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Federal Communications Commission
Office of Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of: Retention by Broadcasters of Program Recordings	)	MB Docket No. 04-232

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SUPPLEMENTAL COMMENTS OF INTERCOLLEGIATE BROADCASTING SYSTEM, INC.

Intercollegiate Broadcasting System, Inc., a Rhode Island non-profit corporation which has represented the interests of educationally affiliated radio stations since 1940 ("IBS"), filed comments on August 27, 2004, in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding ("NPRM"). Only recently have the results of a joint study by the Center for Creative Voices in Media and the Donald McGannon Communication Research Center at Fordham University been published. IBS asks leave of the Commission to file the report of this study, which was not publicly available until September 2005.

Under Point II of IBS' comments, IBS pointed out that "there is no need to impose such requirements on educationally affiliated stations [, since] there is nothing to indicate that such stations have been a prolific source of obscenity complaints."[1] Op. cit. at 7. The Centers' recent study by Rintels and Napoli: "Ownership Concentration and Indecency in Broadcasting: Is

[1] The point that the indecency problem, to the extent there is one, is confined to a few programs by a few broadcasters was made by other commenters, e.g., Comments of Salem Communications at 4, Cosmos Broadcasting, *et al,* at 6, State Broadcasters Ass'ns at 7; Reply Comments of National Association of Broadcasters, filed September 27, 2004, at 3 n. 5.

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List A B C D E

There a Link?", a copy of which is attached, supports IBS' contention. The Centers found that ninety-six percent of all indecency fines levied by the FCC in radio from 2000 to 2003 (97 out of 101) were levied against four of the nation's largest radio station ownership groups -- Clear Channel, Viacom, Entercom, and Emmis." Id. at 3.

Without reaching the study's conclusion that multiple-station-ownership limits might be "a more effective approach to the problem of 'indecency' on the airwaves...",[2] an alternative which the Commission would be required to consider before adopting a broad recording retention rule,[3] the new study supports IBS' point that, given the burden imposed by the rules and the low incidence of complaints involving FM stations affiliated with an educational institution, the FCC should either dismiss the NPRM or exempt the educationally affiliated broadcasters from any recording-retention requirement.

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[2] Op. cit. at 21.

[3] "At the very least this alternative way of achieving the objectives of the Act should have been addressed and adequate reasons given for its abandonment." Motor Vehicle Manufacturers Assoc'n., et al. v. State Farm Mutual Automobile Insurance, 463 U.S. 29, 48 (1983).

Respectfully submitted,

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Attachment

September 20, 2005

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Certificate of Service

I hereby certify that I have caused to be mailed this day copies of the foregoing Supplemental Comments to:

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Ownership Concentration and Indecency in Broadcasting: Is There a Link?

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EXECUTIVE SUMMARY

In the nine years since the passage of the Telecommunications Act of 1996, ownership of our nation's broadcast radio and television stations has become increasingly concentrated. For radio, the Act eliminated nationwide station ownership limits and relaxed local market limits. As a result, in the five years after the Act's passage, the number of owners of radio stations decreased by 33 percent despite a 5 percent increase in the number of stations.[1] During this period, Clear Channel Communications became the nation's largest owner of radio stations, rapidly expanding to own 1,233 stations in 2002, up from just 40 stations prior to the 1996 Act, with a nationwide audience share of 27 percent. Viacom, the nation's second-largest radio station owner, grew to own 183 radio stations in 2002, with a national audience share of 15.4 percent.[2]

Over this same period, many Americans, including some of the same lawmakers and regulators who supported relaxing media ownership limits, expressed concern over what they perceived to be an increase in the raunchiness of broadcast radio and television content. The Federal Communications Commission (FCC), which prohibits the broadcast of "indecent" material during hours when children are likely in the audience, levied nearly twice as many indecency fines from 2000 to 2003 as it had in the entire decade of the 1990s.[3]

The corresponding rise in the rates of ownership concentration and indecency on the airwaves has led some policymakers and media observers to question whether there might be a relationship between ownership concentration and the broadcast of indecent material. This study represents a preliminary investigation of this question, focusing on radio broadcasting from 2000 to 2003.

The statistical results of the study are striking. Ninety-six percent of all the indecency fines levied by the FCC in radio from 2000 to 2003 (97 out of 101) were levied against four of the nation's largest radio station ownership groups — Clear Channel, Viacom, Entercom and Emmis. The percentage of overall indecency fines incurred by these four companies was nearly double their 48.6 percent share of the total national radio audience.

In contrast, all the other radio stations in the nation were responsible for just four of the total of 101 FCC indecency violations. The 11,750 stations not owned by the four station groups represent 88 percent of total radio stations in the United States and their combined share of the national audience is 51.4 percent. Yet they were responsible for just 4 percent of all FCC radio indecency violations, a fraction of their national audience share.

Eighty-two percent of the radio programs that generated FCC indecency fines were owned by a large, vertically integrated radio station ownership group. Of those 83 violating programs, 37 were broadcast and fined for indecency in the program's "home" — or originating — market. The FCC fined 46 programs for indecency in distant markets where

the vertically integrated broadcaster aired the program it owned on additional stations it also owned. For example, Clear Channel exported "Bubba the Love Sponge," a show it owned that originated near Tampa, Fla., to its WCKT-FM in Port Charlotte, Fla., resulting in four indecency violations within a matter of weeks.

The increasingly centralized ownership of broadcast radio stations and programming may contribute to the problem of increased indecency on the airwaves.

In 2004, Clear Channel,[4] Viacom[5] and Emmis[6] entered into "Consent Decrees" with the FCC to settle all indecency fines already levied up to that point by the FCC, as well as all indecency complaints then pending at the FCC staff level awaiting final action by the Commissioners.[7] The provisions of these Consent Decrees are severe and significantly increase the likelihood of self-censorship of speech that is not indecent, obscene, or profane (and therefore protected by the First Amendment). They could create a massive "chilling effect" given that these three companies own 1,394 stations, or 10.4 percent of all stations[8], with a combined national audience share of 45.2 percent.[9] The potential chilling effect raises significant questions about the current regulatory approach to indecency, which may deprive large sectors of the audience of their First Amendment right to access — as well as the on-air talent's right to express — protected speech over the publicly owned airwaves.

This report makes clear that when radio station and program ownership is concentrated in fewer owners' hands, as it has been since the passage of the 1996 Telecom Act, the decision by any one owner to broadcast indecent material impacts a substantially larger audience than was possible prior to the lifting of ownership limits. Conversely, in the case of the three companies now operating under FCC Consent Decrees, their decision *not* to broadcast certain material, made under significant government pressure and duress, also impacts a substantially larger audience than was possible prior to the lifting of ownership limits.

In the end, this report suggests that the increasingly centralized ownership of broadcast radio stations and programming may contribute to the problem of increased indecency on the airwaves. In addition, increasingly centralized ownership may also reduce constitutionally protected speech on the public airwaves — the unwelcome, yet likely outcome of the behaviorally based Consent Decrees entered into by the government and the large radio broadcasters in response to the indecency problem.

Many policymakers have proposed exponentially raising the fines levied against broadcasters — and, in some cases, extending those fines to on-air talent — as the best way to prevent indecent broadcasts from offending the public. However, this research suggests that audiences, speakers and the First Amendment may be better served by a regulatory approach that more thoroughly considers — and accounts for — the possible role that ownership concentration plays in the broadcast indecency issue. Such an alternative approach might include breaking up large station groups, reintroducing meaningful station

ownership limits, and limiting vertical integration of ownership of programming and distribution. Such an approach would reduce the risk that any one radio station ownership group would broadcast indecent content to a significant share of the national audience. It would also more closely tie station ownership and programming to local community sensibilities. This approach would also promote the First Amendment goal of maximizing "voices" over the publicly owned airwaves, as well as the stated goals of the FCC in regulating media ownership — competition, diversity of viewpoints and localism.[10] It could also significantly reduce the role of government in directly regulating program content, always a highly sensitive and contentious area fraught with First Amendment concerns.

These results do not prove a causal link between ownership concentration and broadcast indecency. Additional research, accounting for the broad array of factors that may influence the likelihood of a station receiving an indecency violation, is necessary. However, this study provides compelling theoretical, anecdotal and quantitative evidence suggesting that this potential relationship should receive much greater scrutiny from researchers and policymakers. This study is intended as a first step toward initiating this process.

INTRODUCTION AND BACKGROUND

In the nine years since the passage of the Telecommunications Act of 1996, ownership of our nation's broadcast radio and television stations has become increasingly concentrated. For radio, the Act eliminated nationwide station ownership limits and relaxed local market limits. As a result, in the five years after the Act's passage, the number of owners of radio stations decreased by 33 percent despite a 5 percent increase in the number of stations.[11] During this period, Clear Channel Communications became the nation's largest owner of radio stations, rapidly expanding to own 1,233 stations in 2002, up from just 40 stations prior to the 1996 Act, with a nationwide audience share of 27 percent. Viacom, the nation's second-largest radio station owner, grew to own 183 radio stations in 2002, with a national audience share of 15.4 percent.[12]

Over this same period, many Americans, including some of the same lawmakers and regulators who supported lifting media ownership limits, expressed concern over what they perceived to be an increase in the raunchiness of broadcast radio and television content. The Federal Communications Commission (FCC), which prohibits the broadcast of "indecent" material during hours when children are likely in the audience, levied nearly twice as many indecency fines from 2000 to 2003 as it had in the entire decade of the 1990s.[13]

Some broadcasters have halted live news reporting from the field for fear that an offending swear word or image in the background might result in an FCC indecency complaint.

The concerns of media policymakers over indecency on the public airwaves reached a crescendo on Feb. 1, 2004, when Janet Jackson suffered her notorious "wardrobe malfunction" during the Super Bowl Halftime Show. The next day, FCC Chairman Michael K. Powell said he was "outraged" by the baring of Jackson's breast, which he termed a "classless, crass and deplorable stunt," and ordered the Commission to launch an investigation.[14] A few days later in testimony on Capitol Hill, Powell termed the episode "a new low." adding that "action must be taken by the entire television and radio industry to heed the public's outcry and take affirmative steps to curb the race to the bottom. ... This industry simply must help clean up its own room."[15] Powell's legal advisor, Jonathan Cody, was even blunter, threatening, "[The FCC] is going after them for this."[16]

Capitol Hill was no less "outraged." Politicians from both parties acted to rein in broadcast "indecency," with Rep. Edward Markey (D-Mass.) strongly criticizing what he considered lax FCC indecency enforcement and Rep. Joe Barton (R-Texas) threatening, "The halftime show at the Super Bowl is the proverbial last straw."[17]

Thus, from early 2004, broadcasters were pilloried from all sides for "indecent" programming on the airwaves and put on notice that any future violations could result

in high fines or, even worse, loss of broadcast licenses. The contrite response from Clear Channel President and CEO John Hogan was typical. Days after the Janet Jackson incident and one day prior to testifying about indecency before an angry Congress, Hogan fired Todd Clem, host of Clear Channel's oft-fined program "Bubba the Love Sponge," dropped Howard Stern's show from all Clear Channel stations, and announced a new "Zero Tolerance Policy" on indecency.[18] Other radio station owners also watered down or dropped potentially problematic content for fear of FCC enforcement actions, and, in so doing, possibly eliminated programming that was not indecent.

Later in 2004, the FCC made good on Cody's threat to "go after them," entering into Consent Decrees with Clear Channel,[19] Viacom[20] and Emmis[21] that imposed multi-million dollar fines on these companis in exchange for settling all past and pending indecency cases. In addition, these Consent Decrees included restrictive provisions and significant penalties for future indecency. Clear Channel, Viacom and Emmis are today operating all of their 1,394 radio stations — 10.4 percent of all stations,[22] with a national audience share of 45.2 percent[23] — under the terms of these decrees.

The provisions of these Consent Decrees are severe. For example, the June 2004 Consent Decree entered into by Clear Channel and the FCC includes, among others, the following provisions[24]:

> If a Clear Channel station receives a Notice of Apparent Liability or other proposed action for a broadcast occurring after the adoption of this Initiative that the Commission believes to be obscene or indecent, the following steps will be taken:
>
> (a) The employees accused of airing, or materially participating in the decision to air obscene or indecent content will be suspended and an investigation will immediately be undertaken;
>
> (b) Such employees will be required to undergo remedial training on the FCC's obscenity and indecency regulations and policies and satisfy station management that they understand where the line between acceptable and unacceptable programming falls before resuming their duties; and
>
> (c) If any such employee who is on-air talent is permitted to return on a Clear Channel station following remedial training, his or her broadcasts will be subjected to a significant time delay — up to five minutes — so that a program monitor will have the ability to interrupt a broadcast if its content crosses the line.

These provisions, agreed to by the FCC and Clear Channel are highly problematic from a First Amendment standpoint. For example, under the above provisions, an employee is punished after only a "Notice of Apparent Liability or other proposed action" and prior to any FCC final judgment — or "Forfeiture Order" in FCC terminology — that the employee has actually broadcast indecent material. This is analogous to imposing punishment on an accused criminal on the basis of a prosecutor's indictment, before any final judgment is rendered and any appeals are considered.

To avoid punishment under these terms, the companies and their on-air talent likely will "self-censor" speech that is not indecent, obscene or profane (and therefore protected by the First Amendment), creating a potential "chilling effect" on protected speech. For example, some broadcasters have halted live news reporting from the field for fear that an offending curse word or image in the background might result in an FCC indecency complaint.[25] Thus, the 45.2 percent of the national audience affected by these three companies' Consent Decrees are potentially being deprived of their First Amendment right to access — and the on-air talents' right to express — such protected speech over the publicly owned airwaves.

The corresponding rise in the rates of ownership concentration and indecency on the airwaves since the passage of the Telecommunications Act of 1996 has led some policymakers and media observers to question whether there might be a relationship between ownership concentration and the broadcast of indecent material. FCC Commissioner Michael Copps was among the first to express concern over a possible relationship between ownership concentration and indecency. In advance of the FCC's June 2003 decision to relax a wide range of its media ownership rules, Copps speculated that "large national companies, essentially faceless in most of the local communities where they own stations, are arguably more apt to air shock programming or cater to the lowest common denominator that seems to dictate so many programming decisions."[26]

More recently, Sen. John McCain (R-Ariz.) stated at a radio industry convention that, while ownership concentration may not cause greater levels of indecency on the airwaves, it may contribute to a worsening of the problem. According to McCain, "If a company has 1,200 stations, and many of those stations carry the same programming, that is going to exaggerate the problem."[27]

Rep. Diane Watson (D-Calif.) also has argued that an increase in indecency complaints appears to have corresponded with the relaxation in media ownership limits. According to Watson, "a concentrated media market controlled by profit-driven conglomerates [is] producing indecent, shock-value programming for the sake of viewership."[28]

This study is an exploratory effort to test these assertions of a relationship between ownership concentration and indecency, via a case study of the programming effects of a station ownership change, and via a descriptive analysis of radio industry ownership and indecency violation data from 2000 to 2003. The first section of this report explores the logic of a possible relationship between ownership concentration and indecency, via a brief overview of the relevant research on the economics of broadcast programming. The second section provides an overview of the indecency enforcement process and describes the methodology employed for both the qualitative and quantitative portions of the study. The third and fourth sections of the study review the results of the case study and quantitative analyses conducted. The final section outlines the study's conclusions and implications, as well as suggestions for future research.

INDECENCY AND OWNERSHIP CONCENTRATION:
Exploring the Logic of a Possible Connection

While there has been much discussion of the possible linkage between concentration of ownership and indecency, there has been relatively little detailed consideration of why such a linkage might exist. Are there any legitimate reasons to expect stations that are part of large ownership groups to be more likely to air programming that the FCC finds indecent than stations that are not part of large ownership groups? It is not the purpose of this section to argue that greater ownership concentration causes increased indecency in programming, only to explore possible rationales that might underlie the increasingly common assertions of a correlation between concentration and indecency. These assertions typically have lacked thorough explanations for why greater concentration should lead to greater indecency. But as this section illustrates, when we consider the economics of broadcasting, we do uncover some compelling reasons why concentration of ownership may produce more incidents of indecent programming.

Consider first the economics of advertising-supported media such as broadcast radio and television. Programmers that rely almost entirely on advertiser dollars for their revenue must, of course, be highly responsive to advertisers' demands to remain viable. If demographics that advertisers desire most exhibit a strong preference for programming that is risqué in nature, then there would be a compelling economic incentive for programmers to produce such programming. Research suggests that this may, in fact, be the case — that the demographic groups that advertisers consider most valuable may exhibit strong preferences for programming that pushes the envelope.

FCC Commissioner Michael Copps was among the first to express concern over a possible relationship between ownership concentration and indecency.

The 18-34 and 18-49 age groups have been well-documented as the age groups that advertisers value most highly.[29] Thus, whether it is in television, radio or print, content providers tend to pursue these demographic groups most aggressively. They do so by providing content that appeals to the interests of these age groups.[30] Research by Duke University economist James T. Hamilton suggests that audience members in these age groups exhibit the strongest preferences for programming of a more adult nature. Hamilton focuses on violent programming, finding that men and women in the 18-34 age category not only are the most highly valued by advertisers, but also are the most avid consumers of violent programming on television. Hamilton therefore concludes that the preponderance of violence on television is primarily a function of programmers' efforts to attract the demographic groups that advertisers consider the most valuable.[31]

Although the FCC's definition of indecency focuses more on sexuality and general foul language than on violence, it would seem reasonable to expect a similar pattern, with

advertisers' most-coveted demographics gravitating toward programming that is more adult in nature in terms of language and sexuality. Certainly, we see this reflected in the indecency scandal surrounding the 2004 Super Bowl. Janet Jackson's notorious "wardrobe malfunction" has been blamed in large part on Viacom's decision to let its MTV unit design the half-time show, in an effort to take advantage of MTV's well-documented expertise in attracting younger demographics. "The Howard Stern Show," perhaps the most frequently fined program in radio due to its insistence on pushing the envelope in terms of language and sexuality, is well-known for attracting a young, male demographic that advertisers consider particularly valuable.[32]

Thus it would seem that broadcasters (both television and radio) face powerful economic incentives to provide programming that pushes the indecency envelope, as such programming is likely to attract the audience members that advertisers value most highly. The key question, however, is whether there are reasons to expect that stations that are part of large station groups will be more likely to act on these incentives than stations that are independent or part of smaller station groups.

Stations that are part of large groups may be more willing to incur the financial risks associated with providing potentially indecent programming. That is, when we consider the potential ramifications of providing indecent programming — most notably the possibility of being fined by the FCC — it may be the case that stations that are part of large station groups are more willing and able to accept the risk of an indecency fine. Stations that are part of large groups likely have a greater pool of financial resources to draw upon. An indecency fine may mean a lot less from a financial standpoint to stations that are part of large station groups than to other stations, increasing the likelihood that such stations will broadcast potentially indecent programming.

Commissioner Copps and Senator McCain raise additional reasons why stations that are part of large groups might be more likely to provide indecent programming. Copps described stations that are part of large groups as "essentially faceless in most of the local communities where they own stations,"[33] suggesting that stations that are part of large groups may be less aware of, and responsive to, the sensibilities of their local communities, and therefore may be more likely to provide programming that offends listeners.

McCain noted that "if a company has 1,200 stations, and many of those stations carry the same programming, that is going to exaggerate the problem."[34] His statement reflects the reality of contemporary radio, where many station groups utilize the same programming on many of the stations they own to take advantage of the economies of scale. Under this strategy, costs of individual programs are spread across as many stations as possible, thereby reducing the per-station program costs.[35] The larger the station group (in terms of the number of stations), the greater the potential impact (in terms of the number of indecency violations) if audiences — and, subsequently, the FCC — consider the programming indecent.

METHODOLOGY

It is a violation of federal law to broadcast obscene, profane or indecent programming (18 U.S.C. § 1464). Congress has assigned to the Federal Communications Commission the responsibility for administratively enforcing this law.[36] In contrast to "obscene" programming, which is not protected by the First Amendment, "indecent" programming is protected.[37] However, broadcast of indecent material is restricted to the hours of 10 p.m. - 6 a.m., when children are not likely to be in the audience.[38] The FCC has defined broadcast indecency as "language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities."[39] In applying the "community standards for the broadcast medium" criterion, the Commission has stated, "The determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant."[40] Indecent programming contains sexual or excretory references that do not rise to the level of obscenity.[41]

The FCC does not initiate indecency proceedings on its own.

As many observers have noted, there is no "bright line" of what constitutes "indecency" under FCC rules, but rather a broad, gray, ambiguous and arbitrary area that often depends on the context of the remarks at issue and "community standards for the broadcast medium."[42] For example, in March 2004, the FCC wrote that the words "fuck" and "fucking" were indecent, no matter if they were uttered in reference to the sex act or simply in joy, as occurred when Bono exuberantly accepted a Golden Globe award by uttering "This is fucking amazing" on live television.[43] Yet less than a year later, the FCC found that the word "fuck" uttered repeatedly during the television broadcast of "Saving Private Ryan" was not indecent.[44]

The FCC does not initiate indecency proceedings on its own. Individual citizens must initiate the process by filing a complaint with the Commission, which it reviews "to determine whether it alleges information sufficient to suggest that a violation of the obscenity, profanity or indecency prohibition has occurred." The Commission states: "In making indecency and profanity determinations, context is key!"[45] The Commission staff analyzes "what was actually said during the alleged broadcast, the meaning of what was said and the context in which it was stated." Once the FCC staff completes its investigation into the indecency complaint, the Commissioners decide by majority vote whether a broadcast licensee "apparently violated" the Commission's indecency rules. If so, the Commission issues a "Notice of Apparent Liability" (NAL), which proposes action ranging from a warning to monetary fines or station license revocation.[46] The NAL may be appealed to the Commission for reconsideration. Ultimately, should the NAL become a "Forfeiture Order" of the Commission, it may be appealed to the federal courts.[47]

This study represents a preliminary inquiry into the possible relationship between ownership concentration and FCC indecency enforcement actions resulting from the Commission's complaint, investigation and decision-making process described above. To this end, the study first engaged in a case study of the effects on broadcast programming that can occur as a result of a shift in station ownership to a large ownership group, via an analysis of the impact of Clear Channel's acquisition of WRLR in Port Charlotte, Fla., and the numerous FCC indecency fines that the station subsequently received.

Next, this study engaged in a descriptive quantitative analysis of FCC indecency violation data from 2000 to 2003. The key question this analysis examined was how FCC broadcast indecency violations were distributed among radio station owners, and whether this distribution of violations provided any indication that larger station owners exhibit a greater likelihood of committing indecency violations.

In some instances, the FCC found that one indecent utterance on a single program aired on multiple stations and therefore levied multiple fines.

To address this question, this study examined FCC indecency fine data for from 2000 to 2003, and compared these data with the ownership and audience share characteristics (as of 2002[48]) of those stations fined. This approach makes it possible to determine whether the largest station groups (in terms of number of stations and audience reach) are accounting for a disproportionate share of the indecency violations being levied by the FCC. Accounting for total audience share is important as it reflects the fact that larger audiences could lead to a greater likelihood of receiving an indecency violation, since it is the responsibility of radio listeners to report incidents of indecency to the FCC.

When the FCC determines that a broadcast licensee is "apparently" liable for a violation of its indecency regulations, it issues an NAL to that broadcaster. NALs and other orders relating to indecency are publicly available on the FCC Web site as of Nov. 8, 1999, the date the FCC Enforcement Bureau was created to process indecency complaints.[49] The earliest full year of Enforcement Bureau activity (and detailed indecency data) available on the site is 2000, the starting point for the study.

2003 was selected as the end point for the study, as events in 2004 caused "indecency" on radio to come to a screeching halt, following Janet Jackson's "wardrobe malfunction." Also in 2004, three of the four large station group owners, Clear Channel, Viacom and Emmis, entered into Consent Decrees with the FCC that included severe penalties for additional indecency violations. The FCC did not issue any new NALs to radio broadcasters for indecent material in 2004.

Each fine proposed by the FCC in an NAL from 2000 to 2003 was counted as one incident, unless it was later successfully appealed or dropped for procedural reasons. In some instances, the FCC found that one indecent utterance on a single program aired on multiple stations and therefore levied multiple fines. Or one program might contain multiple

indecency violations, resulting in multiple FCC fines. The study follows the FCC lead, tabulating each FCC fine described in an NAL as an incident of indecency.

National radio station totals were gathered using the total number of AM Commercial, FM Commercial, and FM Educational stations reported by the FCC on its Web site.[50] Data on the number of stations owned by each company is taken from corporate annual reports[51] and the Future of Music Coalition's excellent and comprehensive study, "Radio Deregulation: Has it Served Citizens and Musicians?"[52] Audience share data also were drawn from the Future of Music Coalition report and derived from aggregated Arbitron "Metro Cume Persons" for each station. Program ownership data were found in several places: FCC NALs, the Web site of each program, the Web site of one of the stations that broadcast the program, or from data provided by the Center for Public Integrity.[53]

The study was limited to indecency fines levied against radio station owners because the FCC has levied only three fines for indecency on television since 2000, not enough to facilitate any comparative analyses.[54]

It should be noted that one NAL for indecency issued against Clear Channel's WIHT-FM in Washington, D.C. — in the amount of $27,500 for its "Hot Morning Mess" show of September 17, 2002[55] — subsequently was canceled as a result of the expiration of the statute of limitations,[56] as were four fines levied against Edmund Dinis, owner of WJFD-FM, New Bedford, Mass.[57] Since these NALs became null and void, we chose to not include these in the study.

RESULTS

PORT CHARLOTTE, FLORIDA — A CASE STUDY

Port Charlotte, Fla., is a community just inland from the Gulf of Mexico, approximately an hour south of St. Petersburg and a half hour north of Fort Myers. The median age of its 46,469 citizens is 49.0 years.[58] Following the passage of the Telecommunications Act of 1996, which raised local ownership limitations to a maximum of eight stations per market and eliminated national caps, Clear Channel purchased WRLR-FM in Port Charlotte from Radio Equity Partners in 1996 and eventually changed its call letters to WCKT-FM.[59]

Immediately across Charlotte Harbor from Port Charlotte, easily able to hear WCKT-FM, is the community of Punta Gorda, population 14,344 and median age 63.6 years.[60] Approximately 30 miles south of Port Charlotte, the Fort Myers market, where a number of other Clear Channel stations are located, is also able to receive WCKT-FM.[61]

On Oct. 29, 2001, WCKT-FM started broadcasting the "Bubba the Love Sponge" program, which was owned by Clear Channel and aired on other Clear Channel stations serving larger markets such as Jacksonville, West Palm Beach and Tampa Bay.[62] Prior to airing in Port Charlotte, Clear Channel's "Bubba" program had previously been found by the FCC to have violated indecency standards on Clear Channel's Clearwater, Fla., station, WXTB-FM, on five different occasions. The Clearwater radio market is substantially larger than Port Charlotte. Clearwater's population in 2000 was 108,787.[63] In addition, Clearwater's WXTB-FM is heard throughout the entire Tampa Bay area, including the large cities of Tampa, population 303,447 and median age 34.7 years, and St. Petersburg, population 248,232 and median age 39.3 years.[64]

In 2001, prior to the launch of "Bubba" on WCKT-FM, a Floridian named Douglas Vanderlaan had complained about the show's raunchy content after hearing it air on Clear Channel's WPLA-FM in Callahan, Fla., a town with a population of less than a thousand near Jacksonville.[65] The median age in Jacksonville is 33.8 years.[66]

Vanderlaan listened as "Bubba" (real name Todd Clem) talked with the owner of a pornographic Web site.[67] "Bubba's comment," as recounted by Vanderlaan, "was if you're 16 or 17 years old, you should become a Web master for a porno site, because that's the way to get a lot of ass. I was amazed and flabbergasted."[68]

"I was angry that people would be so irresponsible, so mindless of the welfare of the young folks that listened to that station," added Vanderlaan, who had two teenagers living at home at the time. "I know my son listened to that station, as did his friends."[69] Vanderlaan called the station manager of WPLA-FM and asked him to stop broadcasting the "Bubba" show.

The manager refused, so Vanderlaan called advertisers and asked them to stop advertising on "Bubba." Many did, according to Vanderlaan.[70]

Vanderlaan then began to tape record "Bubba." Those tapes became the basis for his complaint to the FCC, filed in 2002, concerning several of Bubba's 2001 shows,[71] including the show on July 19, 2001, which contained these two sections of material, as described by the FCC:

> Segment 1 (aired July 19, 2001 between 6:30 and 8:30 a.m.): In this segment, skits in which the voices of purported cartoon characters talk about drugs and sex are inserted between advertisements for Cartoon Network's Friday night cartoons that are identified as "provocative adult cartoons to help you get your freak on." The first skit begins when Shaggy tells Scooby Doo that he needs crack cocaine but has no money to buy it. Scooby Doo responds that Shaggy could "su(bleep)ck d(bleep)ick" to pay for the drugs. In the next skit, Fat Albert, a/k/a Phat Diddy Daddy, gets killed in a drive-by shooting after bragging that Jennifer Lopez had been "s(bleep)ing Diddy Daddy's (bleep)ck the previous night. The third skit begins with the theme music from "The Jetsons" cartoon show. George Jetson then begins telling Jane that he no longer needs Viagra because he got a "Spacely Sprocket (bleep)ck ring." After George flips a switch to activate the device, sound effects indicate that the device malfunctions, and the skit ends with George calling for Jane to turn off the device. Next, Alvin the Chipmunk complains that he hasn't "been laid in almost six weeks." Another chipmunk responds that his problem is due to the "f(bleep)cking pussy music we play" and begins to sing a more "kick ass" song directing a "filthy chipmunkwhore" to "[s]uck on my (inaudible) Chipmunk (bleep)s," "[p]ut 'em in your mouth and (bleep)uck 'em." He continues by singing "They taste like pistachios. They're warm and fuzzy. Suck my (bleep)." The song is interrupted by a final advertisement for "Cartoons with Balls."[72]
>
> Segment 2 (July 19, 2001, between 6:30 and 8:14 a.m.): In this segment, a male applicant for a job as an underwear model calls the model search hotline and describes his as the "perfect penis," so gorgeous that "[e]very f(bleep)ing, every — every ounce of f(bleep)cking co(bleep) purple (inaudible) of it" "should be hanging in the f(bleep)cking Louvre," and so strong that it can lift a 25-pound weight and can split his pants like the Incredible Hulk.[73]

The FCC determined that these segments violated its indecency regulations and fined Clear Channel the statutory maximum of $27,500 for each of the two incidents on each of the three Clear Channel-owned stations that broadcast the July 19, 2001, "Bubba" show, WPLA-FM, WXTB-FM of Clearwater, and WRLX-FM of West Palm Beach.[74]

Prior to Clear Channel's purchase of Port Charlotte's WCKT-FM (then WRLR-FM) from Radio Equity Partners, the station had never received an indecency fine from the FCC.[75] In 1997, George Sosson, the former owner of Radio Equity Partners who sold his stations to Clear Channel and then became a Clear Channel senior vice president, told an interviewer that "nothing changed" at the 19 stations he used to own, including WCKT-FM. "They kept everybody," he said, as well as most of the programming.[76]

But on Oct. 29, 2001, despite earlier FCC indecency fines against the "Bubba" show, and despite Vanderlaan's complaints, Clear Channel did change the programming on Sosson's former station by introducing "Bubba" on WCKT-FM.

Clear Channel's purchase of station WCKT-FM caused the community of Port Charlotte to lose twice.

Three weeks later, on Nov. 14, 2001, and three more times over the next two months, the "Bubba" program aired segments later found to be indecent by the FCC.[77] These four "Bubba" segments, containing raunchy content similar to that detailed above,[78] all aired not just in the larger, "younger" cities of Jacksonville, West Palm Beach, and Tampa Bay, but also on WCKT-FM in the significantly smaller and "older" communities of Port Charlotte and Punta Gorda.

On Jan. 26, 2004, the FCC issued a Notice of Apparent Liability to Clear Channel that covered all 26 of the "Bubba" show's 2001 indecency violations, in communities large and small, young and old, levying total fines of $715,000 for indecency violations and an additional $40,000 for public file violations. Port Charlotte's WCKT-FM received four of those 26 indecency fines in the maximum amount of $27,500 each ($110,000 total).[79]

In February 2004, Clear Channel removed the "Bubba" program from all its stations and fired Todd Clem, the on-air personality known as "Bubba the Love Sponge."[80] At the same time, Clear Channel dropped "The Howard Stern Show," another well-known raunchy show owned and syndicated by Viacom, from all six Clear Channel stations that were airing it. Clear Channel announced a new "Zero Tolerance Policy," threatening to fire any on-air talent who broadcast indecent material.[81]

A few months later, to settle Clear Channel's radio indecency fines, including the Port Charlotte fines, the company entered into its Consent Decree with the FCC.[82] In the end, Clear Channel's purchase of WCKT-FM caused the community of Port Charlotte to lose twice. In 2001, despite prior indecency violations in larger and younger-skewing markets, Clear Channel introduced "Bubba," a show it owned, into Port Charlotte, a smaller and "older" community, broadcasting speech so raunchy that it violated FCC indecency rules. Now, with its local Clear Channel stations operating under the broad and restrictive terms of the Consent Decree, the citizens of Port Charlotte may not receive speech broadcast over the publicly owned airwaves that is not only permissible under FCC rules, but fully protected under the Constitution, thus infringing on their own rights to access such speech.

FCC INDECENCY VIOLATIONS: 2000-2003

This section presents the results of an analysis of four years' worth of FCC data on fines issued against radio broadcasters for violations of the FCC's indecency regulations. For this analysis, data were gathered on all such fines issued by the FCC from 2000 to 2003. Data also were gathered on the ownership characteristics and audience shares of those stations cited for indecency violations.

In examining these data in the aggregate, it quickly became clear that the majority of the indecency fines being levied by the FCC were concentrated around many of the nation's largest radio station ownership groups. As Table 1 indicates, the top 10 station owners account for a total of 17.9 percent of the radio stations operating in the United States — and 57.2 percent of the nationwide radio audience — but 91 percent of the indecency violations issued from 2000 to 2003.[83] The top 10 radio station owners are responsible for a share of the total FCC indecency violations that is dramatically out of proportion with the share of the stations that these owners control, and significantly (though less dramatically) out of proportion with the share of the nationwide radio audience that they reach.

Table 1: FCC Broadcast Radio Indecency Violations for Top 10 Station Owners (by Number of Stations)

Owner (stations/violations)	% Stations Owned (2002)	% National Audience (2002)	% Indecency Violations (2000-2003)
Clear Channel (1233/61)	9.3	27.0	60
Cumulus (248/0)	1.9	1.9	0
Citadel (206/0)	1.5	2.7	0
Infinity/Viacom (183/18)	1.4	15.4	18
Entercom (103/12)	0.8	3.4	12
American Family Association (103/0)	0.8	-	0
Salem Communications (82/0)	0.6	-	0
Cox Radio (79/0)	0.6	3.5	0
Waitt Radio, Inc. (73/0)	0.5	-	0
ABC Radio, Inc. (Disney) (64/0)	0.5	3.3	0
Total	**17.9**	**57.2**	**91***

** Value not equal to column sum due to rounding*

To focus on the issue of audience reach (given that all indecency violations must originate with listener complaints), Table 2 presents the top 10 radio station owners ranked according to share of the national radio audience. As this table indicates, the top 10 owners by share reach 65.2 percent of the nationwide radio audience, and control 17.1 percent of the radio stations in the United States. Yet they account for 96 percent of the indecency violations issued by the FCC from 2000 to 2003.

Four of the nation's largest radio station ownership groups were responsible for nearly all the indecency fines levied by the FCC from 2000 to 2003, accounting for a far greater

proportion of the indecency fines than either their share of the total number of stations, or their share of the total radio audience, would lead us to expect.

Clear Channel Communications, the nation's largest owner of commercial radio stations, rapidly expanded from 40 stations before the 1996 Telecom Act to 1,233 stations in 2002 — 9.3 percent of all radio stations in the United States. In 2002, Clear Channel had a 27 percent share of the nation's radio audience. Yet from 2000 to 2003, 61 of the 101 indecency fines levied by the FCC occurred on Clear Channel stations. Clear Channel's 60 percent share of indecency violations was substantially in excess of its share of stations or audience.

Table 2: FCC Broadcast Radio Indecency Violations for Top 10 Station Owners (by National Audience Share)

Owner (stations/violations)	% National Audience (2002)	% Stations Owned (2002)	% Indecency Violations (2000-2003)
Clear Channel (1233/61)	27.0	9.3	60
Infinity/Viacom (183/18)	15.4	1.4	18
Cox Radio (79/0)	3.5	0.6	0
Entercom (103/12)	3.4	0.8	12
ABC/Disney (64/0)	3.3	0.5	0
Radio One (64/0)	2.9	0.5	0
Emmis Communications (27/6)	2.8	0.2	6
Citadel (206/0)	2.7	1.5	0
Hispanic Broadcasting (55/0)	2.3	0.4	0
Cumulus (248/0)	1.9	1.9	0
Total	**65.2**	**17.1**	**96**

Viacom, the nation's second-largest radio station owner in terms of audience share, also grew significantly after the 1996 Act, owning 183 radio stations in 2002, or 1.4 percent of all radio stations in the United States. In 2002, Viacom had a 15.4 percent share of the nation's radio audience. Yet from 2000 to 2003, 18 of the 101 indecency fines levied by the FCC occurred on Viacom stations.

Entercom owned 103 stations in 2002 and was the fourth-largest radio station owner in terms of audience share, with 3.4 percent of the total national radio audience. However, Entercom was responsible for 12 percent of total indecency violations, far in excess of its total audience share.

Emmis Communications is not one of the nation's largest ownership groups in terms of stations owned (27 stations, or 0.2 percent of the nation's total). However, those stations are in large markets, making Emmis the seventh-largest station owner in terms of national audience, with a 2.8 percent share. Emmis was responsible for 6 percent of total indecency violations, more than double its percentage share of the national audience. Emmis' indecency violations were all incurred by one show, "Mancow in the Morning," airing on Chicago's WKQX-FM.

In terms of national audience share, four of the seven largest radio station group owners — Clear Channel, Viacom, Entercom and Emmis — had a combined total audience share in 2002 of 186.2 million listeners, or 48.6 percent of the total national radio audience.[84] Yet these four station groups were responsible for 96 percent of the total number of indecency violations on radio from 2000 to 2003.

In contrast, all the other radio stations in the nation accounted for only four of the 101 total FCC indecency violations. These 11,750 stations[85] represent 88 percent of total radio stations in the United States. Their combined share of the national audience is 51.4 percent. Yet they were responsible for just 4 percent of all FCC radio indecency violations.

Many of the examples discussed above touch upon the issue of large station groups exporting programming produced by one of their stations to other stations they own. Table 3 addresses this issue of national-level vertical integration of program production and distribution more broadly. The table presents the ownership of programming fined by the FCC for indecency. Eighty-two percent of the radio programs that generated FCC indecency fines were owned by a vertically integrated large radio station ownership group. Thirty-seven of those 83 violating programs were broadcast and fined for indecency in the program's "home" – or originating – market. The FCC fined 46 programs for indecency in distant markets where the vertically integrated broadcaster aired its program on additional stations it owned.

Table 3: FCC Broadcast Radio Indecency Violations by Station and Program Ownership, 2000-2003

Station Owner (total violations)	Violations by Program Owned by Station Owner Airing *Within* Original Market	Violations by Program Owned by Station Owner Airing *Beyond* Original Market	Violations by Program *not* Owned by Station
Clear Channel (61)	18	25	18
Infinity/Viacom (18)	5	13	0
Entercom (12)	4	8	0
Emmis Communications (6)	6	0	0
Beasley Broadcasting (2)	2	0	0
GA/MEX Broadcasting (2)	2	0	0
Total	**37**	**46**	**18**

As noted previously, one reason why larger station groups may account for a disproportionate amount of indecency violations is the tendency among these groups to air the same programming on many of the stations they own across the country, taking advantage of economies of scale and thereby reducing per-station programming costs. An examination of the individual programs fined by the FCC illustrates this pattern. Among the shows Clear Channel broadcast that received FCC fines were its "Bubba the Love Sponge" and "Elliott in the Morning" shows. Clear Channel itself owned these shows and placed them on several of the stations it purchased following the passage of the

Four station groups were responsible for 96 percent of the total number of indecency violations on radio from 2000 to 2003.

1996 Telecom Act — stations that had never previously been fined for indecency.

In addition, Clear Channel licensed "The Howard Stern Show," owned and distributed by Viacom, and aired it on six stations outside of Stern's New York City home market. On these six Clear Channel stations, Howard Stern generated 18 FCC indecency fines. Of these six Clear Channel stations, five were not owned by Clear Channel prior to 1996: WXDX-FM, Pittsburgh, Pa.; WTKS-FM, Cocoa Beach, Fla.; WTFX-FM, Louisville, Ky.; KIOZ-FM, San Diego, Calif.; and, WNVE-FM, Honeoye Falls, N.Y.[87] Prior to purchase by Clear Channel, none had received an FCC indecency fine.[88]

Like Clear Channel, Viacom itself owned much of the programming that generated FCC fines, distributing it to many of its own stations. For example, the "Opie and Anthony Show," owned by Viacom, generated 16 FCC indecency fines, all of them on Viacom-owned stations.

Thus, it should be clear that a large proportion of the programs fined by the FCC for indecency are being exported by large station groups to multiple stations/markets to take advantage of the economies of scale in program production and distribution.

CONCLUSION

The 1996 Telecommunications Act unleashed a wave of consolidation in the radio industry. Soon, another wave was unleashed upon the American people — a wave of raunchy content, the vast majority of it broadcast over stations owned by the nation's largest radio station ownership groups. Four of the largest radio station groups in the nation received 96 percent of FCC indecency fines, despite the fact that these ownership groups owned only 12 percent of the nation's radio stations and had a total nationwide audience share of 48.6 percent.

These results do not prove a causal link between ownership concentration and broadcast indecency. Additional research, accounting for the broad array of factors that may influence the likelihood of a station receiving an indecency violation, is necessary. However, this study has provided compelling theoretical, anecdotal, and quantitative evidence suggesting the connection between indecency and media consolidation should receive much greater scrutiny from researchers and policymakers.

These results have important implications for the ongoing debate over effective regulatory responses to indecent programming. Many policymakers have proposed exponentially raising the fines levied against broadcasters and, in some cases, extending those fines to on-air talent, as the best way to prevent indecent broadcasts from offending the public. In addition, recent FCC actions have focused on the imposition of broad and highly restrictive Consent Decrees upon large station groups, an approach that inevitably raises questions about "chilling effects" on speech and the appropriate boundaries of the First Amendment.

These results have important implications for the ongoing debate over effective regulatory responses to indecent programming.

The results of this study raise the possibility that a more effective approach to the problem of "indecency" on the airwaves might include breaking up large station groups, reintroducing meaningful station ownership limits, and limiting vertical integration of ownership of programming and distribution. Such an approach would reduce the risk that any one radio station ownership group would broadcast indecent content to a significant share of the national audience. Moreover, reduced ownership limits could more closely tie the ownership and programming of radio stations to the local community and attune the ownership and programming of the station to local sensibilities, as was so clearly not the case with Clear Channel in Port Charlotte, Fla.

Using media ownership limits to address concerns over offending content would be First Amendment-friendly, in a way that direct government regulation of program content — the present system of indecency regulation — is not. Moreover, increasing the number of owners of radio stations and programming brings more voices to the public airwaves, advancing the stated goals of the FCC in regulating media ownership — competition,

diversity of viewpoints and localism.[89] And, by reducing vertical and horizontal ownership concentration, the government could significantly lessen its role in directly regulating program content, always a highly sensitive and contentious area fraught with First Amendment concerns.

In summary, this report suggests that the increasingly centralized ownership of broadcast radio stations and programming may contribute to the problem of increased indecency on the airwaves. In addition, increasingly centralized ownership may also reduce constitutionally protected speech on the public airwaves — the likely outcome of the behaviorally based Consent Decrees entered into by the government and the large radio broadcasters in response to the indecency problem. Audiences, speakers and the First Amendment may be better served by a regulatory approach that more thoroughly considers — and accounts for — the possible role that vertical and horizontal ownership concentration plays in the broadcast indecency issue. This study is intended as a first step toward initiating this conversation.

NOTES

[1] Peter DiCola and Kristin Thomson, "Radio Deregulation: Has It Served Citizens and Musicians?" Future of Music Coalition, Nov. 18, 2002, p. 13. Available at http://www.futureofmusic.org/research/radiostudy.cfm (accessed July 14, 2005). We thank the authors and FMC for their generosity in granting permission to use data in their study in the preparation of this report.

[2] Id., Tables 3-1 and 3-2, pp. 23-4. 2002 data are the latest available for audience share in the relevant time period.

[3] FCC Data, available at http://www.fcc.gov/eb/broadcast/NAL.html (accessed July 14, 2005). Pre-2000 FCC indecency fine data generously provided by John Dunbar, Center for Public Integrity.

[4] "In the Matter of Clear Channel Communications, et al," FCC order, June 4, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-128A1.pdf (accessed July 14, 2005).

[5] "In the Matter of Viacom, Inc., et. al," FCC order, Nov. 9, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-268A1.pdf (accessed July 14, 2005).

[6] "In the Matter of Emmis Communications Corporation, et. al," FCC order, August 10, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-199A1.pdf (accessed July 14, 2005).

[7] The Consent Decrees entered into by Clear Channel, Viacom, and Emmis closed a number of pending FCC indecency cases at the staff level prior to any Commission finding that additional indecency violations had occurred. Therefore, the figures and percentages reported here may understate, perhaps significantly, the number of indecency violations actually committed by these three companies from 2000 to 2003.

[8] 2003 figures.

[9] 2002 figures.

[10] "In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996," FCC report and order, June 2, 2003, p. 8.

[11] DiCola and Thomson, *Id.*

[12] *Id.*

[13] FCC data available at http://www.fcc.gov/eb/broadcast/NAL.html (accessed July 14, 2005). Pre-2000 FCC indecency fine data generously provided by John Dunbar, Center for Public Integrity.

[14] "FCC to Probe Super Bowl Halftime," *CNNMoney*, Feb. 2, 2004. Available at http://money.cnn.com/2004/02/02/news/companies/superbowl_fcc/ (accessed July 14, 2005).

[15] "Capitol Hill Grills NFL, Viacom about Super Bowl Show," *USA Today*, Feb. 11, 2004. Available at http://www.usatoday.com/news/washington/2004-02-11-hill-halftime_x.htm (accessed July 14, 2005).

[16] "FCC to Investigate Super Bowl Show," *Washington Post*, Feb. 3, 2004. Available at http://www.washingtonpost.com/ac2/wp-dyn/A5746-2004Feb2?language=printer (accessed July 14, 2005).

[17] "Powell: Jackson Flash 'A New Low,'" *CBS News*, Nov. 11, 2004. Available at http://www.cbsnews.com/stories/2004/02/11/entertainment/main599759.shtml (accessed July 14, 2005).

[18] "Clear Channel pulls plug on 'vulgar' Stern," *Hollywood Reporter*, Feb. 26, 2005. Available at http://www.hollywoodreporter.com/thr/article_display.jsp?vnu_content_id=1000444731 (accessed July 14, 2005). In a decision issued on April 8, 2004, the FCC levied 18 fines of $27,500 each, totaling $495,000, on Clear Channel for three separate incidents of indecent material aired on its six stations that then carried Stern's show. See "Clear Channel Broadcasting Licenses, Inc.," FCC Notice of Apparent Liability, April 8, 2004.

[19] "In the Matter of Clear Channel Communications, et al," *Id.*

[20] "In the Matter of Viacom, Inc., et. al," *Id.*

[21] "In the Matter of Emmis Communications Corporation, et al," *Id.*

[22] 2003 figures.

[23] 2002 figures.

[24] "In the Matter of Clear Channel Communications, et al," *Id.*

[25] "Reporting Live, Very Carefully," *Broadcasting & Cable*, July 4, 2005. Available at http://www.broadcastingcable.com/article/CA623019.html?display=Feature&referral=SUPP (accessed July 7, 2005).

[26] Michael J. Copps, "Remarks before the NATPE 2003 family programming forum, New Orleans, La.," Jan. 22, 2003, p. 5. Available at http://www.fcc.gov/Speeches/Copps/2003/spmjc301.pdf (accessed January 10, 2004).

[27] Joe Howard, "Talk radio seminar highlights," *Radio and Records*, Feb. 2004, p. 1. Available at http://www.radioandrecords.com/Conventions/TRS2004/Highlights/ (accessed May 31, 2005).

[28] Diane Watson, "Media reform at the crossroads," *MediaChannel.org*, Sept. 28, 2004. Available at http://www.freepress.net/news/4771 (accessed May 31, 2005).

[29] Neal Gabler, "The tyranny of 18-49: American culture held hostage," Norman Lear Center, University of Southern California, April 9, 2003. Available at http://www.learcenter.org/images/event_uploads/Gabler18to49.pdf (accessed May 31, 2005).

[30] Phil M. Napoli, *Audience Economics: Media Institutions and the Audience Marketplace,* Columbia University Press, 2003.

[31] J.T. Hamilton, *Channeling Violence: The Economic Market for Violent Television Programming,* Princeton University Press, 1998.

[32] "Stern ratings rise amid content furor," *Variety,* April 25, 2004. Available at http://print.google.com/print/doc?articleid=j45DtFjRVR (accessed May 31, 2005).

[33] Copps, *Id.*

[34] Howard, *Id.*

[35] B.M. Owen and S.S. Wildman, *Video Economics,* Harvard University Press, 1992.

[36] Available at http://www.fcc.gov/eb/broadcast/obscind.html (accessed July 14, 2005).

[37] "Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency," Federal Communications Commission, 2001. Available at http://www.fcc.gov/eb/Orders/2001/fcc01090.html (accessed July 14, 2005).

[38] Available at http://www.fcc.gov/eb/broadcast/obscind.html (accessed July 14, 2005).

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] According to the FCC Web site, "The Commission has defined broadcast indecency as language or material that, in context, depicts or describes, in terms patently offensive as measured by contemporary community standards for the broadcast medium, sexual or excretory organs or activities." Per the FCC, however, "contemporary community standards" does not mean "community" as in "locality," the preferred dictionary definition. Instead, "The determination as to whether certain programming is patently offensive is not a local one and does not encompass any particular geographic area. Rather, the standard is that of an average broadcast viewer or listener and not the sensibilities of any individual complainant." Available at http://www.fcc.gov/eb/broadcast/obscind.html (accessed July 14, 2005). "Many media executives, performers and free speech organizations criticize the existing rules as too ambiguous and vague. They say the rules lead to random enforcement and unfair interpretations of 'indecency.' " "Policing the Airwaves, the Debate Over Indecency," *PBS Newshour Extra*, March 31, 2004. Available at http://www.pbs.org/newshour/extra/features/jan-june04/indecency_3-31.html (accessed July 14, 2005).

[43] "Complaints Against Various Broadcast Licensees Regarding Their Airing of the 'Golden Globes Awards' Program," FCC memorandum opinion and order, March 3, 2004. Available at http://www.fcc.gov/eb/Orders/2004/FCC-04-43A1.html (accessed July 14, 2005).

[44] "Complaints Against Various Television Licensees Regarding Their Broadcast on November 11, 2004 of the ABC Television Network's Presentation of the Film 'Saving Private Ryan,' " FCC memorandum opinion and order, Feb. 3, 2005. Available at http://www.fcc.gov/eb/Orders/2005/FCC-05-23A1.html (accessed July 14, 2005).

[45] *Id.* Emphasis in original.

[46] *Id.*

[47] "Industry Guidance On the Commission's Case Law Interpreting 18 U.S.C. § 1464 and Enforcement Policies Regarding Broadcast Indecency," Federal Communications Commission, 2001. Available at http://www.fcc.gov/eb/Orders/2001/fcc01090.html (accessed July 7, 2005).

[48] 2002 data are the latest available for audience share in the relevant years 2000 to 2003. For consistency, 2002 data is also used for station totals.

[49] Available a http://www.fcc.gov/eb/broadcast/NAL.html (accessed July 14, 2005).

[50] Available at http://www.fcc.gov/mb/audio/totals/index.html (accessed July 14, 2005). The total number of stations as of September in each year was chosen, as this was the only quarterly total available for each of the four years analyzed. The number of stations varies little from quarter to quarter.

[51] Available at http://www.sec.gov/edgar.shtml (accessed July 14, 2005).

[52] DiCola and Thomson, *Id.*, Table 3-2, p. 24. Future of Music Coalition uses source data from Media Access Pro, BIA Financial Networks; data as of May 16, 2002.

[53] The authors thank John Dunbar and the Center for Public Integrity for their assistance in the preparation of this report. Available at http://www.public-i.org/telecom/report.aspx?aid=239&sid=200 (accessed July 14, 2005).

[54] The three instances of indecency on television were: 1) Viacom, for the 2004 Super Bowl Halftime Show, available at http://www.fcc.gov/eb/Orders/2004/FCC-04-209A1.html (accessed July 14, 2005); 2) Fox Television and its affiliates, for "Married By America," aired April 7, 2003, available at http://www.fcc.gov/eb/Orders/2004/FCC-04-242A1.html (accessed July 14, 2005); and 3) Young Broadcasting, for a sequence on "Puppetry of the Penis," aired Oct. 4, 2002, available at http://www.fcc.gov/eb/Orders/2004/FCC-04-16A1.html (accessed July 14, 2005).

[55] "AMFM Radio Licenses, L.L.C., (WIHT-FM), Washington DC," FCC order, June 10, 2004. Available at http://www.fcc.gov/eb/Orders/2004/FCC-04-35A1.html (accessed July 14, 2005). Listeners were invited to predict how large a man's penis would become after applying a penile-enlargement device.

[56] "AMFM Radio Licenses, L.L.C., (WIHT-FM), Washington DC," *Id.*

[57] "In the Matter of Edmund Dinis," FCC order, Feb. 2, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-04-250A1.pdf (accessed July 14, 2005).

[58] 2000 population figures available at http://www.city-data.com/housing/houses-Port-Charlotte-Florida.html (accessed July 14, 2005).

[59] Pre-1996 ownership data generously provided by Peter DiCola, Future of Music Coalition.

[60] 2000 population figures available at http://www.city-data.com/housing/houses-Punta-Gorda-Florida.html (accessed July 14, 2005).

[61] 2000 population figures available at http://www.city-data.com/city/Fort-Myers-Florida.html (accessed July 14, 2005) and http://www.city-data.com/city/Cape-Coral-Florida.html (accessed July 14, 2005).

[62] *Clear Channel Broadcasting Licensees, Inc.*, FCC Notice of Apparent Liability, January 16, 2004.

[63] Available at http://www.city-data.com/housing/houses-Clearwater-Florida.html (accessed July 14, 2005).

[64] Available at http://www.city-data.com/city/St.-Petersburg-Florida.html (accessed July 14, 2005).

[65] Available at http://www.city-data.com/city/Callahan-Florida.html (accessed July 14, 2005).

[66] Available at http://www.city-data.com/city/Jacksonville-Florida.html (accessed July 14, 2005).

[67] Available at http://work.timgibbons.net/clips/000219.html (accessed July 14, 2005).

[68] *Id.*

[69] "Bubba's brazen shows draw hefty FCC fine," *St. Petersburg Times*, Jan. 28, 2004. Available at http://stpetersburgtimes.com/2004/01/28/news_pf/Tampabay/Bubba_s_brazen_shows_.shtml (accessed July 14, 2005).

[70] *Id.*

[71] *Id.*

[72] "Clear Channel Broadcasting Licensees, Inc., Notice of Apparent Liability," Federal Communications Commission, Jan. 16, 2004, p. 5.

[73] *Id., p. 6.*

[74] Id.

[75] Available at http://www.fcc.gov/eb/broadcast/obscind.html (accessed July 14, 2005).

[76] Available at http://personals.newhavenadvocate.com/articles/fcc.html (accessed July 14, 2005).

[77] *Id.*

[78] *Id.*

[79] *Id.*

[80] Available at http://www.btls.com/pressrelease.php (accessed July 14, 2005).

[81] In a decision issued on April 8, 2004, the FCC levied 18 fines of $27,500 each, totaling $495,000, on Clear Channel for three separate incidents of indecent material aired on its six stations that then carried Stern's show. "Clear Channel Broadcasting Licenses, Inc., Notice of Apparent Liability," Federal Communications Commission, April 8, 2004.

[82] "In the Matter of Clear Channel Communications, et al," FCC order, June 4, 2004. Available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-04-128A1.pdf (accessed July 14, 2005).

[83] Data for the year 2002 is used for stations owned and audience share throughout these results, while the indecency data is for the years 2000 to 2003. 2002 data is the latest available for audience share.

[84] DiCola and Thomson, *Id.*, pp. 24-25.

[85] 2002 data.

[86] See "Port Charlotte, Florida" section of this report for additional details. Pre-2000 FCC indecency fine data generously provided by John Dunbar, Center for Public Integrity.

[87] Pre-1996 ownership data generously provided by Peter DiCola, Future of Music Coalition.

[88] FCC data available at http://www.fcc.gov/eb/broadcast/NAL.html (accessed July 14, 2005) and data generously provided by John Dunbar, Center for Public Integrity.

[89] "In the Matter of 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996," FCC report and order, June 2, 2003, p. 8.

About Creative Voices

The Center for Creative Voices in Media is dedicated to promoting free expression and preserving in America's media the original, independent, and diverse creative voices that enrich our nation's culture and safeguard its democracy. Founded in 2003, its Board of Advisors consists of numerous prominent creative artists, including many Oscar, Emmy, Tony, and Peabody Award-winners. Additional information about Creative Voices can be found on its website, www.creativevoices.us.

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About the McGannon Center at Fordham

The Donald McGannon Communication Research Center was founded in 1986 and is named in memory of Donald H. McGannon, former CEO of Westinghouse Broadcasting Corporation (Group W) and a Fordham College graduate, Class of 1940. The mission of the Center is to conduct, support, reward, and disseminate research in the fields of communications policy and ethics, with a particular emphasis on research that addresses the public interest dimensions of media performance. In pursuit of this mission, the Center serves as a resource and forum for scholars, policymakers, industry groups, and public interest organizations. For more information, go to www.fordham.edu/mcgannon.

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