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**PS WHEN AND OR IF YOU EVER CAMPAIGN FOR CHIEF EXECUTIVE, YOU CAN SAY I AM FOR FREE SPEECH, GUESS WHAT YOU WOULD BE ELECTED FOR BY THE MAJORITY.**

99.99% of the American people are legally barred from using the most effective communications system in the United States. Can such a regulatory scheme possibly be contemplated by the First Amendment? Absent some extraordinarily compelling need, which is not present here, we think the answer must be a clear no

This is especially so in light of developments following the Telecommunications Act of 1996. The Act substantially relaxed ownership restrictions for both radio and television. In the twenty months since the law was enacted, 4,000 of the nation's 11,000 commercial radio stations have changed hands and there have been over 1,000 radio company mergers.<sup>12</sup> And the pace of consolidation has not slowed. Small chains have been acquired by middle-sized chains, and middle-sized chains have been gobbled up by the few massive giant companies who have come to dominate the industry. The sort of consolidation permits the giants to reduce costs by shrinking local editorial and sales staffs and running programming out of national headquarters. <sup>13</sup> According to Advertising Age, by September 1997 in each of the fifty largest markets, three firms controlled over 50 percent of radio advertising revenue (and programming). <sup>14</sup> In twenty-three of the top fifty, three companies controlled more than 80 percent of the ad revenues. CBS alone has 175 stations, mostly in the fifteen largest markets.<sup>15</sup>

The gains in diversity that were supposed to flow from the FCC's Docket 80-90, which led to the expansion of the number of FM radio stations by about 50%, has likely been almost completely reversed by the Telecommunications Act of 1996. While there may be more radio outlets, there are likely fewer owners, especially in the large markets, than there were prior to Docket 80-90.

As The Wall Street Journal puts it, these deals "have given a handful of companies a lock on the airwaves in the nation's big cities."<sup>16</sup>

Other changes have further exacerbated this situation. The FCC's liberalization of city-of- license service requirements has allowed stations technically licensed to small towns, to, in fact, serve larger nearby metropolitan areas, further decreasing any hope of locally responsive programming. In addition, the effect of consolidation, as well as a number of recent, disparate court decisions and administrative actions, has apparently led to a decrease in the number of women and minority-owned radio and television stations.

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Mr.D'Alessandro

### ABan on Radio Stations of Less Than 100 Watts is Overly Restrictive and Violates the First Amendment.

The U.S. Supreme Court in *Red Lion* and many other cases has held that some regulatory scheme for radio broadcasting is clearly necessary and enhances, rather than abridges, the First Amendment. However, the need for regulation does not give the FCC carte blanche to institute a scheme which restricts the public use of radio far beyond that which is necessary to achieve its legitimate objectives. The blanket ban on low-power radio<sup>9</sup>, especially in light of the clear, current demand for such a service, has no rational justification. Today hundreds of microstations are on the air serving their communities without causing interference, proving that actual interference is not a significant issue.

In addition, the FCC's acceptance of low power FM translators clearly shows that, technically, such stations can exist. In fact, allowing such transmitters to exist only when they do not originate programming clearly is a content based distinction that favors "efficiency" over First Amendment values. It flies directly in the face not only of the First Amendment, but of oft-expressed FCC policy favoring localism and local service as being in the public interest

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