



Future of Music Coalition

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FR: Michael Bracy, Policy Director, Future of Music Coalition
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RE: Impact of the FCC's selective data collection on radio regulation

On behalf of the Future of Music Coalition, I want to express our appreciation for being invited to speak today. We share many of the concerns voiced earlier by our colleagues in the Media and Democracy Coalition, and want to speak briefly about the role that data collection – or, more accurately, selective data collection – has played in the FCC's ability to regulate the radio industry.

First let me provide a bit of context. FMC believes that radio is an extremely valuable public resource. It has a rich tradition as a platform for news, information and entertainment. It is ubiquitous and it is cheap. And the traditional regulatory goals of localism, competition and diversity have served a valuable purpose in guiding policymakers toward regulations that help maximize the technology's usefulness as a public resource.

In 1996, Congress eliminated the national cap that limited the number of stations any company could own and raised the local ownership cap to eight in the largest markets. This immediately led to an historic transformation of radio station ownership, as wave after wave of consolidation fundamentally changed the nature of the commercial radio industry. This was particularly troubling for the music community, as consolidation often led to staff cutbacks and the loss of local programming decisions, a significant growth in syndicated and voicetracked programs, the elimination of many traditional music formats from commercial radio and the maturation of a particularly insidious form of structural payola. Under the indie promoter system, record labels couldn't buy their way on the air, but if they didn't come to the table with significant consideration for broadcasters via promotional dollars funneled through an indie promoter, they had no chance for airplay.

In 2001 and 2002, these issues became increasingly public as artists, activists and policymakers spoke out about the devastating impact of radio consolidation. The FCC was well aware of these concerns, and organizations like the Future of Music Coalition were eager to see how the Commission would address consolidation's impact on localism, competition and diversity.

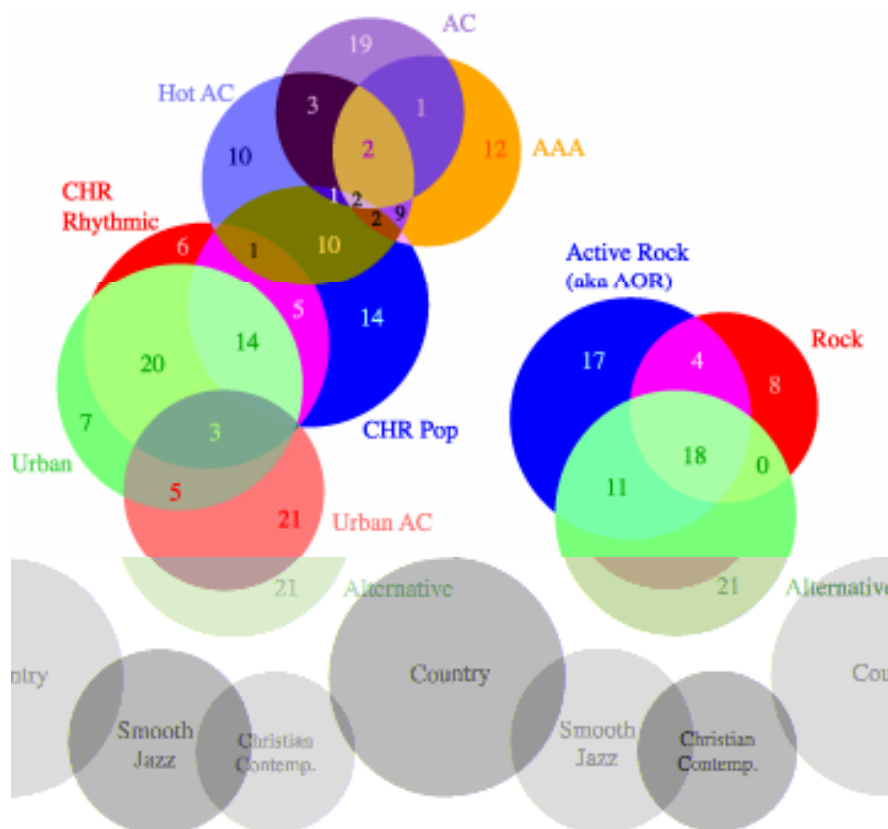
However, FMC and other groups did not sit back and hope the FCC would step in. We were fortunate to receive funding to undertake an intensive quantitative and qualitative analysis of the

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impact of radio consolidation on listeners and the public, but we did not realize that the FCC was doing a similar analysis at the same time.

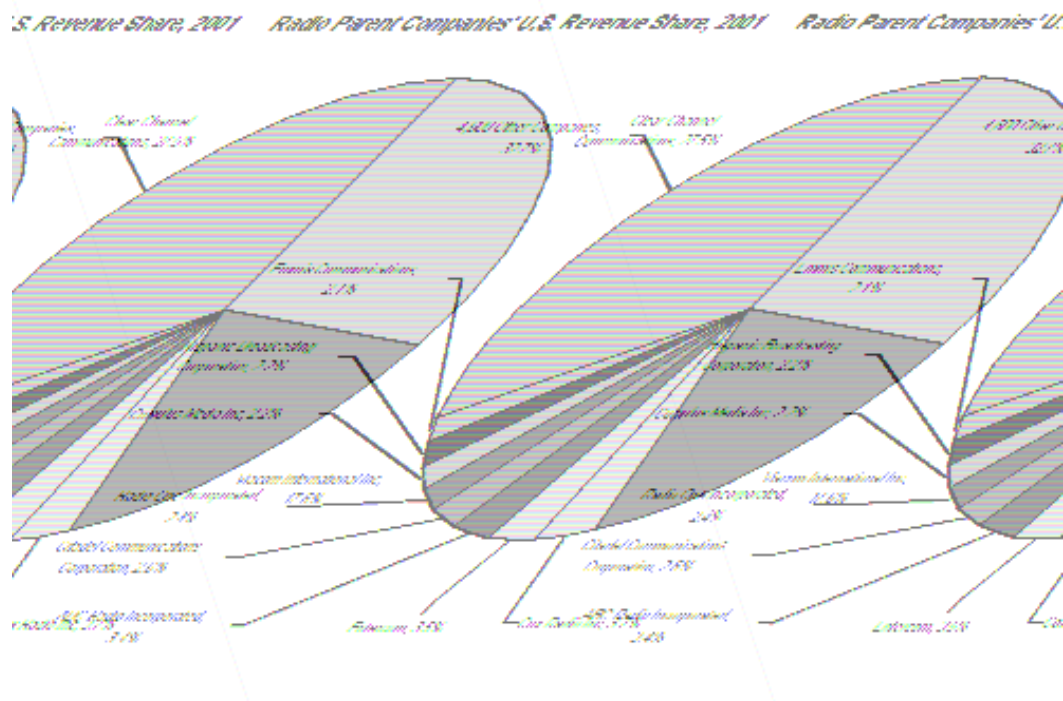
In late 2002, as we prepared our findings, the FCC issued a report that concluded radio consolidation had in fact led to *greater* diversity in commercial radio. Their rationale was that one result of consolidation was more radio formats in most local markets, and therefore, more program diversity.

FMC’s study looked at similar questions but went much deeper. We purchased access to industry data and conducted a thorough analysis of changes in both radio station ownership and playlist composition. But, unlike the FCC, we recognized that diversity cannot be measured simply by the *number* of formats on the dial, but rather what programming goes *into* those formats. Through a playlist analysis, we documented how song selections in many formats overlapped in clusters, leading not to true diversity of content but rather similar selections fine-tuned to reach interconnected demographic groups. Rather than program genres like classical, jazz, bluegrass, blues or folk, the consolidators offered up Adult Contemporary, Urban Adult Contemporary and Hot Adult Contemporary. The analogy we came up with was like being in a grocery store that offered lots and lots of different kinds of jars...only inside the jars was the same kind of food. Choice isn’t a function of what the label says, it’s what’s inside the jar that counts.



Radio Deregulation: Has it Served Citizens and Musicians? Peter DiCola and Kristin Thomson, November 2002. Page 57. <http://www.futureofmusic.org/research/radiostudy.cfm>

FMC also documented other impacts of consolidation, including the fact that two-thirds of commercial radio listeners and dollars were controlled by only ten firms. In virtually every local market, 70 percent or more of advertising revenues were controlled by four firms or fewer, with those firms rarely being local owners. And the industry that once rightly prided itself as a vast patchwork of local owners, had seen one-third of radio station owners disappear within six years.



Radio Deregulation: Has It Served Citizens and Musicians? Peter DiCola and Kristin Thomson, November 2002. Page 25. <http://www.futureofmusic.org/research/radiostudy.cfm>

In the end, the FCC backed away from the idea of allowing even more consolidation in local markets, and I am proud that FMC has made significant progress in our four part “Fixing Radio” agenda: hold the line on consolidation, expand and protect community radio, end structural payola and ensure the transition to HD radio benefits the public. But the question has remained: why is the FCC unwilling or unable to access readily available data to understand the industries it is charged with regulating?

Let me skip ahead to the issue of payola. FMC and others have talked for years about what we call structural payola – the barriers that make it virtually impossible for local or independent artists to have a legitimate shot at gaining significant commercial airplay. This is a critical issue for the music community, as over 80 percent of music released in this country is from independent record labels, making up roughly 30 percent of music sold in this country. Yet independent artists receive a disproportionately small amount of spins.

Beyond questions of fairness and localism, these barriers put tremendous pressure on independent labels and artists. The lack of commercial airplay support hampers the independent sector, as small independent labels are unable to recoup the investments they make in up and coming artists. Meanwhile, artists feel that they have to sign contracts with major record labels in

order to be eligible for commercial radio airplay, but in most cases they are forced to sign away the ownership of their recordings as part of that contract. In other words, a musician in this country must sign away the rights to his or her work as a precondition of being considered for airplay on the public airwaves. This is quite simply an outrage.

In March 2007, in the aftermath of payola investigations led by New York State Attorney General Eliot Spitzer in 2005 and 2006, the four largest broadcast groups agreed to something called the “Rules of Engagement” – a basic framework for how they would interact with the independent music community. It was our hope that this agreement would increase access for independent artists, but we knew the framework’s success was contingent on aggressive FCC oversight.

Now, it is not difficult to track what artists are played on what radio stations. In fact, there are at least three companies that put every song played on thousands of stations every day into giant databases. But the FCC does not track this data – even after years of public awareness, Congressional pressure, media coverage and pressure from activists. This year FMC undertook a project that looked at the 1,000 songs that received the most airplay annually from 2001 to 2007, and categorized them according to the kind of label that released the song. Unfortunately, the company that licensed us the data refused to let us publish our results, claiming it would be a violation of our license. We are currently recreating the study using a different data provider. While our work is not yet complete, early indications are that the independent label sector’s share of spins remain significantly lower than its overall market share

I tell these stories for a simple reason. Collecting and routinely analyzing data – either by requiring station owners to submit data as part of their licensee obligations, or by subscribing to commercial data providers – should be at the core of the FCC’s job. Whatever the issue – from cable rates to broadband penetration to payola in commercial radio – the FCC has a fundamental responsibility to understand what readily available data sources can assist them in making informed policy decisions, then pursue this data.

Through our research on radio, FMC has learned that data is often the best way to measure the effects of policy decisions on a market or a behavior. In fact, it’s an essential component of the high quality, data-driven social research that measures the effects of policy shocks. However, we have also learned that proprietary data is not only expensive, but that some owners of the data are reticent – if not totally opposed – to having their data used in any way beyond offering snapshots of the commercial field.

This is where the FCC and the public need to work together. The Commission needs to make data collection and analysis a top priority in order to fully understand the sectors that it is responsible for regulating and to measure its own policy outcomes. But, it also needs to embrace transparency and accountability by making the data sets available to the public so that social science researchers and advocates can conduct their own research, in some cases to shed new light on policy questions, and in others to challenge the FCC’s own work. Of all the changes that we’d like to see from a new Administration, a shift in this mindset ranks high upon our list.