

TESTIMONY OF

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EXECUTIVE VICE PRESIDENT AND CHIEF LEGAL OFFICER
CLEAR CHANNEL COMMUNICATIONS, INC.**

**HEARING ON
OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION:
MEDIA OWNERSHIP**

**BEFORE THE
SUBCOMMITTEE ON TELECOMMUNICATIONS AND THE INTERNET
HOUSE COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES**

DECEMBER 5, 2007

Summary

Nearly twelve years after Congress directed increases in the local radio ownership caps, radio stations of all sizes across the nation are once again facing major operating challenges, not only due to ever-increasing competition among local radio stations, but now due to the onslaught of competition from new - and largely unregulated - technology platforms. In fact, the current state of the media marketplace - in which Americans have access to a super abundance of news, information, and entertainment options - renders the local radio ownership caps entirely unnecessary and subject, at the very least, to meaningful relaxation.

There is no question that a seismic shift has taken place in the competitive landscape, and that this shift is taking a severe toll on free, local radio. The existence of new digital audio technologies - including satellite radio, iPods, and Internet radio outlets - and the growing trend toward implementing these technologies in automobiles - is significantly eroding the amount of time spent listening to free, local radio, especially during the "drive-time" so crucial to local radio stations' bottom lines. Each of these technologies is achieving tremendous success and providing new services to consumers, but all are doing so in unregulated, market-driven environment. Free radio broadcasters, by contrast, remain shackled by outdated regulations that limit their growth, and, by extension, their ability to deliver services that consumers want and need. This despite the fact that free local radio - with 20 companies accounting for less than half of all radio revenues - is the least concentrated of all major media sectors. The FCC cannot ignore this sea-change in the market. Relaxing or repealing the local ownership restrictions is required both as a matter of law and sound communications policy.

The possibility of the Commission's approval of the proposed XM-Sirius merger makes repeal of the local radio ownership limits an absolute imperative. A combined XM/Sirius would control more spectrum than the AM and FM bands combined in every market. If the FCC approved the creation of a spectrum monolith like this, without concurrently revising its rules for radio, it would be both a dereliction of its statutory mandate and profoundly unfair to the broadcasting industry and the American public.

As Ranking Member Upton and many other members of the Subcommittee have recognized, in order to compete effectively, at a minimum the FCC should raise the current caps in the largest markets, just as it proposing to do with the newspaper-broadcast cross-ownership rules. That action would be exceedingly modest, and is the bare minimum needed to ensure that free radio will remain just that: free- and that news, information, and entertainment does not become something that is available only to people who can afford to pay for it.

Finally, and very importantly, immediate action is needed to improve the disgraceful state of minority media ownership. Bold initiatives are needed to shake up the status quo. One way is for Congress to reinstate minority tax certificates. Clear Channel supports strongly H.R. 3003, House Ways and Means Committee Chairman Rangel's bill, and H.R. 600, Congressman Bobby Rush's bill, to do just that. Additionally, immediate action can and should be taken by the FCC. Clear Channel urges the Commission to adopt the proposals of the Minority Media and Telecommunications Council ("MMTC") to facilitate increased minority ownership. Of special note, MMTC and multiple other prominent minority media groups, including LULAC, Rainbow/PUSH, Multicultural Radio Broadcasting, Inc., and others support repeal of the AM-FM subcaps, which constrain opportunities for increased minority ownership by reducing the inventory of radio stations for purchase by minority and woman-owned enterprises. MMTC's proposed "incubator program" also has the potential to provide an immediate spike in minority and woman ownership by allowing companies to acquire more than the otherwise-allowable number of stations in any market where the company establishes an "incubator" program that substantially promotes minority or woman ownership.

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Mr. Chairman and Members of the Subcommittee, thank you for inviting me to appear before you today. My name is Andy Levin, and I am Executive Vice President and Chief Legal Officer of Clear Channel Communications, Inc. It is an honor to be back in this hearing room, although with all due respect, it's really more fun to be on your side of the dais. I appreciate the opportunity to testify today.

The principal focus of this hearing is the FCC Chairman's proposed change to the newspaper-broadcast cross-ownership rules. Chairman Martin has made it quite clear that he does not intend to propose changes to other broadcast ownership rules, including the local radio rules. I appear today because neither the FCC review required by statute nor the Third Circuit remand are limited to the newspaper-broadcast prohibition. The FCC has an obligation to address all of its ownership rules, not merely a small subset of that universe.

It is no secret that broadcast ownership issues have always been controversial. But it's my hope that my testimony will help the Subcommittee put aside some common misconceptions and hyperbole, and focus instead on today's marketplace realities. I believe that is the key to making fact-

based, dispassionate determinations about whether the current regulatory regime continues to make sense.

Clear Channel operates radio stations serving local communities across the United States. It is a fact that the radio industry has been able to significantly improve its service to the public as a result of changes to the radio ownership rules that Congress mandated in the “Telecommunications Act of 1996.” Most people forget that prior to the Telecommunications Act more than 60% of working radio stations were operating in the red, and at risk of going silent entirely. But twelve years ago Congress acted, and it worked. In the years following the Act, radio stations were once again able to compete fairly and be successful. And, just as important, because Congress knew that technology was changing rapidly, it directed – in Section 202(h) of the ’96 Act – that the FCC periodically review its broadcast ownership rules, including the local radio ownership rule, to determine whether those rules remain necessary in the public interest as the result of increased competition. If not, Congress directed that the broadcast ownership rules must be modified or repealed.

It is our view that the current state of the media marketplace – in which Americans have access to a super-abundance of news, information, and entertainment options – renders the local radio ownership caps entirely unnecessary and subject, at the very least, to meaningful relaxation.

Today, nearly twelve years after Congress directed increases in the local radio ownership caps, radio stations of all sizes across the nation are once again facing major operating challenges, not only due to ever-increasing competition among local radio stations, but now due to the onslaught of competition from new – and largely unregulated – technology platforms.

In 1996, Congress could not have imagined the dizzying array of digital audio platforms available to consumers today. The country's two satellite operators – XM and Sirius – can now provide listeners with nearly 300 channels of programming in every local market across the country. In 1996, they weren't even licensed to operate. In 2003, when the FCC last examined the state of competition in the industry, XM and Sirius had less than one million subscribers combined. Today, just four years later, they boast over 16 million customers. That's an astounding 16-fold increase. Certainly the FCC is legally required to take notice of this seismic shift in the competitive landscape.

Likewise, Congress could not have imagined in 1996 that nearly 110 million iPods and other MP3 players that are used to listen to music instead of radio would be sold by now. And, as you can imagine, iPods have significantly eroded the amount of time spent listening to free radio, and it's getting worse. In 2007, 70% of new cars were delivered to customers iPod-ready. This will hit radio where it hurts the most, given that 50% of time spent listening to radio takes place in the car. Those devices did not even exist in 1996.

While Congress may have been able to envision the day when people might listen to music over the Internet, it had no idea that today 30 million people would listen to music services on the Internet every week.

All of these wonderful technologies have one profound thing in common - they are achieving tremendous growth – which we otherwise term “success” – and providing wonderful new services to consumers, but all are doing so in unregulated, market-driven environments. Free radio broadcasters, by contrast, remain shackled by outdated regulations that limit their growth, and, by extension, their ability to deliver services that consumers want and need.

The numbers more than bear this out: in the five year period between 2002 and 2006, the average annual growth rate for XM was 161%. Sirius grew 430%. Apple grew 43%. But during that same period, free radio grew less than 1%. Moreover, radio industry revenues fell by an average of 8 percent between September 2006 and September 2007, and industry expectations are that it will be down 3 percent by the end of this year. Projections going forward are all flat to down. This is unsustainable. Free, local radio needs regulatory reform now.

The FCC simply cannot look the other way. It is clear that the marketplace has changed enormously. It is also clear that real trouble is brewing for the local radio industry. Congress doesn't wait for the nation to go into a deep recession before it urges the Federal Reserve to cut interest rates. Similarly, it should not wait for the bottom to fall out for local radio before it urges the FCC to take preventative measures. Relaxing or repealing the local ownership restrictions is required both as a matter of law and sound communications policy.

And let's just imagine for a moment the possibility the Commission were to suspend rational thought, and approve the pending XM-Sirius merger application. If that were to happen, repeal of the local radio ownership limits would be an absolute imperative. Just consider that a combined XM/Sirius would control a block of frequencies that spans 25 MHz. That means they would control more spectrum than the AM and FM bands combined in every market. If the FCC approved the creation of a spectrum monolith like this, without concurrently revising its rules for radio, it would be both a dereliction of its statutory mandate and profoundly unfair to the broadcasting industry and the American public.

Some people may believe that consolidation is a dirty word, but there is abundant evidence that increased levels of common ownership have produced real benefits for American listeners. For example, the number of diverse programming formats has more than doubled since 1993. As a

result of more niche formats, Clear Channel has increased the number of unique songs in rotation by more than 70% since 2001. That means more new music, and more new artists than ever before.

Clear Channel also has become a pioneer in foreign language programming, introducing wholly new formats – such as La Preciosa, Hurban, Mega, Viva, and Reggaeton – which previously were nonexistent anywhere on America’s airwaves.

And often overlooked is that the ’96 Act was the catalyst for the launch of progressive talk radio. It gave companies like Clear Channel the financial breathing room to experiment with new and untested formats. As a result, in 2006 Clear Channel was the largest affiliate of Air America, carrying progressive talk in 23 markets, six of which were in the top ten.

What’s more, reforms of the ’96 Act have gone beyond enabling Clear Channel to increase the diversity of programming on its own operated stations. Clear Channel also has made its stations available for diverse program offerings by others. For example, Clear Channel recently entered into an “historic,” five-year, local marketing agreement and option to buy with the licensee of WVON(AM), an independently-owned Chicago station that airs an all-Black information and talk format, an arrangement that community leaders in Chicago have heralded as “the most important economic news to hit Black Chicago in years,” and one that provides “the only vehicle that we [Black Chicagoans] have to get information and to express our opinions” with expanded reach and the opportunity to create new jobs.

The increased economic and operational efficiencies resulting from the 1996 Act have also allowed Clear Channel stations to greatly augment their commitment to local news and other locally oriented programming. At the end of 2006, Clear Channel had more than 900 news staff in 72 bureaus – rivaling any other national broadcast organization, and, we believe, surpassing many.

Clear Channel stations are routinely recognized by leading journalism organizations for their excellence in news coverage.

Similarly, Clear Channel has expended considerable resources expanding its stations' emergency preparedness capabilities, further enhancing its operations following our stations' experiences with Hurricane Katrina, the recent southern California wildfires, and other local crises that have affected various parts of the country. Of particular note, Clear Channel's "Disaster Assistance & Response Team" has installed radio transmitters, studio equipment and news gathering packages in trucks and RVs in many cities that Clear Channel serves across the country. Those cities will also house generators, satellite phones, fuel and supplies, even a portable tower on a trailer. An emergency backup satellite system will enable any of the company's radio studios located in the vicinity of a particular city with specialized equipment to broadcast their local programming directly to any of the company's tower sites when microwave links or land lines are down or fail. If emergencies force Clear Channel news teams and announcers to abandon their studios, the satellite equipment will enable the station crews of affected areas to broadcast from alternative, nearby locations to provide their listeners with valuable and up-to-date information. This type of comprehensive emergency response plan would simply not be possible were it not for the operational efficiencies flowing from common ownership.

Indeed, I could go on all day – even all week – about the efforts of local Clear Channel stations and their extraordinarily dedicated employees to make a meaningful, positive difference in the communities they serve. The stations throughout Florida and the Gulf Coast that played an integral role before, during and after each of the devastating hurricanes of 2005. The niche public affairs programming offered by our San Francisco stations that address compelling community concerns ranging from the welfare of local children to issues affecting the gay community. The

three-day-a-week open forum provided by Clear Channel's Lebanon, NH stations, which promote discussion of issues of importance to the community and the region. The "Fuel for Families" program hosted by Clear Channel's stations in August/Waterville, Maine, which increases awareness and raises money to provide heating fuel for families in need. These are but a few of many examples which show how Clear Channel stations are better able to serve the specific interests and needs of their local communities due to the economies and efficiencies made possible by common ownership.

It is very important to understand that the amount of consolidation created by the '96 Act did not result in excessive concentration. In fact, nearly every other segment of the media is far more concentrated than the very competitive free, over-the-air, radio industry.

Let's look at the facts:

- Satellite Radio – 2 companies control 100% of the market.
- DBS – 2 companies control 100% of the market.
- Record labels – 4 companies control nearly 90% of the market.
- Cable Television – 7 companies control 85% of the market.
- Internet Search: 2 companies control 80% of the market.

Compare that to:

- Radio Industry: the top 20 companies control less than half of the total market.

As Ranking Member Upton and many other members of the Subcommittee have recognized, in order to compete effectively, at a minimum the FCC should raise the current caps in the largest markets, just as it is proposing to do with the Newspaper Broadcast Cross-Ownership Rules. That action would be exceedingly modest, and is the bare minimum needed to ensure that

free radio will remain just that: free- and that news, information, and entertainment does not become something that is available only to people who can afford to pay for it.

Finally, and very importantly, changes in the local radio ownership rules could be coupled with FCC adoption of key elements of the MMTC proposals, some of which have been pending for more than a decade, to jumpstart real increases in minority and woman ownership of radio properties. The state of minority ownership in media today is a disgrace. There is a need for bold initiatives to change the status quo.

When Clear Channel commenced the process of divesting more than 400 radio stations earlier this year, nearly 40 percent of its radio assets, it sought minority and woman-owned buyers. It wanted to replicate the success of the year 2000, following the 1996 Telecommunications Act, when, in connection with the AMFM merger, it sold 40 of 110 stations, or nearly \$2 out of \$4 billion in assets, to minority-owned broadcasters. But, Clear Channel's desires this year were thwarted by the stubborn problem of insufficient access to capital by economically disadvantaged groups. The economies of the marketplace need to change to smash the barrier to increase minority ownership. One way to do that is for Congress to reinstate minority tax certificates. Clear Channel is proud to support strongly H.R. 3003, House Ways and Means Committee Chairman Rangel's bill, and H.R. 600, Congressman Bobby Rush's bill, to do just that.

But, we don't have to wait for enactment of that legislation to move the ball forward. The Commission should immediately consider and adopt MMTC's proposals to facilitate increased minority ownership. Of special note, MMTC and multiple other prominent minority media groups, including LULAC, Rainbow/PUSH, Multicultural Radio Broadcasting, Inc., and others support repeal of the AM-FM subcaps. The court in the *Prometheus* case expressly found that the FCC had failed to justify its retention of the subcaps. The history of the subcaps amply reveals that there is

no justification for their retention in today's radio marketplace. Moreover, retention of the AM/FM subcaps actually constrains opportunities for increased minority ownership by reducing the inventory of radio stations for purchase by minority and woman-owned enterprises.

Another MMTC proposal – the so-called incubator program, also has the potential to provide an immediate spike in minority and woman ownership. The FCC should allow companies to acquire more than the otherwise-allowable number of stations in any market where the company establishes an “incubator” program that substantially promotes minority or woman ownership. A “menu-based” approach should be adopted, allowing a company to choose from among several options that would enhance the ability of such businesses to enter, or expand their presence in, the radio industry in exchange for an ownership “credit” or credits. Each such credit, could, in turn, be used by the company to own one station above the ownership cap in a local market. In most cases, the diversity-enhancing benefits would be delivered in a market of similar size to that in which the proposed transaction “over the cap” would take place.

In closing, I implore Members of the Subcommittee, do not leave free, over-the-air radio behind. And do not view media ownership as the third rail of telecommunications policy. The FCC's proceedings afford the opportunity to do much good for American consumers and to promote the kinds of investment that will lead to a more locally oriented and diversely programmed free broadcast radio service. Please don't let that opportunity pass.