownership restrictions is politically unlikely and legally ineffective, given how many radio stations would fall under “grandfather clauses” protecting previous stations sales. Capping the

total audience coverage allowed by any one radio company however will at least create a barrier to continued consolidation and protect at least some measure of programming diversity at the national level. Currently television networks are allowed to own a group of stations that reach up to 39% of the national audience.<sup>4</sup> This is quite a large portion of audiences, and broadcasters are lobbying for extended coverage, so the audience cap for radio is by no means a panacea for concentration. However as it stands, no such provision exists for radio under current rules.

Local rules for radio ownership should be maintained, as the possibility of a roll back is not likely. Currently, a company may own five stations in a market with fewer than 14 stations, but not more than 50% of the total stations available. In midsize markets, a company may own up to six in a 15 to 29 station market and up to seven in a 30 to 44 station market. In large markets of 45 or more stations, a company may own eight stations. However, these local ownership caps should be evaluated in terms of local ad revenue shares as well in order to protect business from the potential of inflated advertising rates by near-monopoly control of ad time. The role of anti-trust investigations is discussed below.

### State/Local Regulations

The most significant changes in ownership and the least diverse radio programming occurred on stations in small to midsize markets. As stated above, the local ownership caps must be maintained, if not elevated. In addition, although highly unlikely in the current political climate, state or county oversight of local broadcast properties

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<sup>4</sup> In June of 2003 the FCC ruled to increase the national audience reach to 45% but the measure was overturned by a federal appeals court until such time that the FCC can justify the raised audience cap.

should be implemented to attend to issues of localism, public interest and the role of citizens in the oversight of their broadcast airwaves.

Provoked by a national debate about media ownership in the spring and summer of 2003, FCC Chairman Michael Powell created a Localism Task Force “to evaluate how broadcasters are serving their local communities” (“FCC Chairman Powell Launches,” 2003). The task force consisted of field hearings held throughout the country where citizens were invited to speak directly to FCC members about their media concerns.<sup>5</sup> The FCC also issued a Notice of Inquiry to receive written comments about localism issues. The findings of the task force are expected in 2005, but the concept of a localism task force could serve the community needs of the public well beyond the current FCC rules review.

State legislators could establish a board of broadcasting of elected members, much like a state board of education with similar principles and tensions between federal regulation and states’ rights. The board of broadcasting must adhere to federal regulations about broadcasting and accept the rules of the FCC, unless specific legal challenges are made to particular rulings. In addition, the state board could establish public service requirements that reflect the community standards under its jurisdiction and establish procedures for citizen participation in the licensing process.

This would accomplish at least two critical tasks: First, the current system of license renewal requires the FCC to review a radio station license every eight years. This was increased from every three years until 1981 and every five years until 1996 because broadcasters complained that the burden on the FCC was overwhelming the process and

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<sup>5</sup> As of this writing, three field hearings were held in Charlotte, North Carolina, San Antonio, Texas, and Rapid City, South Dakota.

slowing down renewal. Mechanisms to assess the public interest obligations of broadcasters to local communities include a public file documenting programming that attends to community issues, and stations must issue a public notice when a station is up for license renewal so that citizens may petition the FCC to deny or support renewal. A state board could lift some of the burden from the FCC by reviewing these materials, holding public renewal hearings, and making recommendations to the federal agency.

Second, the current system of public inquiry moves the process from the local to the national arena where community standards and regional concerns are detached from the filing process. A state or even county-based board of broadcasting is in a better position to evaluate the commitment of a radio (or television) station to community concerns than the FCC.

Recently network television broadcasters have come under attack by citizens groups on both the right and left of the political spectrum for forcing their affiliated stations to air programming that did not reflect local community standards. For example, several CBS affiliated stations protested when the network attempted to air *Victoria's Secret Fashion Show* at 8 p.m. when many children are assumed to be watching television. The networks have increasingly disciplined affiliates for pre-empting network programming with local material by threatening to discontinue a station's affiliation status (Lieberman, 2003). A similar but far more politically motivated clash occurred recently around Sinclair Broadcasting's plan to air a documentary film critical of Senator John Kerry's record in Vietnam. Public outcry, heavy news coverage during a tight presidential election and a stock price drop forced Sinclair to air a much-edited version of the piece. Regularly-scheduled board of broadcasting hearings could be used as a forum

for local audiences to raise concerns like the affiliate/network relationship, to set community standards for indecency, fairness and equal access rules, and to promote local accountability for broadcasters and civic participation for citizens.

As is the case for any political office, the elected members of the board of broadcasters would be subject to influence by multiple interests, including broadcast license holders. According to media watchdog group, The Center for Public Integrity, “television and radio companies contributed more than \$26.5 million to federal candidates and lawmakers” from 1998 through June 2004 (Morlino, 2004). The board of broadcasters would be particularly vulnerable to political pressure from media owners especially during election years. A renewed role for government oversight at the state or federal level must be accompanied by significant campaign finance reform, including reduced-fee or free airtime for political candidates.

#### LPFM and DAB

A third policy area involves initiatives already underway by the FCC and Congressional legislators; the establishment of low-power radio licenses and the allocation of noncommercial spectrum for digital audio broadcasting services. However, both face regulatory histories that threaten to shut down the possibilities for greater media diversity that each technology could provide.

On January 21, 2000 the FCC voted to authorize a new class of broadcasting licenses; low-power radio service (LPFM). Low-power radio is defined by the FCC as radio broadcasting below 100 watts. Prior to the January vote, operating a station with less than 100 watts of power was illegal. Often referred to as “pirates,” micro radio

broadcasters operating low-power radio without a license were subject to fines, seizure of broadcast equipment, and arrest.

Under the FCC rules, low-power stations still require a license to broadcast, but a significant characteristic of these new licenses is the noncommercial requirement. Any individual or organization wishing to operate a LPFM station is prohibited from airing advertisements, although support from underwriting and program sponsorship is permitted. In addition to the noncommercial requirement, LPFM licenses are only available to individuals or organizations who do not already own radio stations or any other media outlet (including cable systems, television stations and newspapers) and, at least for the first two years of licensing, LPFM operators must live within ten miles of their station.

Chaired by President Clinton-appointee William Kennard, the FCC's campaign to create LPFM and the specific requirements of low-power operators reflected a concern for the concentration of radio ownership evident since the 1996 Telecommunications Act. Speaking to the NAB in October 1998, Kennard (1998) advocated for LPFM as a means to remedy the trends of concentration:

As I have traveled around the country, I talk to many, many people who want to use the airwaves to speak to their communities...There is a tremendous need for us to find ways to use the broadcast spectrum more efficiently so that we can bring more voices to the airwaves...I believe that we have an obligation to explore ways to open the doors of opportunity to use the airwaves, particularly as consolidation closes those doors for new entrants.

His efforts met fierce opposition from established commercial radio broadcasters.

With legislative support from U.S. Representative Billy Tauzin (R-Louisiana), chair of the House Commerce Committee's communications subcommittee, which oversees communications policy, broadcasters lobbied for Congressional action to stop low-power licenses. Drafted by Republican representative from Ohio, Michael G. Oxley, the bill, known as the Radio Broadcasting Preservation Act of 2000, sought to curtail the FCC's LPFM initiative by requiring signal integrity studies and "buffer zones" that cut the stations the FCC opened for licensing by 75%. The measure was attached to a House appropriations bill and signed into law by President Clinton in December of 2000, not quite a year from the FCC's initial LPFM ruling.

The lobbying effort and public relations campaign launched by LPFM opponents seemed ludicrously disproportionate to the immediate effect low-power stations would have on large radio group owners. However, as the free radio movement has proclaimed for years, what is at the heart of the low-power radio struggle is a far greater challenge to established broadcasters than competition. In announcing the LPFM initiative as a measure for giving local communities a "voice," the FCC suggested what many media activists have known: The current structure of the media does not adequately serve the public interest. If successful, new models of broadcasting, like LPFM, may upset a business logic that has enabled broadcasters to exploit deregulation for economic gain.

In addition, low-power radio upsets the traditional relationship between broadcaster and consumer. Since the new class of stations requires owners to live in the community where they broadcast, and the voices on the station are likely to be members of the community, the consumers (audience) and producers of low-power radio are one in

the same. Their relationship with media access is democratized, involving far more participation than call-in shows and promotional contests.

The fate of low-power radio currently rests in a bill proposed by Republican Senator John McCain and supported by Democrat Senator Patrick Leahy. The Low Power Radio Act of 2004 seeks to undo the 2000 Preservations Act and free the FCC to issue low-power licenses without the restrictive signal buffer zone. The NAB continues to oppose LPFM legislation even after an independent study found that the low-power stations proposed by the FCC in 2000 do not pose a significant risk of interference to existing stations. McCain's bill, which received positive approval from the Senate Commerce, Science and Transportation Committee in July of 2004, should be passed as soon a Congress reconvenes in January 2005.

Similarly, digital audio broadcasting (DAB) is currently tied-up in FCC inquiry proceedings as various interests jockey for position in the conversion from analog to digital radio. The deliberations echo similar debates in the mid-90s surrounding the transition to digital television. Digital spectrum opens up additional channels on currently allocated broadcast signals, thus allowing broadcasters to "piggyback" information on the analog signal. For example, by sending additional audio and video data to digital-ready radios, users could play the music video and display the song title, artist and album name while listening. One of the questions about this added signal capability that circulated during the mid-90s was how the additional spectrum space would be allocated and what would happen to the old, analog signals? Not surprisingly, the broadcast lobby headed by the NAB was successful in convincing Congress that existing licensed broadcasters should be given the digital spectrum space related to their analog signals in order to

quicken the transition to digital television. Decisions about what the broadcasters would be required to do with the old, analog signals were not resolved because the timetable for the digital TV rollout was still unclear.<sup>6</sup> Senator Bob Dole publicly condemned the FCC, Congress and the Clinton Administration for “giv(ing) away the first broadcast licenses for digital television to broadcasters for absolutely nothing” instead of auctioning the new spectrum licenses and raising \$70 billion in revenues (Dole, 1997, p. 29). Before Dole left the Senate to pursue a failed presidential run, he received a written commitment from the FCC and Congress that legislators would review the public interest requirements of broadcasters before allocating the digital signals and would require broadcaster to return the analog signals to the FCC for re-allocation. Consumer advocates, community groups and local governments imagined the analog signals could be used for educational, governmental, disability and emergency services. However, use policies were never discussed or implemented and television broadcasters continue to hold on to their analog channels as the transition to digital television rolls out at a snail’s pace.

Digital audio broadcasting may face the same policy fate. The technical method adopted by the FCC, in-band on-channel (IBOC), allows for the transmission of digital and analog radio broadcast signals simultaneously on the same frequency, and it is possible to split the digital channel so that it may broadcast multiple streams of programming, called multicasting. It is likely that incumbent broadcasters will be granted

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<sup>6</sup> Transition to digital TV was to be completed by 2006, but this deadline was extended several times when it became apparent that consumers were not embracing the switch to digital, which requires a new television set, and broadcasters were not investing the money needed to upgrade transmission equipment by the deadline. The catch-22 scenario has created a digital TV stalemate that may only be resolved by a government-enforced deadline. But, legislators are reluctant to force a deadline as it may leave many consumers without television – a politically poisonous outcome.

licenses to use the corresponding digital spectrum of their analog signals. This is useful because it maintains analog radio during the transition to digital and gives consumers time to purchase digital-ready radios, but again, it is a multi-billion dollar loss of revenue for the government if the spectrum is not auctioned. Moreover, the public interest obligations of broadcasting on the new signals and the fate of the old signals once the transition is complete are yet to be determined.

In April of 2004 the FCC issued a Further Notice of Proposed Rule Making and Notice of Inquiry, seeking comments about what types of digital services the FCC should permit radio stations to offer, how the FCC's current public interest, programming and operational rules should apply to DAB, and how DAB will impact LPFM and noncommercial stations ("FCC explores rules," 2004). Now is the opportunity for citizens, musicians and local governments to push for specific DAB requirements.

Due to the nature of IBOC technology, it is unlikely that broadcasters will have to release the analog portion of their signal because it serves as an interference buffer to its spectrum neighbors in an all-digital environment. The public airwaves are, essentially, hijacked by the technical needs of private, commercial broadcasters. In order to regain some form of public ownership and access, digital radio broadcasters should be obligated to reserve a community access channel on the new spectrum, much like cable companies do for community access television. Since a broadcaster can multicast up to six channels, and perhaps more as transmission technology improves, one of these channels could be set aside. The local board of broadcasting outlined above could oversee applications from local, noncommercial broadcasters for the community access channels. As a result, local markets would gain not one community access channel, but one channel for every

licensed broadcaster. The public ownership model needs to be reinvigorated and applied to the digital realm. City planning boards allocate commercial space for local economic strength and civic space like public parks for quality of life improvements. If corporate broadcasters want to use the spectrum for financial gain, some part of it must be reserved for civic use. Community DAB channels are the public parks of the radio broadcasting environment.

### Legal Action

After the 1996 Telecommunication Act had initiated such a momentous change to the structure of radio ownership, the Department of Justice (DOJ) launched several investigations into the potential anticompetitive practices of radio companies in regards to advertising rates and revenue share. Proposed mergers and acquisitions were scrutinized by the DOJ under the Hart-Scott-Rodino Antitrust Improvements Act on 1976 if the completed sale would put control of more than 40% of local radio ad revenue in the hands of one company (Klein, 1997). However, when George W. Bush became president in 2000 and appointed Attorney General John Ashcroft to head the DOJ, activity of the Justice Department on radio mergers (and most anti-competitive investigations in general) nearly stopped.

The same year that Bush became president, Clear Channel emerged as the largest concert promotion and touring business in the music industry. With the purchase of SFX Entertainment, Clear Channel now produces over 26,000 events annually nationwide. The combination of owning over 1200 top-rated radio stations and booking concerts at over 100 venues, positions Clear Channel as the single most important source for promoting music, via radio or live show, in the country.

Performers rely on radio airplay in order to build exposure for their music and sell concert tickets. Live shows provide the bulk of most artists' income. Concert promoters use radio stations to garner excitement for live shows with ticket give-aways and on-air plugs. In August of 2001 a small promotions firm, Nobody in Particular Presents (NPP), filed an antitrust suit in Denver federal court charging that Clear Channel violated the Sherman Antitrust Act of 1890 by engaging in monopolistic, predatory and anticompetitive business practices regarding concert promotion. The company claimed that Clear Channel intimidated performing artists who chose to promote live shows through NPP, not Clear Channel, by pulling an artist's record from radio playlists and not plugging their shows on air (Boehlert, 2001). In April of 2004, the United States District Court for the District of Colorado issued a ruled against Clear Channel's attempt to dismiss the charges, which clears the way for NPP's lawsuit to proceed in federal court.

Clear Channel came under further antitrust scrutiny in January 2002 when U.S. Representative Howard L. Berman sent a letter to the Justice Department urging Ashcroft and his staff to investigate whether Clear Channel had "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 radio stations" (Berman, 2002). New York Representative Anthony Weiner, also wrote a letter to the DOJ requesting an examination of Clear Channel based on similar allegations. As a result, DOJ finally opened an investigation of Clear Channel in 2003 for both its concert promotion business practices and remote-operation of radio stations that may violate local ownership caps.

On the issue of pay-for-play, Senator Russ Feingold introduced legislation on January 28, 2003 to prohibit radio stations from accepting money from independent music promoters for airplay. Less than four months later, Clear Channel issued a statement that the company planned to end the practice when its contracts with promoters expired. These legal challenges to broadcast ownership and the business practices that have emerged in the deregulated environment are important tools for reining in corporate broadcast power. The DOJ investigation and NPP lawsuit could lead to a divestiture of Clear Channel holdings, which would set legal precedent for the separation of music industry segments that present clear conflicts of interest. The antitrust examination of local ad revenue shares should also return since, as this dissertation shows, oligopolies control the majority of revenue in a market.

### Business Strategies

While anecdotal evidence from media buyers has indicated that large group radio owners unfairly set the rates for ad spots (Ross & Krol, 1999), a more pressing concern for independent and small group station owners is the ability of duopolies to offer ad spots across multiple stations. Industry analyst Veronis and Suhler issued a report in 1998 about the bright future for consolidated radio ownership, highlighting the advertising advantage large group owners have over smaller radio companies:

Duopolies allow radio station owners to expand their reach in a market, enhance their demographic base, or diversify by appealing to multiple demographic groups. Duopolies have more inventory to sell and greater flexibility in packaging that inventory, making radio more appealing to advertisers. Radio operators can (also) offer national advertisers an extensive market reach, both within markets

and across markets, in a single buy...Radio is better positioned to attract national advertising as a result of cross-market consolidation (Taylor, 1998, p. 83).

If an advertiser has many products to sell that appeal to different demographic groups, than large group owners are able to offer several different stations fitting the advertiser's desired audiences. Even if an advertiser has only one product which it sells to a specific demographic, a large group owner can offer the convenience of one-stop-shopping and blanket a region with ad spots. Independent and small group owners are unable to offer similar package-deals and are thus handicap when vying for national advertisers.

One way independent and small group owners could respond to duopoly and oligopoly control of ad revenue is to form advertising collectives with other local stations. Cooperative station owners could package airtime across their collected stations in order to offer similar cross-market advantages to advertisers. Although competition between radio stations for audiences and advertising is traditionally very tough, with stations "dueling" for listeners, every market has combinations of stations that do not directly compete for listeners. For example, country and alternative rock formats do not typically vie for the same listeners. Oldies and contemporary hits radio formats are also fairly discrete. If an advertiser wants to reach both of these demographics, the collective radio stations could offer a two-station airtime buy. The revenue split could be based on the stations' Arbitron ratings. As it is today, a radio station's share of listeners in a market determines, in part, the cost per 15 or 30-second ad the station can charge.

Similarly, radio station collectives of the same format could reach a similar demographic across a large region. For example, northeast independent and small group radio owners from Connecticut to Maine that program classic rock could offer multiple

ad buys for the 18-35 year-old male demographic. In this way, stations can compete with large group owners by offering collective coverage. Antitrust regulations would also have to apply to radio station collectives as it does duopolies, so that no one group of stations could unfairly set ad rates in a market.

### Media Reform Movements

In June of 2003 the FCC voted to allow broadcasters to own television stations reaching up to 45% of the national audience and to control newspaper and broadcasting entities in the same market, relaxing a decades-old ban on cross-ownership. Opposition to the expected rules gathered earlier that year when it became clear the FCC was going to further deregulate the media. Per a mandate in the 1996 Telecommunications Act, the FCC must revisit its rules every two years and either justify or eliminate existing regulations. The June decision became a flashpoint around which a diverse coalition of groups organized to repeal the deregulation move. Organizations and individuals including the National Rifle Association, the National Organization for Women, the National Association for the Advancement of Colored People, Consumer Union, the Writer's Guild, Code Pink: Women for Peace, the Conference of Catholic Bishops, founder of CNN Ted Turner, and conservative columnist William Safire, challenged the FCC in court and won a stay by the Third Circuit Court of Appeals in Philadelphia until the court held a hearing and completed a review. The coalition argued that further media consolidation would reduce the diversity of local news and programs. In June of 2004, the three-judge panel returned the rules to the FCC, stating that the agency used "irrational assumptions and inconsistencies" to justify its move to deregulate the media

(*Prometheus Radio Project v. FCC*, 2004, p. 58). The ruling was seen as a major victory for citizens and media reform groups (Labaton, 2004, p. 1).

This recent media reform movement that coalesced around the FCC ownership rules is the latest in a rich history of citizen groups opposed to corporate control of media. As outlined above, in the late 1920s a collection of educators, religious organizations and nonprofits attempted to secure a noncommercial model for broadcast policy. In the 1960s civil rights organizations spearheaded by Everett Parker and the Office of Communication of the United Church of Christ, won the right to participate in FCC license renewal procedures and monitor broadcasters' public interest obligations. In the 1970s, working with the U.S. Surgeon Generals office, the National Citizens Committee for Broadcasting chaired by former FCC member Nicholas Johnson and the Cultural Indicators Project lead by then-Dean of the Annenberg School for Communications George Gerbner argued for the reduction of violence on television and increased civic-oriented programming. In each of these eras, battles for the 'public interest' were won and ground was also lost. In this current period of deregulation, as media critic Robert McChesney (1999) warns, "media reform will not be an easy area in which to gain victories" (p. 319).

A primary reason why it is so difficult to argue for media reform, in particular for less corporate-controlled media, is because the terms of the debate have been so thoroughly established and interpreted in ways that support the current system. The increasing popularity of rhetoric that casts regulation and the government itself as the "principle enemy of democratization" makes it hard to argue for an expanded role for government agencies and renewed legislative action (Lenert, 1998, p. 12). Even using

current rules, like the ‘public interest, convenience and necessity’ mandate which has survived since 1927, is hindered by weak policy definitions. For decades broadcasters have chosen to interpret public interest obligations in ways that serve the corporate broadcast model. As Thomas Streeter (1996) writes,

These terms (antimonopoly, the public interest, free speech, and access) must be approached with a sense of their context, their history and their role in institutional practices. They gain their meaning, their force, not from what one wants them to mean but from the frameworks used by others to interpret them, and those frameworks are in turn shaped by the way the terms have been effectively used in the dominant social formation. And for the most of this century, these words have been used comfortably alongside, and in many cases on behalf of, corporate-dominated broadcasting (p. 196).

Thus, attempting to require broadcasters to air certain amounts of civic-oriented, local programming, which is a current strategy of many media reform organizations, will continue to face First Amendment challenges and is unlikely to create the kind of programming diversity radio lacks. The lobby arm of corporate broadcasters, the NAB, has thus far been able to define public interest obligations and localism in fairly narrow terms. Most recently, the NAB filed comments in November 2004 in response to the FCC’s notice of inquiry regarding localism. The report focused on the amount of airtime radio broadcasters donated to public service announcements (\$7.3 billion in 2003) and funds raised for charitable causes (\$2.3 billion in 2003). Responding to criticism that broadcasters do not create programming locally and thus ignore issues of importance to citizens, the NAB (2004) wrote:

News and public affairs programming of importance to the entire nation also can be important to the citizens of a particular community such as campaigns against drinking and driving, children's smoking, and drug abuse. It is irrelevant to a local stations' audience where these campaigns are produced; the messages still hit home (p. 25).

As this comment reveals, the NAB conveniently understands localism within a model that supports the centralized production of programming.

When Commissioner Michael Powell was appointed to the FCC, before being named chair by President Bush, he said in a speech to the American Bar Association, The night after I was sworn in, I waited for a visit from the angel of the public interest. I waited all night, but she did not come. And, in fact, five months into this job, I still have had no divine awakening and no one has issued me my public interest crystal ball...The best that I can discern is that the public interest standard is a bit like modern art, people see in it what they want to see (Powell, 1998).

He received a public tongue-thrashing from Congressional democrats and media reform activists for not knowing what constitutes the public interest. However, his comments to the ABA are perhaps more illuminating than the divine awakening Powell anticipated.

The history of broadcast policy illustrates that 'the public interest' has always been a discursive tool used strategically by government regulators, corporate media owners and citizens groups to serve their political interests. The phrase is a contested principle that is fought over in the complex arena of policy formation. In order to achieve the goals of media reform – increased public affairs programming, fair and balanced news coverage, more locally-produced content, ownership and viewpoint diversity, citizen access to

media production, genuine content variety, and so on – the contemporary reform movement must engage in a battle over meaning. For example, what does it mean to “own the airwaves” and what rights does that afford the public? Is it even possible to attain public interest-focused media in a commercial system? The answers to these questions have been assumed for so long that the operationalization of these values is lost. In order to reclaim terms like ‘public interest,’ the “basic tenets and patterns of corporate liberalism” must be expressed as “a deliberate choice to foster a consumerist, oligopolistic, for-profit electronic media...Only then can the naturalness of that choice be questioned, and a full-fledged discussion of its value be undertaken (Streeter, 1996, p. 320).

#### Noncapitalist Forms of Broadcasting

The discursive battle over the meaning and value of communication policy also requires imagining other models for broadcasting that could exist as well as foregrounding alternative models that do exist. One way in which the assumptions of corporate liberalism can be exposed is by moving commercial broadcasting to the periphery and centering noncapitalist forms.

As a dominant discourse, postmodern Marxian theorist J.K. Gibson-Graham (1996) argues, capitalism has monopolized how society thinks about economic structures in general, and as such has limited the imagining of anticapitalist politics:

It was possible, I realized, and potentially productive to understand capitalist hegemony as a (dominant) discourse rather than as a social articulation or structure. Thus one might represent economic practice as comprising a rich diversity of capitalist and noncapitalist activities and argue that the noncapitalist

ones had until now been relatively “invisible” because the concepts and discourses that could make them “visible” have themselves been marginalized and suppressed (p. xi).

The challenge is to displace capitalism as the favored lens for not only understanding the ‘mainstream’ economy but also as the measure by which all other ‘alternative’ economic forms are constructed (p. 6). For example, instead of representing housework as either a non-economic activity because it has no exchange value within a capitalist system, or as a social activity that services a capitalist system (by sustaining and procreating the labor force), rethink housework as a cultural practice that exists beside capitalism and may have a different, but no less sufficient, set of exchange values that circulate in a noncapitalist form. By making this shift, Gibson-Graham claims, “other types of economy may be seen as coexisting in a plural economic space - articulated with and overdetermining various capitalisms rather than necessarily subordinated or subsumed to a dominant self-identical being” (p. 14).

Applying this discursive shift to radio broadcasting, for example, may dislodge the dominant model for understanding how the medium is structured and make visible the various ways radio relates to itself and other relevant industries. Radio broadcasting, which has been primarily a commercial medium since the mid 1930s and operating within a capitalist mode of production, may also be characterized as a socialist activity if the economic structure of college and community radio broadcasting is moved to the center of analysis. Established as nonprofit organizations, supported by tax dollars, noncommercial by FCC mandate, and often labored by unpaid volunteers, public college

and community radio stations have played a substantial role in the production and distribution of music in the United States.

Popular music icons *REM* in the 80s and *Nirvana* in the 90s cultivated fans beyond their native Athens, Georgia and Seattle music scenes through college radio airplay. Once established as a favorite of young adult audiences, *REM* and *Nirvana* secured large, corporate record label contracts and broke into commercial radio. College and community radio are often described as the research and development test beds for new music which may, or may not, be picked up by the commercial music business. This relationship, far from being peripheral to the (capitalist) music industry, is vital to the survival of both commercial radio stations and record labels. New music keeps audiences tuned in and consumers buying. From this perspective a noncapitalist form of broadcasting is visible as constitutive of the capitalist production (record labels) and mass distribution (commercial radio) of music. Furthermore, despite capitalism, this noncapitalist form continues to exist on its own terms and through many policy and business practice changes to its capitalist form.

The final recommendation of this project is also a call for further research that, unfortunately, was not possible within the scope of this dissertation. A political economic analysis of community, college, public and pirate radio stations would provide insight into noncapitalist forms of broadcasting, and how those forms may cultivate localism, diversity and citizen participation in media production. Formal policies as well as cultural practices that champion these noncapitalist forms of broadcasting should be encouraged. The establishment of LPFM stations and DAB community access channels are part of

this policy proposal, as well as expanded and sustainable financial support for a vibrant public broadcasting system.

### The Future of Telecommunications Reform

The 1996 Telecommunications Act was crafted to promote competition and encourage new entries into the market. In regards to radio broadcasting, it did not accomplish these goals. Twenty-five percent of broadcast owners left radio since 1996 and most stations are managed by local oligopolies. As the act approaches its ninth anniversary, the U.S. Congress plans to overhaul the law and further relax media ownership rules (Labaton, 2004, p. 1). While Congress moves ahead, the policy making community should take into account the evidence of this critical cultural policy examination of the 1996 act. The consequences of economic reforms on telecommunications policy have significant cultural implications. Whether the FCC's recent attention to non-competition issues like localism and public interest obligations will generate policies that support greater cultural diversity in the media is uncertain, given the current political climate and privatization policies of the Bush Administration. Nevertheless, assumptions about the social value of centralized, corporate-controlled media must be contested in order for alternative visions to blossom and a progressive democratic culture to thrive.