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The Testimony of

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

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

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

¡ñ Public spokesmen decry the evils of consolidation but ignore the substantial benefits that consolidation has brought to the listening public.

¡ñ Fingers are pointed at the alleged misdeeds of Clear Channel ¨C by far the largest radio company with 1200 stations ¨C and assumptions are incorrectly made that every radio company engages in the same practices.

¡ñ Critics point to an FCC rule on market definition that permits some anomalies ¨C such as Clear Channel¡¯s ownership of many stations in the relatively small market of Minot, North Dakota ¨C and wrongly assume that the FCC rule allows excessive consolidation in every market.

¡ñ Pressed by Congress to do something about the few anomalies that generate almost all of the publicity, the FCC adopts a solution ¨C the use of Arbitron-created markets ¨C that the FCC rejected more than 10 years ago because it would not adequately reflect the actual options available to radio listeners.

¡ñ Anxious to protect the public against the alleged dangers of a single large company ¨C Clear Channel ¨C the FCC has shot an arrow that strikes at the heart of smaller broadcasters whose practices have served ¨C and could continue to serve ¨C the listening public well.

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

Radio historically has been an extremely fragmented industry. Prior to 1992, no single operator could own more than 20 of the more than 10,000 stations in the United States. Following the gulf war in 1991, the industry fell on hard times and more than half of the radio stations were losing money. There were simply too many stations in each market chasing a very small share of the advertising dollars spent on all media. There were in fact reports that 90% of the industry¡¯s profit was garnered by about 10% of the owners.

Radio owners ¨C and the listening public they served ¨C needed relief if free over-the-air radio was to survive. Responding to this grave situation, the FCC permitted broadcasters to own up to 2 FM¡¯s and 2 AM¡¯s in each market with a maximum of 20 AM stations and 20 FM stations nationwide. It was a bold attempt to provide relief to a seriously troubled industry, and it revolved around a simple but critical concept ¨C consolidation. The FCC recognized even then that radio broadcasters needed the efficiencies of scale if they were to survive and hopefully improve program service. In order to implement its new ownership rule, the FCC labored long and hard to develop a market definition that would provide the most uniform and objective method of determining compliance. It considered many options ¨C including the use of Arbitron-based market definitions ¨C and ultimately decided in favor of the contour-based approach. Over the next four years, hundreds (if not thousands) of transactions were completed and billions of dollars of capital were invested as the radio industry completed its first wave of consolidation and produced the very efficiencies that the FCC had sought. As the industry attracted new capital, stations that had gone dark were revived by entrepreneurs who were banking on a new business model that enabled broadcasters to leverage fixed costs against multiple stations in a single market. In short, the FCC¡¯s action in 1992 proved to be a desperately needed regulatory relief package for a struggling and still very fragmented industry. Despite progress, there were many areas ¨C especially in medium and smaller markets ¨C where the FCC¡¯s expanded ownership rules had little or no impact. Then, in 1996, Congress passed sweeping reform legislation that further relaxed the caps on local ownership and removed the national cap on the number of stations a single company could own. Radio broadcasters could now own up to eight (8) stations in the largest markets and no more than half of the stations in the smallest markets.

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

II. THE RESULTS OF INDUSTRY CONSOLIDATION

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

Clear Channel was by far the most aggressive of the consolidators, acquiring more than 1200 stations, or almost 1000 more than my company, Cumulus, which owns the second largest number of stations. On the revenue front the disparity is equally as great. With over $3.5 billion of radio revenue, Clear Channel has almost a billion and a half dollar lead over the next largest competitor, Infinity, and a $3 billion lead over the number three player in revenue, which is Cox. In short, Clear Channel is in a class by itself in terms of revenue and number of stations. As the proverbial 800-pound gorilla, Clear Channel has become the lighting rod for opponents of radio consolidation. While some of this criticism may be deserved, much of it is not. For example, concerns have been raised that ownership of so many radio stations by one company has homogenized program fare and turned radio service by all stations ¨C whether or not owned by Clear Channel ¨C into a McDonald¡¯s version of broadcasting. The truth is otherwise. There is more format diversity today than ever before, and there are more choices on the dial today than ever before. Our experience at Cumulus is illustrative. I have built our company - which focuses on midsize and smaller markets - from scratch through 130 acquisitions which now provides a format diversity in most markets that never previously existed.

Like many other radio companies, Cumulus has been able to utilize the expanded ownership caps of the 1996 Act to develop market clusters that operate with greater economic efficiency and are able to pour much-needed money and resources into developing quality local programming with live disc jockeys and upgraded equipment. Critics today ignore the achievements of companies like ours and speak of those ¡°mom and pop¡± operations with great nostalgia on the assumption that those small operations provided reliable and responsive local service. Again, the truth was often otherwise. Many of the stations we acquired were automated juke boxes which had few local programs and instead relied on programming from syndicators via satellite or bare-bones automation systems. Oftentimes, these stations were operated as little more than sales organizations with little or no programming staff and with substandard transmission facilities that were in need of significant capital investment just to bring them into compliance with FCC rules. Notwithstanding the benefits achieved under existing rules, the FCC voted a month ago to adopt new radio market definition which had the unstated objective of tempering the dominance of Clear Channel and the stated objective of preventing a repeat of the now famous Minot anomaly. I believe that the new rules regarding radio ownership and market definition have missed on both counts and should be withdrawn or modified.

III. GRANDFATHERING OF CURRENT CLUSTERS AND PENDING APPLICATIONS

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

This is bad news for those of us who have to compete against Clear Channel. We cannot hope to compete effectively against Clear Channel¡¯s mammoth organization unless we can grow. Preserving the status quo simply strengthens and emboldens the incumbent and that, in my judgment, is the unintended consequence of the FCC¡¯s new rulemaking decision. The point should not be lost amidst all the hysteria over consolidation: Clear Channel will be that much stronger five years from today if the ground rules of consolidation are changed in midstream and impede further growth by its competitors. To a large extent, this result is almost preordained by the FCC¡¯s refusal to grandfather a noncompliant market cluster if it is sold to someone other than a small business (which is unlikely to have the resources to buy a cluster in a market of any meaningful size). First is the question of fairness ¨C telling Cumulus and other radio companies that they cannot buy or sell intact a group of radio stations that were acquired in reliance on pre-existing rules. Second, there is the impact on needed growth for companies who want to compete with Clear Channel and other large radio companies. The inability of smaller companies to sell their clusters intact will cause them to hold on to their clusters rather than break them up and suffer the financial loss that could ensue. There will thus be fewer stations available for sale. The net result will be a slower pace of growth for Clear Channel¡¯s competitors ¨C all of which will help preserve Clear Channel¡¯s competitive advantage of scale. Conversely, the question could logically be asked, why not force all clusters to be brought into compliance and thereby level the playing field. The answer is obvious. This approach will hurt the smaller broadcasters and create hundreds of ¡°orphan¡± stations, many of which will inevitably go dark ¨C prompting an ironic reversion to the pre-duopoly situation of the early 90¡¯s where few radio companies could boast of profits. Due to the relative size of the competitors, requiring divestitures to bring a group into compliance will have a much greater adverse impact on Cumulus, Citadel, Regent, Saga or Next Media than it will on Clear Channel, because we, like many other broadcasters, derive the majority of our collective revenue from markets outside the top 50, which are the markets most likely to be affected.

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

As a legal matter, the FCC cannot apply the new rules to those pending applications, because the new rules are not yet effective and probably will not become effective until some time in August at the earliest. The FCC has therefore decided to defer action on non-compliant pending applications until the new rules do become effective. Parties to those pending applications can file amendments to show that their pre-existing deal complies with the new rules, but, in the absence of an amendment which shows compliance, the FCC apparently proposes to suspend the processing of the application until the new rules do become effective. For Cumulus, this means that many pending applications ¨C including some that were filed many months before June 2 ¨C are simply locked away in the FCC¡¯s files until the new rules can be retroactively applied. The FCC has explained that retroactive approach by the need for consistency, but the FCC decision fails to cite any harm that will befall the public interest if those pending applications were processed under the pre-existing rules ¨C which are still in effect today.

IV. RADIO MARKET DEFINITION

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

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

This hypothetical is not designed to impugn the motives or actions of Arbitron.

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

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

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

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

If the objective is to remedy the anomalous situations like Minot, it can be done under the existing contour-overlap methodology with a simple qualification based upon the proximity of the transmitters to the defined market. The NAB proposed a test that no station could be deemed to be in the market under the contour-overlap methodology if the station¡¯s transmitter was more than fifty-eight (58) miles from the ¡°market perimeter.¡± We then could have preserved and refined a market definition methodology under which over 8,000 transactions have occurred and under which local markets have already largely been consolidated. This final test would have the added benefits of consistency for

ALL stations (both rated and unrated) and not being subject to manipulation.

V. CONCLUSION

In deciding whether to keep the existing rule or in fashioning a new rule, it must be remembered that the radio industry is a diverse industry with dozens of different companies who each have unique cultures and operating strategies. This Committee should not assume that all broadcasters behave similarly or that consolidation will only produce one way of operating a cluster. For example, at Cumulus, we believe in being live and local and have eschewed the practice of piping in talent from another market and pretending that they are right there in the local studio. That is a tactic that is used against us, and sometimes it works and sometimes it doesn¡¯t. But that does not affect our programming decisions. We believe that, in the long run, we will take share from companies who aren¡¯t predominately local because radio is truly a local medium, and we feel very strongly that a local and personal touch is critical to good public service and to our financial health. Therefore, I caution the Committee not to use some broadcasters¡¯ programming policies as the sole basis to define beneficial public policy for an entire industry. I would also ask the Committee not to tie our hands as we work to continue to grow so that we remain viable and continue to compete across the street from Clear Channel. Any action that impedes that growth will only serve to strengthen the industry leader as a greater share of advertising dollars increasingly shifts towards larger platforms. That will inevitably enhance Clear Channel¡¯s ability to lock up the best talent and the biggest promotions ¨C all of which will increasingly make it a more formidable competitor for audience share as well. That last point cannot be emphasized too strongly. Clear Channel will become a more powerful market force under the new rules. If the Committee is interested in fair competition and better public service, the FCC¡¯s new definition for rated radio markets should be changed. ###