Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2024 Communications Marketplace Report	)	GN Docket No. 24-119
	)	
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REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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I. INTRODUCTION AND SUMMARY

As NAB has shown in this and other Commission proceedings,[1] the 2024 Communications Marketplace Report should reconfirm that radio and television broadcasters compete against myriad multichannel and online content providers for audiences and advertising revenues and that consumers and advertisers now choose and benefit from a vast and growing array of audio and video providers and digital ad platforms, The few parties commenting here on audio and video issues either do not convincingly dispute or do not address the profound competitive impact that the transformation of the media and advertising markets in the digital age has had on local broadcast stations. Instead, these commenting parties predictably focus on – and make misleading statements about – an irrelevant copyright debate outside the FCC's jurisdiction and reiterate perennial complaints about the retransmission consent regime that Congress adopted and has retained.

[1] Comments of the National Ass'n of Broadcasters (NAB), GN Docket No. 24-119 (June 6, 2024) (NAB Comments). NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

More specifically, the music industry parties' late-filed, rehashed comments offered an incomplete and inadequate competitive analysis, again ignoring competition for vital advertising revenues among a variety of content providers and ad platforms. As NAB remarked two years ago, their approach is akin to ignoring both the 800-pound gorilla and the elephant in the room. Terrestrial radio stations are highly dependent on earning advertising revenues for their very survival, let alone for their ability to hire and retain staff, including talented on-air employees and sales staff trained in digital advertising products; provide quality programming, including locally-oriented news, weather, and sports; and improve their technical facilities and physical plant. But just as in earlier communications marketplace proceedings, these commenters refused to recognize the direct connection between stations' advertising revenues and their capability to provide valuable and valued local services.

And while the music industry parties recognized competition between audio platforms for listeners, they declined to analyze audio market competition in light of their recitation of data about listenership to satellite radio, streaming platforms, and AM/FM radio. Instead, these commenters used that information to support their repetitive calls for congressional imposition of new performance rights fees on radio stations' airplay of music to the public without charge – an issue of complete irrelevance to the Commission in this or any other proceeding.

As NAB again makes clear, the upcoming report should not repeat the music industry's predictable and unsuccessful talking points from a legislative debate over copyright policy merely because the music industry dislikes certain copyright laws outside the FCC's purview. The Commission further must reject the erroneous argument that Congress's long-standing and consistently reaffirmed refusal to accede to the music industry's repeated demands for changes to copyright law somehow means the FCC should retain outdated local radio ownership rules, irrespective of the competitive transformation of the communications marketplace. For the reasons NAB previously identified and explains again here, current copyright law treatment of radio stations' over-the-air (OTA) broadcasts of music free to the public does not provide local radio stations with any material competitive advantage in the audio marketplace.

The Commission also must reject the music industry parties' repeated request for it to conduct blatantly biased studies examining only *intragroup* competition between AM/FM broadcasters and presuming in advance that common ownership of local radio stations causes public interest harms. NAB finds it a bit rich for music industry commenters to complain about common ownership of radio stations, given that the recorded music industry is dominated by just *three* major labels that collectively generated $2.9 million *per hour* in revenue last year. In remarkable contrast, the vast majority of radio stations earn less -- and often much, much less – than $2.9 million *per year* in advertising revenues.[2]

Likewise, the predictable and unmeritorious complaints of the multichannel video programming distributor (MVPD) parties about retransmission consent – complaints that unlike wine have not improved with age and repetition – do little to inform the FCC's inquiries here. As NAB has explained innumerable times, MVPDs' unhappiness about paying retransmission consent fees or even negotiating with local stations does not mean that TV broadcasters have any undue bargaining power over pay TV/broadband providers, which frequently dwarf TV station groups in size; that those fees are, in any economic sense, too

[2] T. Ingham, *The 3 Major Music Companies Are Now Jointly Generating Approximately $2.9M Per Hour*, musicbusinessworldwide.com (May 15, 2023); NAB Comments at 20, 2023 Radio Station Advertising Revenues by Market Rank (showing that in 2023, radio stations in all Nielsen Audio market size ranges, except markets 1-10, earned on average below, and often very far below, $2.9 million in ad revenues for the entire year).

high; or that changes to FCC rules intended to enhance pay TV/broadband companies' position at the negotiating table are in any way justified, even if the Commission had authority to adopt them (which it does not),

The Commission also should ignore the pay TV industry's continued effort here to spread misinformation about retransmission consent disputes. As NAB showed in its initial comments, increases in disruptions have not so coincidentally occurred when the FCC and/or Congress actively contemplate changes to the retransmission consent system, and the pay TV industry's incentives to show problems with the system that government must "fix" to the disadvantage of broadcasters accordingly increase. The Commission should decline to indulge this clear rent-seeking strategy intended to reduce the competitiveness of the free OTA television industry for the benefit of pay TV providers.

NAB again urges the Commission to consider the negative impact that marketplace changes have had on TV stations' resources for providing important news and other locally-focused programming to their communities. As Congress has recognized and as NAB previously explained, vast changes in the advertising market, particularly the rise of the giant tech platforms, have imperiled the ability of local broadcast stations to derive advertising revenue from their online content, including local news, or even to reach online audiences with that content.

Beyond recognizing the intense competition for audiences and advertising revenues among innumerable audio and video content providers and platforms, the 2024 Communications Marketplace Report should acknowledge the burdens placed on OTA radio and TV stations by the current asymmetric broadcast regulatory regime. As described in NAB's initial comments and in other FCC proceedings, those burdens include sub-optimal ownership structures, scarce investment capital, delayed technological innovation, and paperwork and compliance requirements that do little to promote important substantive goals, all of which impede local stations' ability to provide quality audio and video content in markets across the country at no cost to the public. The FCC's focus here and in future rulemaking proceedings should be on measures increasing the broadcast industry's competitiveness in today's marketplace, thereby encouraging investment in and availability of capital to the industry. Such measures are necessary to promote the continued viability of local stations in all-sized markets, especially smaller ones, and to encourage new entry into the industry.

II. IN THEIR LATE-FILED COMMENTS, MUSIC INDUSTRY INTERESTS YET AGAIN ARE USING THE FCC'S COMPETITION REPORT TO CONGRESS AS AN ANTI-BROADCAST INDUSTRY VEHICLE

NAB has three initial thoughts about the comments submitted by the musicFIRST Coalition and the Future of Music Coalition.[3] First, they were inexplicably filed five days late.

Second, NAB says "inexplicably" late because the Coalitions' comments clearly were cloned from their comments in the FCC's 2022 proceeding on competition in the communications marketplace, and cutting and pasting text is not especially time consuming. A comparison of the tables of contents from the Coalitions' 2024 and 2022 comments shows that (apart from formatting, or the lack thereof), they are virtually identical.[4] To be clear, NAB does not condemn all repurposing of previous work. Indeed, NAB does so in these reply comments, given that the Coalitions' 2024 competition comments not only copy

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[3] Comment of musicFIRST Coalition and Future of Music Coalition (collectively, the Coalitions), GN Docket No. 24-119 (June 11, 2024) (2024 Coalition Comments).

[4] *See* Attachment A, Coalitions' Tables of Contents from 2022 and 2024 Comments. Beyond correcting a typo, only two words were added to, and two words (including "the") removed from, the 2022 table of contents in preparing the 2024 version.

much of their 2022 comments but also reflect their 2020 and 2018 comments, even using identical language to make some of their leading – but erroneous -- arguments.

Third, as in the FCC's 2022, 2020, and 2018 examinations of competition in the communications marketplace, the Coalitions are participating in the 2024 proceeding to support regulatory restrictions on local radio stations, due to the Coalitions' frustration over their continued failure to persuade Congress to establish a sound recording performance right for terrestrial radio.[5] For these reasons, the FCC must view the Coalitions' tardy, rehashed comments here through with a highly skeptical lens, if not discount them entirely.

A. The Coalitions Again Attempted to Recast the Communications Marketplace Report Statute to Deemphasize Competitive Issues, While Adding Errors in the Process

Just as in 2022, 2020, and 2018, the Coalitions here claimed in identical language and under a highly selective reading of Section 163, that the FCC must analyze comments in this proceeding "through the lens of its public interest obligations and long-recognized commitment to promoting diversity, competition and localism among media platforms."[6] The statute, however, directs the Commission to "assess the state of *competition* in the communications marketplace."[7] Given this statutory language, NAB again makes the blindingly obvious point that the FCC should focus on competition in its upcoming report.

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[5] NAB previously has pointed out the suspect motivations of the multi-billion-dollar music industry for participating in various FCC proceedings, including arguing in quadrennial reviews that radio broadcasters should remain confined to suboptimal analog-era ownership structures. *See, e.g.*, NAB Comments at 50 and n.127; NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 13-16 (Feb. 16, 2022); Reply Comments of NAB, GN Docket No. 22-203, at 19-25 (Aug. 1, 2022) (2022 NAB Competition Reply Comments).

[6] 2024 Coalition Comments at 13, Heading; Comments of the Coalitions, GN Docket No. 22-203, at 6, Heading (July 1, 2022) (2022 Coalition Comments); Comments of the Coalitions, GN Docket No. 20-60, at 4, Heading I (Apr. 27, 2020) (2020 Coalition Comments); Comments of the Coalitions, MB Docket No. 18-227, at 5, Heading I (Sept. 24, 2018) (2018 Coalition Comments) (capitalizations omitted).

[7] 47 U.S.C. § 163(b)(1) (emphasis added).

The Commission should disregard the Coalitions' effort to again downplay the competition-centric nature of the congressionally mandated report on the communications marketplace, which flies in the face of the statute's repeated instructions to analyze various aspects of competition.[8] Contrary to the Coalitions' repetitive claims,[9] Section 163's provisions directing the Commission to assess regulatory and other barriers to competitive entry (including by entrepreneurs and other small businesses) and to the competitive expansion of existing providers does not somehow redirect the FCC's focus in its congressional reports away from competition and toward "public interest obligations."[10]

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[8] "In assessing the state of competition" in the communications marketplace, the FCC "shall consider all forms of competition, including the effect of intermodal competition, facilities-based competition, and competition from new and emergent communications services, including the provision of content and communications using the Internet." 47 U.S.C. § 163(d)(1). In setting forth the contents and requirements of the mandated report, Section 163 uses the terms "competition" or "competitive" 11 times.

[9] 2024 Coalition Comments at 13; 2022 Coalition Comments at 6; 2020 Coalition Comments at 4-5; 2018 Coalition Comments at 5-6.

[10] *See* 47 U.S.C. §§ 163(b)(3) and (d)(3). The cross reference in § 163(d)(3) (entitled "Considering small businesses") to § 257 does not override the numerous provisions of § 163 directing the FCC to address various aspects of competition or place other factors above competition. The Coalitions asserted that § 257(a) "*requires* that the Commission review *ownership* of telecommunications services and information services," with the goal of identifying and eliminating market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications and information services. 2024 Coalition Comments at 13-14 (emphasis added) and n.38, citing 47 U.S.C. § 257(a) (2018); 2022 Coalition Comments at 6-7 and n.30; 2020 Coalition Comments at 4-5 and n.15; 2018 Coalition Comments at 5-6 and n.14 (same). That does not reflect the statute, which provides that the FCC was *required*, within 15 months of passage of the 1996 Telecommunications Act (1996 Act), to complete a proceeding identifying and eliminating market entry barriers for entrepreneurs and small businesses in providing and owning telecommunications and information services. 47 U.S.C. § 257(a). The FCC fulfilled this directive in 1997. *See* Report, 12 FCC Rcd 16802 (1997). The Coalitions also cited § 163(d)(3)'s direction to consider market entry barriers for small businesses in accordance with § 257(b), but that cross-reference to a provision instructing the FCC, in carrying out § 257(a), to promote policies favoring diversity of voices, economic competition, technological advancement, and promotion of the public interest, convenience, and necessity does not recast the entirety of § 163 and its mandates to "assess the state of competition" and "consider all forms of competition" into an inquiry on terrestrial radio stations' public interest obligations. 47 U.S.C. §§ 163(b)(1) and (d)(1).

The primary additions to the text of the Coalitions' 2024 comments over their 2022 version consist of an error and a misrepresentation. First, the error. The 2024 version puzzlingly asserts that since the 1940s, the Supreme Court has made clear that "47 U.S.C. § 257(b) causes the Commission" to have a legislative mandate to protect the public interest, and that the goals of promoting diversity, competition, and localism on the airwaves are consistent with the public interest.[11] Given that Congress did not adopt Section 257 until 1996, obviously the Supreme Court did not, starting in the 1940s (or at any other time), make clear that this provision "caused" the FCC's mandate to promote the public interest. In any event, the general public interest provisions of the 1934 Communications Act (Act) applicable only to broadcast licensees, which the Supreme Court interpreted in the 1943 *NBC* case, do not govern the FCC's report on competition in the entire communications marketplace under Section 163 of the Act, which Congress only adopted in 2018.

Second and more seriously, the Coalitions included a new misstatement. They claimed that "[a]ccording to the National Association of Black Owned Broadcasters," the "highly concentrated nature of local commercial radio ownership and anti-competitive practices by larger commercial local radio station clusters" result in Black owned radio stations "not get[ting] their fair share of advertising dollars."[12] This misrepresents NABOB's comments, which actually said, relying on a BIA report on Black owned radio stations' ownership and revenue, that "Black owned radio stations are not receiving a share of

[11] 2024 Coalition Comments at 14 and n.39, citing *Nat'l Broad. Co. v. United States*, 319 U.S. 190, 194, 203, 219 (1943) (*NBC*). The Coalitions' 2022, 2020, and 2018 comments similarly cited *NBC* but did not include the inapposite reference to "47 U.S.C. § 257(b)" causing anything.

[12] 2024 Coalition Comments at 15 and n.41, citing Comments of the Nat'l Ass'n of Black Owned Broadcasters (NABOB), MB Docket Nos. 22-459 & 18-349, at 6 (Mar. 3, 2023) (NABOB Ownership Comments).

advertising dollars commensurate with the number of Black persons in the U.S. population."[13] NABOB nowhere referred to any "anti-competitive practices" by large radio station clusters, nor did they claim that high concentration caused the asserted failure of Black owned stations to receive a fair share of ad dollars commensurate with the Black population. The Coalitions added those deliberately misleading editorial flourishes.

NAB also observes that the findings of the BIA report cited by NABOB are consistent with the economic struggles of smaller radio broadcasters and those in mid-sized and small markets more generally. NABOB reported that 72 percent of the Black-owned radio stations located in Nielsen markets grossed less than $1 million per year in advertising revenues.[14] According to BIA data for 2023, the average radio station in Nielsen Audio Markets 51-75, 76-100, 101-150, 151-200 and 201-246 *all* garnered under – and often well under – $1 million in ad revenues. Indeed, the average radio station in markets 151-200 and 201-246 garnered *under half a million dollars* in ad revenues last year, with the average station in markets 101-150 only slightly exceeding that half million level.[15] If the inability to attract more than $1 million in annual ad revenues is a litmus test for stations experiencing "serious financial challenges," as NABOB indicated,[16] then a very large proportion of radio

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[13] NABOB Ownership Comments at 6-7, citing Exhibit A, BIA Advisory Services and NABOB, *Black Owned Radio Stations Ownership and Revenue Report* (2022); *see also id*. at 6 (stating that the percentage of Black owned radio stations continues to lag the percentage of Black Americans in the U.S. population and that the "small number of Black owned stations that do exist fail to receive a fair share of the advertising expenditures that all radio stations need to survive").

[14] NABOB Ownership Comments at 6.

[15] NAB Comments at 20. The average radio station in market size ranges 51-75, 76-100, 101-150, 151-200, and 201-246 attracted, respectively, $959,000, $623,000, $537,000, $484,000, and $362,000 in ad revenues in 2023. Even the average station in markets 26-50 garnered just $1.573 million in ad revenues, meaning that many stations earned under that amount.

[16] NABOB Ownership Comments at 6, Heading B (capitalizations omitted).

stations fall into that category. These revenue data also explain why the number of full power AM and FM commercial radio stations has fallen by 285 over the past five years.[17]

B. The Coalitions' View of Intramodal Competition Remains Misleadingly One-Sided

The Coalitions' focus on intramodal competition continues to be distinctly one-sided. While still contending that competition within *each* type of audio delivery platform is important,[18] the Coalitions, as in the past, only addressed competition within AM/FM radio.[19] Again at the risk of pointing out the obvious, satellite radio is the audio delivery platform most characterized by a lack of intramodal competition, with only a single operator. A small number of large and well-capitalized entities, including Google/YouTube, Amazon, Apple, SiriusXM/Pandora, and Spotify, are the major players within the online music arena, with Amazon and Google/YouTube also being two of the three dominant digital advertising platforms. One might wonder why the Coalitions don't sound the alarm about the powerful oligopolists that dominate streaming, given that musicians, especially songwriters, "are at the very bottom of the streaming economy"[20] and say that "streaming economics" translates

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[17] *See* Public Notice, *Broadcast Station Totals as of March 31, 2024* (Apr. 4, 2024) (reporting 11,090 AM and commercial FM stations); FCC News Release, *Broadcast Station Totals as of March 31, 2019* (Apr. 2, 2019) (reporting 11,375 AM and commercial FM stations). AM broadcasting especially suffers from the inability to earn adequate ad revenues, as the number of AM stations alone fell by nearly 300 over the past decade. *See* FCC Public Notice, *Broadcast Stations Totals as of March 31, 2024* (Apr. 4, 2024) (reporting 4,427 AM stations): FCC News Release, *Broadcast Station Totals as of March 31, 2014* (Apr. 9, 2014) (reporting 4,725 AM stations).

[18] 2024 Coalition Comments at 1; 2022 Coalition Comments at i; 2020 Coalition Comments at i (urging the FCC in identical language to consider competition between audio platforms and, "importantly, *within* each type of audio delivery platform") (emphasis in originals).

[19] 2024 Coalition Comments at 11; 2022 Coalition Comments at 5; 2020 Coalition Comments at 2-3; 2018 Coalition Comments at 3 (all saying that "our comments first analyze competition within the AM/FM radio platform" and subsequently analyze inter-platform competition between all types of audio providers).

[20] Jem Aswad, *Songwriters Slam Unfair Streaming Payments in Sadly Hilarious New Video—but Will Anything Change?*, Variety (Feb. 22, 2024).

"millions of clicks on their songs into pennies for them."[21] Perhaps it's because the record labels and streaming services pocket the money in the streaming economy and enable the major music companies to enjoy record profits.[22] Indeed, the recorded music industry is dominated in the U.S. and worldwide by just *three* major labels, which alone generated about $28.4 billion in revenue in 2023.[23]

In contrast, the U.S. terrestrial radio industry with over 11,000 full power commercial AM/FM stations owned by 2,905 separate owners cumulatively generated only $13.3 billion in total (OTA + digital) ad revenue in 2023.[24] As of last month there were 4,430 separate owners of full power commercial and noncommercial AM/FM stations in the U.S., and 6,770 separate owners of all radio outlets (full power, translators, and LPFM stations).[25] If the Coalitions want to complain about concentration in the audio and music spaces, they should focus their ire in a direction other than AM/FM radio. The sheer number of radio stations, moreover, has greatly increased over time, thereby increasing competition within broadcast radio alone and making it more difficult for those thousands of additional radio stations to garner the ad revenues needed to operate and serve local communities effectively, especially given unprecedent competition in local advertising markets.[26]

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[21] Shira Ovide, *Streaming Saved Music. Artists Hate It*., New York Times (Mar. 22, 2021). *See also* Travis Andrews, *In the Spotify era, many musicians struggle to make a living*, Washington Post (Feb. 4, 2023) (explaining that "for a lot of singers and songwriters, streaming has made a full-time music career unsustainable").

[22] Aswad, *Songwriters Slam Unfair Streaming Payments*; Zoe Stern, *The Inequalities of Digital Music Streaming*, The Regulatory Review (May 30, 2024).

[23] *UMG Revenue Tops $12B in 2023*, hitsdailydouble.com (Feb. 29, 2024); statistica.com.

[24] NAB Comments at 19 (citing data from BIA U.S. Local Advertising Forecast, 2024); BIA Media Access Pro (as of June 2024).

[25] BIA Media Access Pro (as of June 2024).

[26] From December 1990 to March 2024, the number of full-power commercial and noncommercial AM/FM stations grew 42.4 percent, from 10,819 to 15,410. The total

Oddly, the section of the Coalitions' comments directly addressing intramodal AM/FM competition was dominated by a multi-page harangue against noncommercial station operator Educational Media Foundation (EMF).[27] NAB says "oddly" because the Coalitions' concern with a *noncommercial* radio broadcaster has little to do with its repetitive, identical – and still unproven – claims that the local radio ownership caps (applicable only to commercial stations) are needed to "provide limits on the extent to which larger clusters can leverage their market share at the expense of smaller clusters," because smaller AM/FM clusters "already find it difficult to sell advertising when competing against larger local clusters."[28] To say that these claims lack convincing support is a vast understatement.[29]

The Coalitions also selectively cited a letter to Chairwoman Rosenworcel from Representatives Steven Horsford and Bennie Thompson concerning geotargeting by radio stations.[30] Interestingly, much of this letter supports NAB's concerns about the radio industry's competitiveness in modern audio and advertising markets. While the letter

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number of radio stations increased by 107.2% percent, from 12,685 to 26,283. *See* FCC Public Notice, *Broadcast Station Totals as of December 31, 1990* (Jan. 7, 1991); FCC Public Notice, *Broadcast Stations Totals as of March 31, 2024* (Apr. 4, 2024).

[27] *See* 2024 Coalition Comments at 18-20. EMF has committed the cardinal sin of owning too many stations and "enjoying economies of scale." *Id*. at 18 (quotation marks in original).

[28] 2024 Coalition Comments at 16; 2022 Coalition Comments at 9; 2020 Coalition Comments at 6.

[29] The Coalitions (2024 Comments, at 16, n.45-46) twice cited the same very brief letter filed in an earlier FCC competition proceeding. Not only does that letter lack empirical evidence to support its claims, but the Coalitions also managed to misquote it, stating that the letter argues that: 'The only check and balance to predatory pricing in media markets across the country "is to maintain a cap on how many stations one market (sic) can own" in those markets.'". (confusing quotation marks and extra punctation in the Coalitions' comments, *id*. at n.46). NAB observes that the Coalitions included this same (mis)quote in their 2022 competition comments and repeated their error here, despite NAB having pointed out their mistake in its 2022 reply comments (although this time the Coalitions, unlike in 2022, managed to provide the correct identity of the commenter they quoted). *See* 2022 Coalition Comments at 9, n.38; NAB 2022 Competition Reply Comments at 9 n.19.

[30] 2024 Coalition Comments at 16 n.44-45.

expressed concerns about consolidation following the 1996 Act, it also stated that the broadcast radio industry is in “decline,” that “industry revenues are in retreat,” and that “radio’s share of the overall local advertising market is expected to drop from 8.6% in 2019 to 5.5% in 2027.”[31] NAB agrees with the Representatives that “many small- and medium-sized station owners are struggling”; indeed, it would be highly surprising if they weren’t, given competitive conditions facing the entire radio industry today and the limited population and advertising bases in mid-sized and small markets.

Even more dubiously and somewhat incoherently, the Coalitions also claimed that the largest commercial AM/FM clusters “leverage their dominance to reinforce their dominance, compelling local advertisers to spend money with these large radio clusters instead of their smaller commercial local radio competitors.”[32] The Coalitions again cited earlier comments by NABOB to support another erroneous claim here and, again, misstated what NABOB actually said.[33] In any event, the Coalitions must be in an alternate audio and advertising universe if they think that even large local radio clusters can “compel” advertisers to spend money with them, given the myriad ad options available today, especially online and mobile. If broadcasters could do so, then local radio stations’ revenues and their share of the overall local ad market would not be declining, as noted by Representatives Horsford and Thompson (and as shown by numerous market analysts), and

[31] Letter from Reps. Steven Horsford and Bennie G. Thompson to FCC Chair Jessica Rosenworcel, MB Docket No. 20-401, at 1 (Nov. 3, 2023).

[32] 2024 Coalition Comments at 18.

[33] NABOB said nothing about large AM/FM groups “leveraging their dominance to reinforce their dominance,” let alone anything about these groups “compelling” advertisers to spend money with them rather than anyone else, including smaller local radio groups. At the pages cited by the Coalitions, NABOB only vaguely said twice that additional consolidation in the radio industry would result in Black-owned stations being purchased by larger companies or “denied sufficient advertising dollars to continue operations.” NABOB did not provide empirical evidence to support these assertions. NABOB Ownership Comments at 2, 19-20.

radio stations' advertising revenues would not have fallen by very large percentages over time, as the FCC has documented.[34] Given that broadcast radio's "*collective* share of local advertising has slipped into the single digits," and that any individual radio stations' share "in virtually every market is *less than 1%* of total advertising,"[35] the Coalitions' claims about radio station groups "leveraging their dominance" over "local advertisers" are sheer fantasy.

Finally, the Coalitions again suggested that smaller AM/FM owners should or generally have opposed reform of the existing caps due to their difficulty competing against larger local groups.[36] As NAB documented in previous proceedings,[37] this is inaccurate. Broadcasters of all sizes and located in all-sized markets – including dozens of mid-sized and small station groups – have supported NAB's proposals for reforming the local radio rule, with some also urging the FCC to go farther and eliminate the rule.[38] Many small

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[34] *See, e.g.,* NAB Comments at 13-15 (providing Borrell data showing digital media's ever-increasing share of local advertising and the declining share of local advertising garnered by broadcast and other traditional media); *id*. at 18-19 (providing BIA data showing the radio industry's declining advertising revenues over time*); 2022 Communications Marketplace Report*, 37 FCC Rcd 15514, at Para. 303 & Fig.II.F.3. (2022) (2022 Competition Report) (showing that the radio industry's revenues never fully recovered from and have never again come close to reaching the level of revenues reached prior to the recession of 2008-2009).

[35] *Borrell 2023 Digital Advertising Report,* at 2 (emphases added), Exh. F to Joint Comments of Connoisseur Media, *et al*., MB Docket No. 22-459 (Mar. 3, 2023) (2023 Comments of Ten Radio Broadcasters).

[36] *See* 2024 Coalition Comments at 2-4, 16-18, 34-35; 2022 Coalition Comments at ii, 9, 23-24; 2020 Coalition Comments at ii, 6-7.

[37] *See, e.g.*, 2022 NAB Competition Reply Comments at 9-12; Written *Ex Parte* Communication of NAB, MB Docket No. 18-349, at 30-32 (Feb. 16, 2022); *see also* 2023 Comments of Ten Radio Broadcasters (ten radio groups, nine of which are small or mid-sized, repeating their calls for relaxation of local radio caps).

[38] *See* Reply Comments of Golden Isles Broad., LLC, MB Docket No. 18-349, at 2 (Oct. 1, 2021) (Golden Isles Reply Comments); Reply Comments of Summit Media, LLC, MB Docket No. 18-349, at 2-3, 5 (Sept. 30, 2021) (Summit Media Reply Comments); Reply Comments of Alpha Media USA LLC, MB Docket No. 18-349, at 2, 7 (Oct. 1, 2021) (Alpha Media Reply Comments); Joint Reply Comments of American General Media, Beasley Media Group Licenses, LLC, Bonneville Int'l Corp., Bustos Media Holdings, LLC, Claro Commc'n, LTD,

broadcasters – beyond supporting reform of the rules – have described the difficult competitive landscape in their specific markets under the current ownership caps.[39]

Cumulus Media Inc., Davis Broadcasting, Entercom License, LLC, Galaxy Commc'n, LLC, Golden Isles Broadcasting. LLC, HEH Commc'n, LLC, HJV Limited Partnership, L.M. Commc'n, Mecca Commc'n, Inc., Meruelo Media, LLC, Monticello Media LLC, Oconee Commc'n Co., LLC, QBS Broadcasting, LLC, Radio Training Network, Inc., Roberts Commc'n, Inc., Southern Stone Commc'n, LLC, Tri-State Commc'n, Inc., Withers Broadcasting Companies/Dana Commc'n Corp., Woman's World Broadcasting, Inc., and Word Christian Broadcasting, Inc., MB Docket No. 18-349, at 2 (May 29, 2019) (Joint Reply Comments of 25 Broadcast Licensees); Joint Comments of Connoisseur Media, LLC, Mid-West Family Broadcasting, Frandsen Family Stations, Neuhoff Commc'n, Patrick Commc'n, LLC, Townsquare Media, Inc., Midwest Commc'n, Inc., Cherry Creek Media, Eagle Commc'n, Inc., and Legend Commc'n, LLC (collectively, Ten Joint Commenters), MB Docket No. 18-349, at 26 (Apr. 29, 2019) (2019 Joint Comments of 10 Radio Broadcasters); Joint Reply Comments of Ten Joint Commenters, MB Docket No. 18-349, at 2, 14 (May 29, 2019); Joint Comments of Ten Joint Commenters, MB Docket No. 18-349, at 30 (Sept. 2, 2021) (2021 Joint Comments of 10 Radio Broadcasters); Joint Reply Comments of Ten Joint Commenters, MB Docket No. 18-349 (Oct. 1, 2021) (2021 Joint Reply Comments of 10 Radio Broadcasters); Reply Comments of WBOC, Inc., MB Docket No. 18-349, at 1, 3 (May 29, 2019) (WBOC Reply Comments); Reply Comments of Grant Co. Broadcasters, MB Docket No. 18-349, at 1, 3 (May 13, 2019) (Grant Reply Comments); Comments of Reno Media Group, MB Docket No. 18-349, at 3 (Apr. 29, 2019); Comments of Alpha Media LLC, MB Docket No. 18-349, at 1 (Apr. 29, 2019); Comments of Vanguard Media, MB Docket No. 18-349, at 2 (Apr. 29, 2019); Comments of Galaxy Commc'n LLC, MB Docket No. 18-349, at 2-3 (Apr. 29, 2019); Comments of West Virginia Radio Corp., MB Docket No. 18-349, at 2, 6 (Apr. 15, 2019) (West Virginia Radio Comments); Comments of Dick Broadcasting Co., Inc., MB Docket No. 18-349, at 1, 3 (Apr. 9, 2019) (Dick Broadcasting Comments); Letter from John Zimmer, President, Zimmer Radio & Marketing Group, to Marlene H. Dortch, FCC, MB Docket No. 18-349, at 1 (Aug. 1, 2019) (Zimmer Radio *Ex Parte*); Comments of Radio Fargo-Moorhead, Inc., MB Docket No. 18-349 at 1, 5 (Sept. 11, 2019) (Radio Fargo-Moorhead Comments); Comments of Sun Broadcasting, Inc. and WBOC, Inc., MB Docket Nos. 18-227 & 18-349, at 5-6 (Sept. 24, 2018); Letter from Raul Santiago Santos, President, Puerto Rico Radio Broad. Ass'n, to Michelle Carey, FCC, MB Docket No. 18-349, at 1 (Aug. 15, 2018). Other small broadcasters called upon the FCC to reform the local rules in different ways. *See* Letter from Aaron J. Leiker, President and General Manager 25-7 Media, Inc. to FCC, MB Docket No. 18-349 (Apr. 30, 2019) (25-7 Media *Ex Parte*); Comments of Curtis Media Group, Inc., MB Docket No. 18-349, at 2-3 (Apr. 29, 2019).

[39] *See, e.g.*, 25-7 Media *Ex Parte* (describing difficulties of maintaining radio stations' financial viability in a small Colorado town); WBOC Reply Comments at 1-3 (licensee of four FM and one AM stations in Delmarva peninsula explaining that the "economics of small-market broadcasting" and growing competition make it "harder and harder to operate without achieving significant local scale"); Radio Fargo-Moorhead Comments at 2-4 (explaining that competitive trends in the advertising market "are most sharply felt by smaller, local broadcasters," and documenting that digital media accounts for the majority

Obviously, small and mid-sized broadcasters from across the country disagree with the Coalitions' repeated claims that the nearly 30-year old local radio caps are needed to protect smaller broadcasters and intragroup AM/FM competition.[40] That is because, as radio broadcasters have informed the FCC on multiple occasions, "most of radio's toughest competition" comes not from other in-market radio stations but from "out-of-market internet pureplay companies owned by America's biggest tech companies."[41] The Commission

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of local ad spend in Fargo-Moorhead, ND); West Virginia Radio Comments at 5-6 (agreeing with NAB that permitting greater economies of scale is very important for smaller broadcasters earning limited revenues and urging FCC to adopt NAB's proposal to remove all ownership limits in markets outside the top 75, especially in smaller and undefined markets such as those in West Virginia); Zimmer Radio *Ex Parte* at 1-2 (licensee of ten radio stations in mid-Missouri explaining importance of achieving greater economies of scale to survive in increasingly competitive market); Dick Broadcasting Comments at 1-2 (operator of stations in small and mid-sized markets in North Carolina, South Carolina, and Georgia describing the problems experienced by broadcasters in smaller markets with fewer potential advertisers and limited revenues in hiring talented staff, providing strong programming, and competing against other outlets for audiences); Grant Reply Comments at 1-2 (independent broadcaster with FM stations in Kentucky and Ohio discussing the difficulties in obtaining funding for small radio station transactions); Decl. of Susan Patrick, Legend Communications of WY, LLC at 1-2, Exh. C attached to 2019 Joint Comments of 10 Radio Broadcasters (detailing loss of ad revenue in small markets and describing how some radio operations in Wyoming "are barely staying on the air, much less providing robust service and programming to their communities"); Joint Reply Comments of 25 Broadcast Licensees at 14-15 & Attachment B at 3 (providing analysis of the Syracuse, NY advertising market finding that the "competitive impact of new media technologies" is "especially acute in medium and small markets").

[40] 2024 Coalition Comments 2-3, 15-16, 20-21; 2022 Coalition Comments at 9, 23, 27; 2020 Coalition Comments at 3, 20-21; 2018 Coalition Comments at 7-9, 28-29.

[41] 2023 Comments of Ten Radio Broadcasters at 21-23 and Heading E (capitalizations omitted); *accord* 2021 Joint Comments of 10 Radio Broadcasters at 20 and Heading E (capitalizations omitted). *See also*, *e.g.*, Joint Reply Comments of Connoisseur Media, *et al.*, MB Docket No. 22-459, at 9-15 (Mar. 20, 2023) (discussing data showing that broadcast radio competes directly with digital media for listeners and ad revenue and that broadcasters must achieve greater local scale economies to compete better in today's marketplace); Summit Reply Comments at 2-3 (stating that local radio rule no longer promotes competition among radio stations but hinders stations trying to compete in the modern multimedia marketplace); Golden Isles Reply Comments at 2 (urging FCC to reform or eliminate its local radio ownership caps because radio is now "one small cog" in a massive audio and electronic media ecosystem including "outsized corporate behemoths,"

summarily must reject any implication that smaller broadcasters *en masse* oppose reform of its radio ownership limits and expressly recognize that radio broadcasters directly compete with myriad content providers and advertising platforms in the modern marketplace. As one small broadcaster bluntly declared when calling for reform of the radio ownership rules, the "radio industry as a whole is slowly dying of '*revenue starvation'* stemming from an unlevel playing field" in which terrestrial radio stations must compete against entities such as SiriusXM/Pandora, Apple Music, and Spotify.[42]

The Coalitions' oft-repeated but unconvincing claims about the deleterious effects of the 1996 Act and common AM/FM station ownership on programming diversity also are misplaced.[43] To begin, it is absurd to complain about a lack of diversity in today's audio marketplace with its almost infinite listening choices for music, podcasts, and other content via terrestrial stations, satellite radio, and online outlets. Never before have consumers enjoyed such vast choices of diverse audio content, accessible 24/7/365 via a range of devices, and audio content providers have never had so many platforms and virtually ubiquitous technologies for reaching potential audiences. Numerous free and subscription streaming services, including SoundCloud, Deezer, Tidal, YouTube Music, Apple Music, Amazon Music, Spotify, and Qobuz, each offer more than 100 million tracks.[44] According to

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such as "Facebook, Pandora/Sirius XM, Spotify, YouTube, and Google"); Alpha Media Reply Comments at 2-3 (explaining that while the radio industry was hard hit by the pandemic, the more significant trend is the continued erosion of local radio's audiences and ad revenues by digital media owned by giant tech platforms).

[42] Comments of Press Communications, LLC, MB Docket No. 18-349, at 3 (Aug. 30, 2021) (emphasis in original).

[43] *See* 2024 Coalition Comments at 2, 4, 15; 2022 Coalition Comments at ii, 8, 14; 2018 Coalition Comments at 10-13.

[44] Tom Newman, *Top 10 streaming services with the most tracks in 2024*, routenote.com (Apr. 23, 2024).

the podcast search engine and database Listen Notes, there are about 3.37 million podcasts and 199 million episodes in the world, and other estimates are even higher.[45] Consumers similarly benefit from today's diverse video landscape, which "offers more than a lifetime's worth of choices for audiences" and which can be accessed from many of the same digital devices as audio content.[46]

Even terrestrial radio stations alone offer a wide array of diverse programming. The number of Latino-programmed full power AM/FM stations in the U.S., for example, has increased dramatically over time, reaching 1,075 as of June 2024.[47] Earlier studies by BIA found that the number of stations airing Spanish-language programming increased by 63.6 percent from 2002-2012.[48] In addition, 784 stations offer a range of programming targeted to different demographic groups within the African-American community.[49] These data do

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[45] *Podcast Stats: How many podcasts are there?*, https://www.listennotes.com/podcast-stats (accessed June 18, 2024). Earlier this year, Podcast Index estimated the total podcast figure to be closer to 4.1 million. Josh Howarth, *How Many Podcasts Are There? (New 2024 Data)*, explodingtopics.com (Feb. 12, 2024).

[46] As of fall 2023, TV audiences in the U.S. could find content on "more than 32,200 linear channels and 89 streaming video sources," with more than 1.1 million unique video titles available (up from "only" 656,000 in early 2020). Nielsen, *Amid the fragmented TV landscape, time spent with content is the best planning data there is* (Jan. 2024).

[47] The formats counted include Cumbia, Grupero, Hurbana, Latino, Mexicano, Norteno, Portuguese, Reggaeton, Ranchero, Spanish, and Tejano. There are 91 Asian-programmed stations, including Asian, Hawaiian, Japanese, Korean, and South Asian stations. *See* June 2024 BIA MAPro data (station counts exclude FM2, FM3, and FM4 digital channels).

[48] BIA Kelsey, *Over-the-Air Radio Service to Diverse Audiences – 2012 Update*, at 5 (showing rise in Spanish-language radio stations from 547 to 895) (Feb. 22, 2012) (BIA Radio Service Study), Attachment G to NAB Comments, MB Docket No. 09-182 (Mar. 5, 2012).

[49] These include 444 Urban-programmed stations, as well as stations offering other varied programming including Blues, Gospel, R&B, Reggae, and Hip Hop, whether it was considered a primary, secondary, or tertiary format. By contrast, in 2012, BIA reported there were only 382 full power radio stations providing Urban programming. BIA Radio Service Study at 7; June 2024 BIA MAPro data with additional analysis by NAB staff (station count excludes FM2, FM3, and FM4 digital channels).

not support claims that increased common ownership of radio stations harms service to members of diverse minority groups.

HD Radio™ technology has allowed thousands of stations in the U.S. to broadcast thousands of additional separate channels. The programming on these digital multicast channels is extremely diverse, with many stations offering programming targeted to minority groups (various Asian, Urban, and Spanish formats), niche music programming (*e.g.*, jazz, blues, classical), and religious/Christian programming. In Washington, D.C., for example, local stations' multicast channels air diverse programming including, *inter alia*, bluegrass/roots, vocal classical, political coverage (U.S. House and Senate), R&B/Soul, Hindi, Spanish, Spanish Christian, Christian Contemporary, religious, Urban Gospel, sports, and two LGBTQ+ channels.[50] One cannot seriously contend that AM/FM stations fail to air a diverse range of OTA programming free to consumers.

Economists and the courts, moreover, have recognized for decades that common ownership of broadcast stations promotes, not retards, the offering of diverse program formats.[51] In previous proceedings, NAB discussed in more detail numerous radio industry studies showing that increases in common ownership following the 1996 Act increased programming diversity.[52] Broadcasters, including smaller ones and those with stations in mid-sized and small markets, have attested that owning more stations locally would enable

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[50] *See* https://hdradio.com/stations

[51] *See*, *e.g.*, Peter Steiner, *Program Patterns and Preferences*, *and the Workability of Competition in Radio Broadcasting*, 66 Q. J. Econ. 194 (1952); *Schurz Commc'n*, *Inc*. *v*. *FCC*, 982 F.2d 1043, 1054 (7th Cir. 1992).

[52] *See, e.g.*, Reply Comments of NAB, GN Docket No. 20-60, at 13-14 (May 28, 2020); Reply Comments of NAB, MB Docket No. 18-349, at 45-46 (May 29, 2019) (identifying *nine* studies, including one commissioned by the FCC, showing that increased common ownership in the radio industry starting in the 1990s resulted in greater programming diversity).

them to program each outlet differently to attract different audiences with differing tastes and interests, thereby benefiting both the public and the stations.[53] They also continue to attest how acquiring additional stations in the same area allows them to initiate local news programming and other live local programming for their markets.[54]

Needless to say, the Coalitions have never offered empirical evidence refuting these previous studies. Instead, they contented themselves here and in 2022 by calling upon the FCC to analyze "*intragroup* competition between AM/FM broadcasters" and to "collect data and commission studies" on the (presumably negative) "impacts of consolidation on ownership diversity, viewpoint diversity, localism, and intragroup competition in AM/FM radio, including causes and *remedies*,"[55] as well as on the extent to which ownership consolidation has "*harmed* viewpoint diversity on FM radio," as expressed in music, news, and information.[56] So despite the FCC's conclusions in earlier communications marketplace reports that traditional radio broadcasters are only one of the three major participants in the audio marketplace, and the Coalitions' recognition that terrestrial radio stations compete for audiences against satellite radio and online audio providers, they nonetheless continue to

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[53] *See* Exh. C to 2019 Joint Comments of 10 Radio Broadcasters; Reply Comments of NAB, MB Docket No. 18-349, at 47-48 (May 29, 2019).

[54] Joint Reply Comments of Connoisseur Media, *et al*., MB Docket No. 22-459, at Exhibits B & C (Mar. 20, 2023) (declarations of broadcasters with station clusters in Connecticut and in Wyoming).

[55] 2024 Coalition Comments at 36; 2022 Coalition Comments at 26-27 (emphases added).

[56] 2024 Coalition Comments at 36-37 (emphasis added). Five years ago, NAB refuted the Coalitions' absurd arguments in another proceeding that the FCC should consider viewpoint diversity in the context of radio stations' music programming, pointing out that today's audio marketplace did not suffer from a lack of content diversity; that measuring viewpoint diversity in music (or other) programming is a virtually impossible task for purposes of empirically establishing, rather than presuming, a link to ownership structures; and that any effort to regulate viewpoint diversity in music programming would raise a host of thorny statutory authority and constitutional issues for the Commission. *See* Reply Comments of NAB, MB Docket No. 18-34, at 25-29 (May 29, 2019).

urge the Commission not to study competition in the audio marketplace, but only study "consolidation" in AM/FM radio and the "remedies" to the assumed-in-advance harms caused by common ownership of radio stations.

The FCC should reject the Coalitions' request for blatantly biased studies. Beyond their improperly presumed outcomes, such narrowly-focused studies do not comport with congressional direction in Section 163, which instructs the FCC to "consider all forms of competition," including "intermodal" and competition from "the provision of content and communications using the Internet."[57]

C. While the Coalitions' Discussion of Intermodal Competition Is Again Incomplete and Inadequate, It Demonstrates that AM/FM Radio Directly Competes Against Non-Broadcast Audio Outlets for Audiences

Given the Coalitions' continued support for one-sided studies focusing only on intramodal AM/FM competition, their analysis of intermodal competition is, unsurprisingly, yet again inadequate and incomplete. The Coalitions described competition between platforms for listeners; documented the rising listenership of streaming; identified the leading online audio brands (Spotify, YouTube Music, Pandora, Amazon Music, and Apple Music); and discussed declining listenership to AM/FM radio, including in cars as the usage of online audio in cars rapidly increases.[58]

Notably, the Coalitions' discussion of competition for listeners supports NAB's position that AM/FM stations directly compete for audiences with other content providers in

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[57] 47 U.S.C. §§ 163(d)(1).

[58] *See* 2024 Coalition Comments at 22-26, 30-32. Several of the leading streaming services identified by the Coalitions are owned by the dominant technology platforms, which gives those services a clear competitive advantage over AM/FM radio. In 2023, for example, among those smart speaker owners age 12+ who used any online audio brands, only seven percent used Amazon Music most often. But more than double (15 percent) who owned an Amazon Alexa device used Amazon Music most often. Edison Research, *The Infinite Dial 2023*, at 47 (Mar. 2, 2023).

a broad audio market, and that ownership and other regulatory restrictions applicable only to terrestrial broadcasters disadvantage local radio stations vis-à-vis their competitors. In particular, the Coalitions discussed surveys from Jacobs Media Strategies. Among those surveyed who said they were listening less to AM/FM radio, *53 percent* reported that a main reason was they were "[l]istening more to non-radio music sources" (primarily streaming and SiriusXM).[59] If even data provided by the Coalitions demonstrate that streaming and satellite radio platforms compete with AM/FM stations for audiences and that such non-broadcast audio sources are substitutes for broadcast radio for many consumers, then the upcoming report must acknowledge that broadcast radio stations are not in a separate market unto themselves but compete in a wider audio marketplace.[60]

But rather than analyzing competition in the audio marketplace in light of all the data they presented, the Coalitions, as in previous proceedings, instead used that data to support their federal legislative agenda calling for imposition of performance rights fees on radio stations' airplay of music to the public without charge.[61] As further discussed in Section II.D. below, the (de)merits of amending copyright law to impose new fees on OTA radio stations, including the many economically struggling ones, is a question for Congress, not the Commission, and remains irrelevant to this proceeding.

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[59] *Id*. at 25. The other leading reasons given for less listening to AM/FM were "lifestyle change" and "less time in a car." *Id*. at 32.

[60] *See* 2023 Comments of Ten Radio Broadcasters at 10, 20-21 (data show that listeners have gravitated toward online audio and paid audio platforms, as the time spent listening to OTA radio has declined, "leading to the inescapable conclusion that consumers view these new sources as substitutes for local radio stations"); *id*. at Exh. A, *Edison Research—Declaration of Larry Rosin* (summarizing data showing continued declines in the amount of time Americans spend listening to AM/FM, as it has become easier for consumers to listen to audio in a variety of different ways).

[61] *See, e.g.*, 2024 Coalition Comments at 27-32 (claiming that AM/FM radio now provides substantially less promotional value to artists and decrying lack of performance fees); 2022 Coalition Comments at 18-22 (same).

Still wanting to avoid inconvenient facts about the financial challenges facing radio broadcasters in today's highly competitive marketplace, the Coalitions' 2024 discussion of intermodal competition – like their discussions in 2022, 2020, and 2018 – ignores competition for vital advertising revenues from non-broadcast outlets and ad platforms. As NAB remarked before, that approach is akin to ignoring both the 800-pound gorilla and the elephant in the room. All terrestrial radio stations – including those in the large groups so disdained by the Coalitions – are highly dependent on earning sufficient ad revenues for their very survival, let alone for their ability to hire and retain employees, including talented on-air staff, provide news, weather, sports, and other locally-oriented programming, and improve their technical facilities. But just as in earlier competition proceedings, the Coalitions here steadfastly refused to recognize the direct connection between stations' advertising revenues and their ability to provide quality local services. In briefly referring to the amount of the radio industry's revenues in the executive summary of their comments, the Coalitions stated that AM/FM broadcasting "collectively generated approximately $15 billion" in 2023, evidently attempting to imply that radio stations earn a healthy level of revenues.[62] But other estimates are lower,[63] and, in any event, merely throwing out this number says nothing about the current state of competition for advertising revenues, the competitive position of AM/FM broadcasting in the current marketplace, or the particularly fraught financial condition of stations in mid-sized and small markets.

In fact, NAB and other broadcasters have demonstrated that competition for advertising dollars is more intense than ever, primarily due to the rapid growth of digital

[62] 2024 Coalition Comments at 5.

[63] BIA estimated that the local radio station industry's advertising revenues (OTA and digital) totaled $13.3 billion in 2023. *See* NAB Comments at 19.

advertising options that the pandemic further boosted. NAB will not repeat here all the information, empirical evidence, and industry analyses submitted to the Commission in multiple proceedings establishing the growing dominance of digital advertising options in the U.S. ad market and the unprecedented competition local broadcast stations (radio and TV) face for ad dollars.[64] The Coalitions not only ignore these reams of evidence but also the FCC's documentation showing the effects of such vastly increased competition on radio station advertising revenues in the 2022 and 2020 Competition Reports. In those reports, the Commission detailed the levels of terrestrial radio revenue over time, observing that the industry's ad revenues following the 2008-2009 recession never again approached the levels of revenues earned in the 2004-2007 period.[65] More recent BIA data and projections showed that the 2020 pandemic and recession had a serious negative effect on radio station ad revenues, with those revenues not yet reaching and not projected to reach at least through 2027, the (lower) level of revenues generated in 2019.[66]

These industry-wide revenue data, moreover, do not convey the special struggles of local radio stations in mid-sized and small markets with limited populations and advertising

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[64] *See, e.g.,* NAB Comments at 13-20; Comments of NAB, GN Docket No. 22-203, at 6-12, 24-29, 46-55, and Attachments A and G (July 1, 2022) (NAB 2022 Competition Comments); Written *Ex Parte* of NAB, MB Docket No. 18-349, at 18-29 (Feb. 16, 2022); Written *Ex Parte* Communication of NAB, MB Docket No. 17-318, at 10-13, 27-32 (May 13, 2022); 2023 Comments of Ten Radio Broadcasters at 25-31 and Exh. F, *Borrell 2023 Digital Advertising Report*.

[65] 2022 Competition Report at ¶ 303 and Fig.II.F.3.; *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, at ¶ 249 and Fig.II.E.3. (2020) (2020 Competition Report). Figure II.F.3 of the 2022 Report clearly shows the fallacy of regarding "approximately $15 billion," Coalition Comments at 5, as anywhere near the previous – or a healthy – level of annual revenue for the radio industry. *See* 2022 Competition Report at Figure II.F.3. (showing S&P Global's estimate of radio station revenue as about $22 billion in 2005 and 2006).

[66] NAB Comments at 18-19, citing BIA, Historic and Go Forward Forecast: Local Radio (with Political) (2024); *accord* J. Nielson, *Broadcast outlook 2024: Challenges, opportunities facing US TV, radio stations*, Kagan Market Intelligence (Feb. 16, 2024) (providing radio ad revenue projections through 2028).

bases to generate ad revenues sufficient to provide quality local services. As NAB has documented here and in several earlier proceedings, full power commercial stations in mid-sized and small Nielsen Audio markets consistently earn but a small fraction of the ad revenues earned by stations in the largest markets.[67]

Ignoring intermodal competition for advertising revenue and the direct impact such competition has on radio stations' financial position stems from the Coalitions' desire to maintain outdated restrictions on common ownership of terrestrial radio stations.[68] After all, a realistic assessment of the state of competition for both advertising dollars and audiences would not support retention of asymmetric ownership rules placed only on terrestrial radio (and TV) broadcasters but no other market participants. The Commission, however, cannot downplay or disregard these fundamental competitive matters in its upcoming report. Not only must the FCC fully consider "all forms of competition," it must assess whether its rules and regulatory policies "pose a barrier" to the "competitive expansion of existing providers of communication services."[69] By definition, the antiquated ownership rules prevent radio and TV broadcasters from expanding to achieve vital scale economies and to better compete with other audio and video providers in the 21st century marketplace.

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[67] *See, e.g.,* NAB Comments at 19-20. In 2023, the average radio station in the smallest Nielsen market (201-246) earned only 8.1 percent of the amount of ad revenue earned by the average radio station in the top-10 markets. Similarly, the average radio station in markets 76-100, 101-150, and 151-200 earned only 14.0 percent, 12.0 percent, and 10.9 percent, respectively, of the average station in the ten largest markets.

[68] *See* 2024 Coalition Comments at 11-12, 21; 2022 Coalition Comments at 9, 23; 2020 Coalition Comments at 6, 20; 2018 Coalition Comments at ii, 22, 29 (supporting retention of local radio ownership caps).

[69] 47 U.S.C. §§ 163(b)(3) and (d)(1).

D. The FCC Should Decline the Coalitions' Repetitive Invitation to Become Involved in an Unrelated Legislative Debate and Reject the Music Industry's Erroneous Claims that Congressional Refusal to Alter Copyright Law Gives Local Radio Stations Any Material Competitive Advantage in the Audio Marketplace or Warrants Retention of Broadcast Regulations Including the Local Radio Ownership Caps

The Coalitions remain under a strange delusion that it is up to the radio industry to change federal copyright law. Their 2024, 2022, and 2020 comments all complained in identical, erroneous language that "*AM/FM Radio* . . . Still Refuses to Establish a Sound Recording Performance Right,"[70] and spuriously claimed that terrestrial radio accordingly has a "significant and unfair" competitive advantage over other audio market participants.[71] The FCC should reject the music industry's tiresomely repetitive invitation to become involved in a decades-long legislative debate about copyright policy. The Coalitions' and the multi-billion dollar record labels' frustration that *Congress* (not AM/FM radio) has consistently rejected changing copyright law by imposing performance rights fees on radio stations' OTA music broadcasts is no reason for the FCC to endorse any of the Coalitions' unsuccessful legislative talking points.[72] And third parties' unhappiness over congressional decisions on copyright law is not a reason for the FCC to retain asymmetric local radio ownership rules or any other outdated broadcast regulations.

[70] 2024 Coalition Comments at 27, Heading; 2022 Coalition Comments at 18, Heading A; 2020 Coalition Comments at 16, Heading D (emphases added).

[71] 2024 Coalition Comments at 27; 2022 Coalition Comments at 18. *Accord* 2020 Coalition Comments at ii, 17-18; 2018 Coalition Comments at iii, 26-29.

[72] Congress considered and again rejected requiring terrestrial radio broadcasters to pay royalties to record labels when it crafted and passed the Music Modernization Act of 2018, thereby reaffirming the value OTA broadcasters provide to their local communities generally, and to performers and the recording industry specifically, through airplay of music to the public without charge.

NAB first wants to dispel the Coalitions' repeated, misleading assertion that radio stations do not compensate "music creators."[73] In fact, radio broadcasters pay royalties to the composers of the music they air OTA and stream online. Broadcasters that webcast also pay performance rights fees to record labels and performers for their online streaming of copyrighted sound recordings. Thus, it cannot be said that radio broadcasters do not compensate "music creators." And if Congress determined to impose performance rights fees on radio stations' free-to-the-public OTA music broadcasts, those fees would be paid to the holders of the copyrights in the sound recordings, *i.e.*, usually the record labels, of which the three major ones alone reportedly generated about $2.9 million in total revenue *per hour* last year.[74] The extent to which performers would share in any such fees, if at all, would depend on the terms of their contracts with the labels.

NAB has previously refuted[75] the Coalitions' erroneous claims repeated here that AM/FM radio stations have a significant competitive advantage over other participants in the audio marketplace because Congress has not imposed a performance rights fee (in addition to the royalties broadcasters already pay) on local stations' OTA music broadcasts.[76] Terrestrial radio stations – which Congress requires to offer their product for free – have many other costs and burdens that do not apply to their marketplace competitors, especially online ones. And several online competitors (*e.g.*, Apple Music, YouTube Music, Amazon Music) are owned by some of the largest corporations in the

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[73] 2024 Coalition Comments at 27; 2022 Coalition Comments at 18.

[74] Tim Ingham, *The Three Major Music Companies Are Now Jointly Generating Approximately $2.9M Per Hour*, Music Business Worldwide (May 15, 2023).

[75] *See*, *e.g.*, NAB 2022 Competition Reply Comments at 21-22; Reply Comments of NAB, GN Docket No. 20-60, at 19-22 (May 28, 2020).

[76] 2024 Coalition Comments at 5, 27; 2022 Coalition Comments at iv, 18; 2020 Coalition Comments at 17.

world.[77] The idea that terrestrial radio broadcasters have any significant or unfair competitive advantage over such corporate behemoths is absurd.

Unlike its digital competitors, every terrestrial radio broadcaster must acquire an FCC license by paying market price for it either in an auction or via an FCC-approved assignment or transfer transaction from an existing licensee; build, acquire, and/or lease and then maintain extensive infrastructure, including transmitters, towers, antennas, and real property to house them; bear the substantial costs (*e.g.*, electricity) of transmitting an OTA signal to its community of license; comply with FCC regulations ranging from keeping online public and political files and station logs to providing EAS alerts to preparing quarterly issues/programs reports; pay mandatory regulatory fees to the government; and fulfill its statutory obligation to serve its community of license to qualify for renewal of its license every eight years. Above all, FCC-licensed radio broadcasters provide their signals free over-the-air to consumers and thus are more limited than their satellite and online competitors in their options for recouping any of their operational or other costs. In its last Competition Report to Congress, the FCC noted that online audio providers "do not incur the same Commission regulatory compliance costs" as broadcast licensees.[78]

Given the substantial costs and burdens borne by terrestrial broadcasters but not by other audio providers, current differences in copyright law do not result in AM/FM stations having a "significant," "unfair," "enormous," "massive," or "huge" – or, indeed, any relevant – competitive advantage[79] and are not a valid basis for the FCC to retain analog-era radio

[77] The other two leading online music brands are Spotify and Pandora (the latter owned by SiriusXM), both of which have market capitalizations far exceeding those of even the largest broadcast radio companies. *See* NAB Comments at 21.

[78] 2022 Competition Report at ¶ 320.

[79] 2024 Coalition Comments at 5, 27; 2022 Coalition Comments at iv, 18, 28; 2020 Coalition Comments at ii, 16-18; 2018 Coalition Comments at i, 22, 26-29.

ownership caps or other antiquated broadcast regulations. Despite asserting since 2018 that terrestrial radio stations have a significant and unfair competitive advantage over every other audio delivery service, the Coalitions have never explained – because they cannot – how those services have managed to expand and thrive, while many AM/FM stations, especially those outside the largest markets, struggle to earn adequate advertising revenues to cover their fixed costs and remain viable.[80] The FCC's upcoming report to Congress must not validate the wholly illusory competitive advantage posited by the Coalitions, particularly given past findings that the licensing costs of streaming services such as Spotify have declined over time as a percentage of their total revenues.[81]

Also illusory is the Coalitions' supposed concern for small radio broadcasters and independent stations.[82] While pretending to cry a river over the struggles of smaller broadcasters to compete, the Coalitions have spent years trying to persuade Congress to impose an additional performance rights fee on local radio stations, including small and independent broadcasters, those in smaller markets with restricted advertising revenue opportunities, and minority-owned stations earning limited amounts of ad revenue. The Coalitions failed to explain how imposing new fees on stations generating extremely modest annual revenues (and likely miniscule profits, if any) would enable those stations to better compete and serve their local communities – or even cover their fixed costs and survive – in

[80] *See, e.g.,* NAB Comments at 19-20; NAB 2022 Competition Comments at 24-29 and Attachment B; Written *Ex Parte* Communication of NAB, MB Docket No. 18-349, at 34-36 (Feb. 16, 2022).

[81] 2022 Competition Report at ¶ 321.

[82] *See* 2024 Coalition Comments at 2-3, 15-17; 2022 Coalition Comments at ii, 7, 9-10; 2020 Coalition Comments at ii, 6-7.

today's hyper-competitive audio marketplace.[83] They similarly declined to explain how supporting burdensome FCC regulations on local radio stations, including repealed ones, would enhance small broadcasters' competitive standing, especially given their limited financial and personnel resources.[84]

Finally, NAB urges the Commission to be skeptical of the Coalitions' arguments supporting ownership or other restrictions on radio broadcasters and their motivations for making them. When urging the FCC to retain restrictions on radio stations, the Coalitions claim that ownership consolidation has harmed music creators and artists by reducing diversity of voices and localism on radio,[85] thus indicating that broadcast radio – and being played on local radio stations – is important and valuable to members of the music industry. For other purposes, however, the Coalitions discount the value of radio airplay to music professionals and the importance of broadcast radio in the current marketplace. Indeed, downplaying radio is the basis of the music industry's arguments for congressional imposition of a performance fee – that radio airplay is not valuable to music professionals

[83] *See* NAB Comments at 20. Because these ad revenue figures are averages, many radio stations earn below the annual revenues of only a few hundred thousand dollars shown in the smaller markets. Stations located outside of Nielsen radio markets generally serve smaller populations in areas with smaller economic bases and available advertising revenues, and thus many may earn even less in annual revenues than those stations in small rated markets.

[84] *See, e.g.*, Comment of the Coalitions, MB Docket No. 24-14 (Mar. 11, 2024) (taking issue with FCC's earlier repeal of the main studio rule); Petition for Reconsideration of REC Networks, musicFIRST Coalition and Future of Music Coalition, MB Docket No. 19-310 (Nov. 20, 2020) (requesting reconsideration of FCC decision repealing obscure rule applicable only to commonly-owned, same-market FM stations that duplicate a certain percentage of their programming, but failing to show that any such FM stations actually did so).

[85] *See* 2024 Coalition Comments at 4, 12; 2022 Coalition Comments at ii-iii, 5-8; 2020 Coalition Comments at 4, 24; 2018 Coalition Comments at 10-13; Letter from Rachel Stilwell, Counsel to musicFIRST Coalition, to Marlene Dortch, Secretary, FCC, Notice of *Ex Parte* Presentation, MB Docket No. 19-310, at 2 (Jan. 29, 2021).

so they should be compensated by another royalty paid by stations.[86] If the Coalitions believe that digital services, not AM/FM radio, matter for music discovery and listening and that radio's promotional value to music creators has been "substantially" reduced, "decimated," or become "nearly non-existent,"[87] then their arguments that reform of FCC ownership or any other regulations supposedly affecting radio programming and airplay have material, let alone harmful, impacts on music professionals appear disingenuous.

As a practical matter, moreover, the retention of overly restrictive radio ownership caps, as the Coalitions support, would do nothing to benefit the music industry generally or performers specifically. While the Coalitions believe that imposing performance fees on stations will financially benefit the music industry, the FCC lacks authority to require performance fees, and its maintenance of ownership restrictions will not enhance the music industry's finances but only harm radio stations and their service to audiences. Whether FCC rules allow a broadcaster to own two, four, six, eight, or ten stations in local markets of whatever size has *no* effect on the royalties that stations do or do not pay to different entities in the music industry. Thus, the Coalitions' support for ownership and other asymmetric regulatory burdens on local stations appears to be little more than rent-seeking motivated by grievance over the music industry's failure to persuade Congress to impose additional royalty payments on local radio stations' OTA broadcasts of music.

E. Retaining Outdated Ownership Limits Will Not Effectively Foster Viewpoint Diversity or New Entry into the Broadcast Industry But Will Only Further Undermine its Competitiveness

[86] *See* 2024 Coalition Comments at 27-28, 30-31; 2022 Coalition Comments at 19-22; 2020 Coalition Comments at 16; 2018 Coalition Comments at 20-22.

[87] 2024 Coalition Comments at 27, Heading; 2022 Coalition Comments at 18, Heading A; 2018 Coalition Comments at 20, Heading C and 22, Heading D (capitalizations omitted).

Finally, the Coalitions once again claimed that restricting common ownership of radio stations promotes ownership and viewpoint diversity.[88] Despite NAB having refuted these highly questionable claims in the 2022 competition proceeding,[89] the Coalitions repeated them here and again without providing empirical data or studies establishing that the broadcast ownership rules have effectively promoted minority and female ownership or viewpoint diversity. Nor does history support the Coalitions' position, given that 80-plus years of maintaining structural ownership rules have not materially fostered minority and female ownership and that the levels of diverse ownership were notably *lower* in the past when the ownership rules were much stricter than today.[90] Indeed, the Commission previously recognized that its multiple ownership rules were "not designed to foster minority ownership in the broadcasting industry" and have "not yielded such an effect."[91]

Beyond 80 years of history, the FCC previously made findings directly contrary to the Coalitions' insistence that stricter ownership rules promote diverse ownership. In 2016, the Commission found that minority ownership of radio stations grew after the 1996 Act and that minority ownership of TV stations increased following the modest loosening of the local TV rule in 1999.[92] Indeed, the FCC concluded in 2016 that "[n]o data provided in the record support a contention that the [local TV] duopoly rule has reduced minority ownership or

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[88] 2024 Coalition Comments at 34-36; 2022 Coalition Comments at 23-24; 2020 Coalition Comments at 9-10.

[89] NAB 2022 Competition Reply Comments at 25-33. The Coalitions' 2024 comments made no effort to refute or even address NAB's previous detailed critiques of their erroneous claims, which remain valid and which NAB includes again here.

[90] *See* Reply Comments of NAB, MB Docket No. 18-349, at 20-21 (Oct. 1, 2021).

[91] Report and Order, 100 FCC 2d 17, 48 (1984) (1984 Ownership Order) (reforming rule limiting AM, FM, and TV station ownership nationwide).

[92] *See 2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, 9895, 9911-12 (2016) (2016 Ownership Order).

suggest that a return to the one-to-a-market rule would increase ownership opportunities for minorities and women," or that "tightening the local radio ownership limits would promote ownership opportunities for minorities and women."[93] Earlier in that same proceeding, moreover, the Commission had agreed with "commenters, including NAB, that the low level of minority and female broadcast ownership cannot be attributed solely or primarily to consolidation," but recognized other factors, "most significantly, access to capital, as longstanding, persistent impediments to ownership diversity in broadcasting."[94] Neither the Coalitions, nor the comments they cited from other FCC proceedings including the 2018 quadrennial review, have provided empirical data or statistical analyses demonstrating that relaxing the radio (or TV) ownership restrictions would harm ownership diversity *in the future*,[95] as the Supreme Court has indicated may be required.[96] Tellingly, the FCC concluded in its belated 2018 ownership review that the record did not establish "affirmative steps the Commission can or should take with respect to our structural ownership rules to address concerns about minority and female ownership."[97]

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93 2016 Ownership Order, 31 FCC Rcd at 9895, 9912.

94 *2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4470 (2014) (2014 Quadrennial FNPRM).

95 *See* 2024 Coalition Comments at 34-35; 2022 Coalition Comments at 23-24.

96 In upholding the FCC's 2017 decision eliminating or reforming several ownership rules, the Supreme Court found that no party had produced "evidence indicating that changing the rules was likely to harm minority and female ownership," and specifically found wanting two Free Press studies in the record that were "purely backward-looking" and offered "no statistical analysis of the likely future effects of the FCC's proposed rule changes on minority and female ownership." *FCC v. Prometheus Rad. Project*, 141 S. Ct. 1150, 1159-60 (2021).

97 *2018 Quadrennial Reg. Review*, Report and Order, MB Docket No. 18-349, FCC 23-117, at ¶ 26 (Dec. 26, 2023) (declining to address the Supreme Court's *Prometheus* discussion of the types of statistical analysis that may be required to justify retention of structural ownership rules based on promotion of minority/female ownership). *Id*. at n.83.

Nor did the Coalitions here or in 2022 cite any evidence showing that the existing radio (or TV) ownership rules have actually promoted viewpoint diversity or would be likely to do so in the future. That failure is hardly surprising. In 2016, the FCC concluded that neither it nor commenters in the 2010 and 2014 quadrennials had been able to identify evidence or studies demonstrating a connection between either minority or female ownership and viewpoint diversity, or even to "devise study designs that are likely to provide such evidence," and further identified significant problems impeding study of the connection between viewpoint diversity and ownership, including the "lack of a reliable measure of viewpoint."[98] To NAB's knowledge, the FCC has never demonstrated a connection, buttressed by empirical evidence, between ownership of media outlets, its structural ownership rules, and viewpoint diversity in the marketplace.[99] The FCC's continued inability to provide such evidence very likely contributed to its conclusion that the record in the 2018 quadrennial failed to establish a basis for using structural ownership rules to address minority and female station ownership.

Ironically, while the Coalitions in 2022 and 2024 correctly recognized that lack of access to capital hinders diverse broadcast ownership,[100] they fail to understand that their "solution" – maintaining existing ownership restrictions – will not solve or even directly

[98] 2016 Ownership Order, 31 FCC Rcd at 9995 and n.944; *see also id*. at 9987-88.

[99] NAB previously and at length identified numerous studies (including several commissioned by the FCC) either failing to find a link between broadcast ownership structures and viewpoint/content diversity or indicating that common ownership may *promote* diversity. *See, e.g.*, 2022 NAB Competition Reply Comments at 27-28 & n.81; Comments of NAB, MB Docket No. 18-349, at 67-68 & n.261-262 (Apr. 29, 2019).

[100] 2024 Coalition Comments at 33-34; 2022 Coalition Comments at 23. The FCC, other government agencies, Congress, numerous broadcasters including female and minority station owners, and former FCC Chairpersons all have agreed that access to capital is the predominant barrier to station ownership by new and diverse entities. *See, e.g.,* Comments of NAB, MB Docket No. 18-349, at 10-15 (Sept. 2, 2021); Reply Comments of NAB, MB Docket No. 18-349, at 15-16, 18-19 (Oct. 1, 2021).

address ownership diversity because such structural rules do not promote the provision of capital to minorities and women. Indeed, the opposite is true, as asymmetric regulations on broadcasting, including structural ownership rules, discourage investment in and the provision of capital to broadcasters and make non-broadcast investment opportunities comparatively more inviting.[101]

Predictably, the Coalitions never addressed *how* structural ownership rules would better enable new entrants, including minorities and women, to obtain investment capital needed to acquire and operate stations. It strains reason to insist that they do. As explained in previous FCC proceedings, ownership restrictions actually (1) reduce the asset and net worth values of station owners (including minorities and women), consequently harming their ability to borrow against their assets to finance growth; (2) artificially depress the value of broadcast stations, thereby "disproportionately increas[ing]" the ability of white male investors, who generally have greater access to capital than women and minorities, to acquire broadcast stations; and (3) reduce the long-term attractiveness of broadcasting relative to other investment opportunities.[102]

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[101] *See, e.g.*, NAB Comments at 30-37.

[102] Reply Comments of the Center for Regulatory Effectiveness, MB Docket No. 06-121, *et al*., at 2-3 (Oct. 25, 2007); *see also* 2023 Comments of Ten Radio Broadcasters, at Exh. G, Decl. of W. Lawrence Patrick (radio station broker stating that, just in the past year, radio station owners wanting to sell their stations have found no interested buyers in Louisiana, Michigan, Missouri, Texas, California, Pennsylvania, Tennessee, and Alabama); 2021 Joint Reply Comments of 10 Radio Broadcasters, at 9-10 (pointing out that falling prices of newspapers did not encourage a rush of new entrants to acquire them and that many newspapers went out of business, and observing that some radio stations now cannot be sold "as new entrants are unwilling to enter the industry"); Decl. of W. Lawrence Patrick, at ¶¶ 5, 8-10, Exh. C to 2021 Joint Comments of 10 Radio Broadcasters (stating that for the first time in his decades of experience, there are no buyers for some radio stations, as the "logical and best buyer[s]", *i.e.*, existing in-market broadcasters, cannot acquire them due to the FCC's rules and there are no other prospective purchasers). Numerous economic studies have found that asymmetric regulation of an industry can create regulatory distortions, drive up the regulated industry's costs, cause scarce capital to flow to less regulated industries,

Simple logic bears this out. After all, if asymmetric regulations, including ones forcing broadcasters into uneconomic ownership arrangements, artificially depress (or merely flatten) the value of broadcast stations, then investors would lack incentives to provide capital to the broadcast industry, and would instead invest in industries with increasing values, making it more difficult for existing and prospective broadcasters to obtain capital. In fact, in 2013, 31 minority and civil rights organizations requested an easing of restrictions on foreign investment in broadcasting, stating that U.S. banks and venture firms that formerly financed small and medium-sized broadcast transactions had "left the space entirely."[103] A lack of interest in providing investment capital to the broadcast industry, especially for modestly-sized transactions, makes it even more difficult for mid-sized and small broadcasters and new entrants, especially women and minorities, to obtain needed capital to acquire or improve stations, as small radio broadcasters have explained.[104]

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undermine innovation, and deter new firm entry into the regulated industry. *See* NAB Comments at 30-33; *accord* 2023 Comments of Ten Radio Broadcasters at 5.

[103] Letter from David Honig, President, MMTC, MB Docket No. 13-50 (Apr. 15, 2013). *See also* Letter from W. Lawrence Patrick to Marlene H. Dortch, FCC, MB Docket No. 17-289, at 2-3 (June 4, 2018) (explaining that many lenders, including banks, do not want to loan to new entrants and that banks and equity institutions will not look at small single market broadcast investments but prefer larger transactions covering multiple markets); Letter from G. Johnson, BIA Capital Strategies, and T. Buono and M. Fratrik, BIA Advisory Services, to Marlene H. Dortch, FCC, MB Docket No. 17-289, at 1-2 (June 11, 2018) (stating that the number of lenders to the broadcast industry has "declined significantly over the past decade"; that the remaining lenders focus on the "largest groups serving the larger markets with seasoned operators"; that "[f]irst-time owners face daunting, if not nearly insurmountable, odds to obtaining financing"; and that these "funding challenges are accentuated in medium and small markets").

[104] *See, e.g.*, Comments of Dick Broadcasting Co., MB Docket No. 18-349, at 2 (Apr. 9, 2019) (stating that the "only way to enable broadcasters, including women and minority-owned broadcasters, to continue to operate is to relax ownership limits and send a message to the lending community that there will now be stability and scale" in the radio industry and a "justification to lend again to broadcasters," including new entrants); Reply Comments of Grant Co. Broadcasters, MB Docket No. 18-349, at 1-2 (May 13, 2019) (stating that retaining ownership restrictions will worsen the plight of independent radio owners,

The Commission previously agreed with this position. In the past when commenters opposing ownership rule reform explicitly suggested that relaxing the rules would lead to higher station prices, thereby disadvantaging minority new entrants, the FCC observed that its ownership rules were "not intended as a mechanism for artificially deflating the price of stations."[105] Moreover, the FCC repeated its determination that the "major barrier to increased minority ownership is the unavailability of adequate financing," and, thus, the "appropriate focus" of its efforts should be "promot[ing] the availability of financing to minorities on equal terms" with others.[106] The Commission then explained that, if financing is not made available to minorities, they would remain largely unable to purchase stations, whether at yesterday's lower prices, today's prices, or the "hypothetically" higher prices following relaxation of its radio and TV ownership rule, and noted that its long-standing, stricter rule had not fostered minority ownership.[107] The Commission accordingly concluded it would be "inappropriate" to "retain or adopt [ownership] rules in order to deflate market prices artificially."[108] Given the failure of ownership limits to successfully foster minority/female station ownership for over 80 years, the universal agreement that lack of access to capital is the primary impediment to greater ownership diversity, and the

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including minorities and women, by continuing to make it extremely difficult or nearly impossible to obtain financing to fund small radio acquisitions and start-ups, but ownership deregulation would help convince conventional sources of capital that their investments would be "safe" in broadcasting).

105 1984 Ownership Order, 100 FCC 2d at 48 (relaxing rule limiting AM, FM, and TV station ownership nationwide). The FCC also noted the lack of any hard evidence indicating that station prices would rise if its rule were relaxed, and further explained that, if station prices did increase, it would be because "the new group-owned stations can operate more efficiently" and thus any "such increases in station prices would be commensurate with the benefit to the general public." *Id*.

106 *Id*. at 48-49.

107 *Id.*

108 *Id.* at 49.

Coalitions' inability to explain how maintaining the current ownership caps – which do not increase new entrants' or small broadcasters' access to capital – will somehow in the future promote diverse ownership, the Commission must reject claims that retaining its existing ownership rules will foster new entry and ownership diversity.

NAB urges the FCC to focus here and in future broadcast proceedings on measures that increase the broadcast industry's competitiveness, thereby encouraging investment and availability of capital to existing and prospective station owners. This shift in regulatory approach is necessitated by today's vastly expanded and highly competitive content and advertising markets that offer unprecedented choices for consumers and advertisers. Continuing technological change, moreover, will only create yet more options for both in the future. The Coalitions' 2024, 2022, 2020, and 2018 reliance on the alleged "scarcity of frequencies" for those who want to own and operate terrestrial radio stations do not reflect the 21st century marketplace, characterized by proliferating outlets, platforms, and digital devices and almost infinite content.[109] Indeed, Congress found nearly 30 years ago that the "scarcity rationale for government regulation [of broadcasting] no longer applies."[110] Both

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[109] 2024 Coalition Comments at 12; 2022 Coalition Comments at 5; 2020 Coalition Comments at 3; 2018 Coalition Comments at 4. The results of FCC radio spectrum auctions do not support the Coalitions' scarcity claims. In the 2021 auction of FM and AM construction permits (CPs), 30.2 percent of the CPs on offer were not acquired by anyone. In the five FM auctions prior to the 2021 auction, the FCC retained a total of 147 unsold CPs, or nearly one-quarter (23.4 percent) of all CPs offered in those auctions. *See* www.fcc.gov/auctions, results of full power FM auctions held in 2015, 2013, 2012, 2011 and 2009. In addition, radio stations, especially in mid-sized and small markets, are going unsold because there are no buyers for them (at least no buyers other than an existing in-market owner prohibited by FCC rules from purchasing any additional local stations). *See* NAB Comments at 34; 2023 Comments of Ten Radio Broadcasters at Exh. G, Decl. of W. Lawrence Patrick at 3. This evidence indicates an abundance of available broadcast radio stations and CPs, rather than a shortage.

[110] H.R. Rep. No. 104-204, at 54 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 18. *See also Syracuse Peace Council*, 2 FCC Rcd 5043, 5054 (1987), *affirmed, Syracuse Peace Council*

the Coalitions and the Commission need to recognize that a broadcast regulatory regime established at a time when "media" meant newspapers, magazines, and smaller numbers of radio and TV stations is neither appropriate nor rational, but affirmatively harmful to the public's free, over-the-air broadcast services.

III. IT'S DÉJÀ VU ALL OVER AGAIN FOR THE RENT-SEEKING PAY TV INDUSTRY

Let's start with a little quiz. Below are quotes from the FCC filings of various representatives of the pay TV industry. Can you guess what year these complaints and (mis)statements about retransmission consent were made? (Hint: Three of them were made in this proceeding and the remainder are about two decades old.)

"[B]roadcasters abuse the retransmission consent process" and "Congress should eliminate" it.

"[T]he size of the retransmission-consent burden is now out of proportion to any conceivable justification."

"The retransmission consent marketplace is especially dysfunctional."

"[B]roadcasters impose ever-higher fees for retransmission consent."

"Retransmission consent leverage by the Big Four has been a principal driver of cable rate increases."

The "retransmission consent regime is broken."

The "retransmission consent system is broken."

The virtual identicalness of MVPDs' erroneous contentions over the course of decades about the congressionally-established retransmission consent system is telling.[111]

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v. FCC, 867 F.2d 654 (D.C. Cir. 1989) (concluding that "there is no longer scarcity in the number of broadcast outlets" available to the public).

[111] In order, the quotes are from the following filings: Reply Comments of Cablevision Systems Corp., MB Docket No. 04-207, at 2 (Aug. 13, 2004); Reply Comments of Time Warner Cable Inc., MB Docket No. 04-207, at 2-3 (Aug. 13, 2004); Comments of ACA Connects, GN Docket No. 24-119, at 20 (June 6, 2024) (ACA Comments); Comments of DIRECTV, GN Docket No. 24-119, at 10 (June 6, 2024) (DIRECTV Comments); Comments of

Indeed, the pay TV industry's long history of complaints about retransmission consent shows its fundamental objection to negotiating with broadcasters at all, let alone paying any amount of cash compensation.

While broadcasters initially sought cash compensation in return for retransmission consent during the first round of negotiations in 1993, most MVPDs, "particularly the largest multiple system operators," were "not willing to enter into agreements for cash," and only offered in-kind compensation, including carriage of TV broadcasters' affiliated non-broadcast channels.[112] Broadcast stations that insisted on cash compensation "were forced to either lose cable carriage or grant extensions allowing cable operators to carry their signals at no charge until negotiations were complete."[113] As the FCC reported to Congress in 2005, cash still had not emerged as a principal form of consideration for retransmission consent, and "virtually all" retransmission agreements involved in-kind consideration.[114]

Remarkably, MVPDs in 2004 and 2005 made several of the fallacious claims quoted above, and many others, about the undue burdens and abusive nature of retransmission consent and urged Congress and/or the FCC to eliminate or reexamine it, even while the pay TV industry was still refusing to negotiate with broadcasters for cash compensation. Before the FCC concluded that "virtually all" retransmission agreements involved in-kind

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Joint Cable Commenters, MB Docket No. 05-28, at 40, Heading III (Mar. 1, 2005) (use of all capitalizations in heading removed); Comments of Echostar Corp., GN Docket No. 24-119, at 20, Heading C (June 6, 2024) (Echostar Comments) (capitalizations in heading removed); Letter from DISH Network to Kevin Martin, Chairman, FCC, Docket Nos. 99-363, 07-198, 07-148, at 1 (Aug. 5, 2008) (capitalizations in heading removed).

[112] FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, MB Docket No. 05-28, at 6-7, 19 (Sept. 8, 2005) (FCC Retrans Report to Congress).

[113] FCC Retrans Report to Congress at 7.

[114] FCC Retrans Report to Congress at 7.

compensation, MVPDs were already calling upon the Commission to begin a rulemaking on retransmission consent because broadcasters merely had the audacity to *ask* for cash payments and were "now more vigorously seeking 'cash for carriage.'"[115] Despite their success in denying cash consideration to TV broadcasters, large MVPDs didn't want to be bothered to negotiate with them, and called upon the FCC to urge Congress to reevaluate retransmission consent because so many TV stations had the temerity to opt for it rather than must carry, complaining about the "sizable transaction costs of negotiating, concluding, and administering retransmission consent agreements" with broadcasters.[116] Ironically, the very same large cable operators that, according to the FCC, had refused to enter into agreements for cash and instead sought to compensate broadcasters through carriage of affiliated channels[117] then turned around and complained about broadcasters "[u]sing retransmission consent as a bargaining chip" to persuade MVPDs to carry affiliated programming, erroneously asserting two decades ago that even this in-kind compensation was "much more onerous" than could be justified.[118]

Given this history, no one should be surprised about the pay TV industry's reaction when broadcasters first began to obtain cash – even if pennies on the dollar – in retransmission negotiations. MVPDs proclaimed, at least as early as 2008, that the

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[115] Comments of Mediacom Commc'n Corp., RM-11203, at i (Apr. 18, 2005). *Accord* American Cable Ass'n, Petition for Rulemaking, RM-11203, at 24 (Mar. 2, 2005) (filing a rulemaking petition asking the FCC to change its rules because broadcasters were merely expected to ask for substantial per subscriber fees in an "upcoming round" of retransmission consent negotiations).

[116] Reply Comments of Time Warner Cable Inc. (TWC), MB Docket No. 05-28, at 1, 3, 5 (Mar. 31, 2005) (TWC 2005 Comments). *Accord* TWC Reply Comments, MB Docket No. 04-207, at 11-12 (Aug. 13, 2004) (TWC 2004 Comments).

[117] FCC Retrans Report to Congress at 6-7, 19.

[118] TWC 2004 Comments at 3, 11, 13; TWC 2005 Comments at 1, 7.

retransmission consent system was "broken" because "even the largest cable companies" were being "forced by broadcasters to offer cash compensation for carriage for the first time, underscoring the inequities of today's system."[119] Let's be clear here. The pay TV industry believes that offering any cash to compensate broadcasters for reselling stations' signals to consumers for profit is fundamentally inequitable and evidence of market failure. As the then-largest MVPD in the U.S. (AT&T) lamented in the FCC's last proceeding on retransmission consent in 2015-2016, retransmission negotiations used to "typically result[] in cable providers carrying the local broadcaster – and perhaps additional affiliated channels – *for free*."[120] That view continues to underscore the pay TV industry's attacks on retransmission consent today.

With this relevant history in mind, the Commission should continue to reject MVPDs' strikingly repetitive and erroneous claims in this proceeding. For example, pay TV interests still assert that the retransmission consent system is "broken"[121] because retransmission consent costs are "outsized," "astronomical," and "skyrocket[ing]."[122]

Although pay TV providers may wish the law was different, it is well established that the Commission does not have authority to regulate the prices, terms, or conditions of retransmission consent. Its authority is limited to ensuring that broadcasters and MVPDs negotiate in good faith. Section 325(b)(1) unequivocally forbids any MVPD from retransmitting the signal of a broadcast station without the "express authority" of the

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[119] Letter from DISH Network to Kevin Martin, Chairman, FCC, Docket Nos. 99-363, 07-198, 07-148, at 1, 3 n.8 (Aug. 5, 2008).

[120] Comments of AT&T, MB Docket No. 15-216, at 3-4 (Dec. 1, 2015) (emphasis added).

[121] Echostar Comments at 20, Heading C; *accord* ACA Comments at 18, Heading III (contending that the multichannel video market is "broken").

[122] DIRECTV Comments at 12; Echostar Comments at 14; ACA Comments at 20.

originating station.[123] In adopting this provision, Congress intended "to create a marketplace for the disposition of the rights to retransmit broadcast signals" but *not* to "dictate the outcome of the ensuing marketplace negotiations."[124] Congress gave the FCC only the narrow authority to ensure that broadcasters and MVPDs negotiating in the retransmission consent marketplace abide by their reciprocal duty to exercise "good faith."[125] Even if the Commission agreed with the MVPD commenters' hollow claims, it has no authority to address MVPDs' complaints about the level of retransmission consent fees they pay or about broadcasters seeking to negotiate for the carriage of affiliated programming, or to otherwise intervene in the retransmission market to set prices.

Not only does the FCC lack the authority to address retransmission consent fees (either directly or indirectly), the pay TV commenters also failed to demonstrate that those fees are the result of a market failure that the Commission could or should address or local stations' undue market power over MVPDs, including the larger ones dominating the pay TV/broadband marketplace. The reality is that retransmission consent fees represent only a portion of MVPDs' overall programming fees, and the fees remain low relative to the costs of other programming, especially given the higher viewership broadcast stations attract. In 2023, retransmission consent fees still represented only 27.9 percent of the fees MVPDs paid to basic cable networks and regional sports networks (RSNs).[126] During the 2023-2024 television season, 48 of the 50 top-rated prime time shows (and 73 of the top 75) aired on

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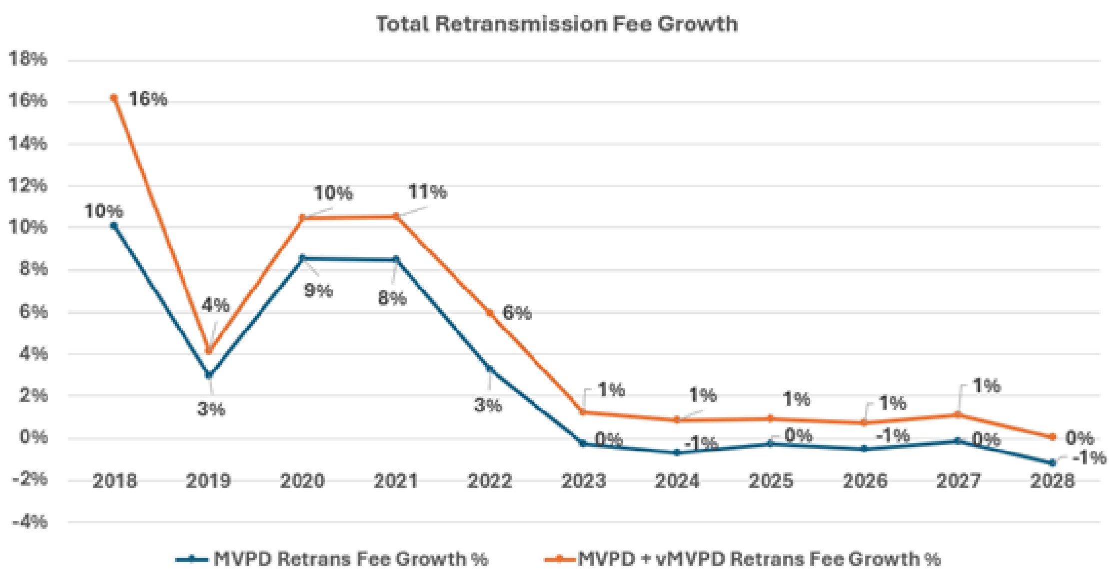
[123] 47 U.S.C. § 325(b)(1).

[124] S. Rep. No. 92, 102nd Cong., 1st Sess. at 36 (1991). Congress specifically observed that broadcasters may seek to negotiate the "right to program an additional channel on a cable system" as retransmission compensation. *Id*.

[125] 47 U.S.C. § 325(b)(3)(C).

[126] *Broadcast retransmission fees vs. basic cable and RSN programming fees,* Kagan, the media research group of S&P Global Market Intelligence (as of January 2024).

broadcast TV; the two exceptions, unsurprisingly, were NFL Thursday Night Football on Amazon Prime and NFL Monday Night Football on ESPN.[127] As demonstrated below, growth in retransmission consent fees has slowed substantially in recent years, and analysts project that those growth rates will be around zero for the next half-decade. These data cast considerable doubt on pay TV industry claims that retransmission fees "continue to skyrocket, with no end in sight."[128]



Source: Kagan, the media research group of S&P Global Market Intelligence. U.S. TV Station Retransmission Projections, 2023.

The pay TV commenters also are quick to blame broadcasters for their rising programming costs but fail to fully recognize the reasons for the increasing costs of quality programming. As an initial matter, some commenters acknowledged that MVPDs' programming costs overall – including for non-broadcast programming – have risen and

[127] Michael Schnieder, *100 Most-Watch TV Series of 2023-2024: This Season's Winners and Losers*, Variety (May 28, 2024).

[128] ACA Comments at 20; *accord* DIRECTV Comments at 10.

continue to rise,[129] and as discussed above, most of the programming fees paid by MVPDs go to basic cable networks and RSNs.

But Echostar has taken a particularly blinkered view of the video marketplace, claiming that programming fee increases are unjustified, given the (supposed) "absence of any evidence" that programming quality "has improved or that the cost of producing it has increased."[130] NAB's initial comments discussed broadcast TV's reliance on top-rated live sports programming and the rapidly growing competition for and expense of that programming.[131] Retransmission fees help broadcasters cover at least a fraction of the very high and growing costs of sports programming, as sports media rights payments in the U.S. approach $30 billion this year, up from $14.6 billion in 2015, and are projected to rise to nearly $35 billion by 2027.[132] The multi-billion dollar investments by the leading streaming services in content also illustrate the massive costs of producing quality programming.[133] The $17 billion Netflix will spend on content this year alone far exceeds the market capitalizations of some of the largest TV station groups, such as Nexstar and TEGNA.[134]

Some MVPD commenters claim that smaller operators are particularly disadvantaged by the existing retransmission consent process.[135] But for every small cable operator in the

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[129] *See* ACA Comments at 18-19.

[130] Echostar Comments at 22.

[131] NAB Comments at 8-9.

[132] Scott Robson, *Sports rights in the US approach $30 billion,* S&P Global Market Intelligence (Apr. 2, 2024); *see also, e.g., NBA 'closes in on' US$76bn ESPN, NBC and Amazon rights deals*, sportspromedia.com (June 6, 2024).

[133] *See, e.g.*, Rachyl Jones, *Netflix will spend 'vast majority' of its $17 billion content budget on originals in 2024 despite deluge of licensed hit shows up for grabs,* Yahoo Finance (Apr. 25, 2024); Todd Spangler, *Amazon Content Spending Rose 14% in 2023 to Nearly $19 Billion,* variety.com (Feb. 2, 2024).

[134] *See* NAB Comments at 21.

[135] ACA Comments at 19-20.

video marketplace, there is a broadcaster being forced to punch above its weight class in negotiations with pay TV/broadband behemoths such as Charter, Comcast, or Verizon (or attempting to compete with the streaming giants for programming and audiences). As NAB earlier documented, the market capitalizations of such pay TV providers, let alone Netflix and Amazon, dwarf even the largest broadcast station groups.[136] The FCC thus should reject out-of-hand continued claims that broadcasters can simply "impose" ever-higher retransmission fees and bundling "requirements" on helpless pay TV providers.[137] Moreover, the fact that smaller MVPDs assert they lack bargaining power compared to large traditional MVPDs and newer vMVPDs, such as YouTube and Hulu, is not the fault of broadcasters or the result of any undue market power by TV stations.[138] And despite the existence of some smaller MVPDs serving a small proportion of U.S. consumers, the FCC should not lose sight of the fact that a limited number of large pay TV and broadband providers control a whopping *96 percent* of both the pay TV and broadband markets.[139] Given that level of consolidation, MVPD claims that "increased consolidation of broadcasters" is a "principal culprit for outsized retransmission consent price increases" fail to convince.[140]

In any event, as NAB previously explained, even if the FCC had authority to regulate the prices, terms, or conditions of retransmission consent, changing the prices of inputs into

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[136] NAB Comments at 21.

[137] DIRECTV Comments at 10; *see also* Echostar Comments at 20, 22 (blaming the bargaining power of local TV stations for spiraling retransmission fees and claiming that programmers, including broadcasters, are "imposing" steep retrans and carriage price increases on MVPDs).

[138] ACA Comments at 19. Nor is it the fault of broadcasters or the retransmission consent process that satellite providers face increased difficulties competing in the current marketplace because they lack their "own broadband facilities." DIRECTV Comments at 7.

[139] Leichtman Research Group (LRG), *Research Notes 1Q 2024* (2024).

[140] DIRECTV Comments at 12; *accord* Echostar Comments at 23.

MVPD services will not reduce those services' retail prices.[141] MVPDs have never remotely hinted, for example, that the FCC could ensure these savings for consumers by regulating pay TV rates. Were the Commission to make any decisions based on the theory that consumers would benefit from reduced retransmission consent rates, it would concurrently need to require any reductions in retransmission fees to be reflected in pay TV bills.[142]

Beyond their other dubious claims, pay TV commenters additionally continue to spread misinformation about alleged increases in the number of retransmission consent disputes.[143] As NAB showed in other proceedings this year, negotiating disputes occurred at about the same rate over the past four years as occurred for the first 20 years of the retransmission consent regime.[144] NAB also demonstrated that increases in disputes, whether measured by frequency or length of time, have not so coincidentally occurred when the FCC and/or Congress actively contemplate changes to the retransmission consent system, and the pay TV industry's incentives to show problems with the retransmission

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[141] *See*, *e.g*., Reply Comments of NAB, MB Docket No. 18-349, at 48 (Oct. 1, 2021) (NAB 2021 Quadrennial Reply Comments). There, NAB discussed how real-world experience demonstrates that pay TV providers do not pass government-granted savings along to consumers. *Id.,* citing, *inter alia*, Karl Bode, *AT&T Lied about Everything it Promised to Do if it Got a Tax Cut,* VICE (Jan. 30, 2020), available at: https://www.vice.com/en/article/qjdvex/atandt-lied-about-everything-it-promised-to-do-if-it-got-a-tax-cut (discussing how the Tax Cuts and Jobs Act of 2017 "provided an incredible windfall to AT&T and other giant corporations," with AT&T expected to net about $42 billion over ten years from reductions in the corporate tax rate. But "[l]ittle if any of that savings appears to have found its way to employees, customers, or the company's network.").

[142] NAB 2021 Ownership Quadrennial Reply Comments at 48-49. Given the pay TV industry's track record of charging consumers, schools, and even governments for broadband, voice, or video services they do not receive, even direct regulation of their retail prices still may not make a difference. *Id.* (listing multiple court settlements resulting from MVPDs overcharging their subscribers).

[143] Echostar Comments at 14, 20; DIRECTV Comments at 11.

[144] *See* Reply Comments of NAB, MB Docket No. 24-20, at 4-5 (Apr. 8, 2024); Reply Comments of NAB, MB Docket No. 23-427, at 4-5 (Mar. 26, 2024).

process that government must "fix" to the disadvantage of broadcasters accordingly increase.[145] The Commission should refuse to be swayed by MVPDs' strategy.

Finally, NAB observes that pay TV providers myopically continue to view video marketplace changes and increasing consumer video options through a warped lens where increasing competition is only happening *to them*. And while traditional MVPDs are competing to retain video subscribers due to the growth of streaming services and virtual MVPDs, many traditional MVPDs own virtual MVPDs themselves and/or are gaining subscribers for their broadband services and can charge their subscribers hefty fees for both types of services.[146]

In contrast, OTA TV stations do not charge (and cannot increase) subscriber fees, and are facing an unprecedented expansion in the amount, quality, and quantity of competing video programming that viewers can access via multiple platforms and through myriad devices; the splintering of their formerly "mass" audiences; and an explosion of advertising competition, including from the dominant Big Tech platforms that also control the technologies powering both content discovery (search) and digital advertising.[147] These factors directly impact broadcasters' continued ability to provide programming that meets the needs and interests of their communities, including the production of original local news and public affairs content and coverage of weather events and other emergencies. Indeed, local TV news is becoming a "casualty of the streaming wars," as cord cutters not only cut

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[145] *Id*.; NAB Comments at 47-49 (analyzing annual publicized signal disruptions for the past decade).

[146] The largest broadband providers in the U.S. (which include the largest cable companies and wireline phone companies that also provide subscription video services) acquired almost 14.9 million net additional broadband internet subscribers from 2020-2023. LRG, *Research Notes 1Q 2024*; LRG, Press Release, *About 2,950,000 Added Broadband from Top Providers in 2021* (Mar. 7, 2022).

[147] *See*, *e.g.*, NAB 2022 Competition Comments at 5-15, 37-58.

their cable channels but also the local TV stations included in their cable/satellite bundles.[148] As a result, local stations lose viewers and the retransmission consent fees associated with those viewers. "Some 40 million households for which local stations used to be compensated as part of the cable bundle . . . now provide no local station revenue."[149]

The Commission has yet to grapple with the multiple threats to local journalism, and its analysis of the video marketplace here should reflect the tremendous competitive challenges facing local TV stations today. As part of that analysis, it should reject the pay TV industry's predictable complaints about their statutorily-mandated requirement to negotiate retransmission consent with local broadcasters and decline to indulge MVPDs' rent-seeking efforts to impose additional asymmetric restrictions on their broadcast competitors.[150] The FCC additionally should refresh the record in the long-pending proceeding on the regulatory status of virtual MVPDs, as NAB has urged.[151]

IV. CONCLUSION

The 2024 Communications Marketplace Report, and its broadcast regulatory regime including the radio and TV ownership rules, must reflect the proliferation of audio and video content providers and digital advertising platforms and their profound competitive impact on local broadcast stations. There is no valid basis for the upcoming report to repeat the legislative talking points of the music industry, and certainly Congress's refusal to impose

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148 Tom Rogers, *Local News Is Being Pushed Up a Creek as a Casualty of the Streaming Wars*, Newsweek (Apr. 4, 2024).

149 *Id*.

150 *See, e.g.*, DIRECTV Comments at 12-13 (calling for further restrictions on TV broadcasters' joint agreements and sharing arrangements).

151 *Promoting Innovation and Competition in the Provision of Multichannel Video Programming Distribution Services*, Notice of Proposed Rulemaking, 29 FCC Rcd 15995 (2014); NAB Notice of *Ex Parte* Communication, MB Docket No. 14-261 (Feb. 7, 2023).

performance fees on radio stations for airing music free to the public provides no rational basis for the Commission to refrain from reforming its local radio limits or other asymmetric broadcast regulations. The predictable complaints of MVPD interests about retransmission consent – which pre-date the provision of any appreciable cash compensation to TV broadcasters – have not improved with age and repetition, do little or nothing to inform the FCC's inquiries here, and reconfirm that the pay TV industry has opposed the mere existence of retransmission consent for decades. In preparing its current report, the FCC should rely on marketplace evidence, not the claims of self-interested regulatory rent seekers.

Respectfully submitted,

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July 8, 2024

Attachment A

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