

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

In the Matter of)
)
Petition for Rulemaking to Establish) MB Docket No. 22-209
New Content Vendor Diversity Report)

REPLY COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS

1 M Street, SE
Washington, DC 20003
(202) 429-5430
Rick Kaplan
Jerianne Timmerman
Erin Dozier

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TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

**II. THE PETITION DID NOT IDENTIFY A SPECIFIC MARKET FAILURE OR CONCRETE
PROBLEM THAT ITS PROPOSAL WOULD REMEDY IN A PROPERLY FOCUSED WAY 2**

**III. THE PETITION DID NOT IDENTIFY A CLEAR SOURCE OF STATUTORY AUTHORITY FOR THE
PROPOSAL, NOR SHOW HOW IT WOULD MEET CONSTITUTIONAL STANDARDS..... 4**

**IV. BROADCASTERS SUPPORT PRACTICAL AND EFFECTIVE EFFORTS TO PROMOTE NEW
ENTRY, TRAIN A DIVERSE INDUSTRY WORKFORCE, AND SERVE DIVERSE AUDIENCES .. 9**

V. CONCLUSION..... 13

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)¹ now replies to certain parties commenting on a petition for rulemaking that called for the Commission to establish a new annual report on the diversity of content vendors used by TV broadcasters, cable and satellite operators, and their affiliated unlicensed video streaming services.² Rather than pursuing this proposal, NAB urges the FCC to support and foster initiatives by the broadcast industry and others to continue to foster a more diverse media and communications ecosystem.

The Petition raises a number of practical and legal concerns. As an initial matter, the Petitioner does not clearly define with any measure of specificity a failure in today's highly competitive video marketplace that its proposal would effectively address in an appropriately

¹ NAB is a nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² Fuse, LLC (Petitioner), *Petition for Rulemaking to Establish a Content Vendor Diversity Report* at 1, 4-5 (May 5, 2022) (Petition) (proposing to require all these entities to survey and gather detailed data about the race/ethnicity of thousands of third-party vendors' owners, Board members, senior leaders, and full-time employees so that the FCC can rank and publicly compare these vendors' diversity levels and regulatees' "commitment to diversity").

tailored way. In addition, the Petition and commenters supporting it do not identify a legitimate source of statutory authority for the proposed expansion of the FCC’s regulatory reach. Nothing in the Communications Act of 1934 (Act) – including the requirement to produce a biennial report on competition in the communications marketplace – authorizes the FCC to adopt the proposed expansive inquiry and disclosure requirements, especially given their burden on unlicensed streaming services and, above all, on third-party vendors over which the FCC has no conceivable regulatory power. While the FCC does have jurisdiction, as the Act defines, over broadcast TV licensees, that authority does not permit it to turn broadcasters into its own quasi-investigative arm to obtain detailed information from and about unregulated third parties. Finally, neither the Petitioner nor any supporting commenter showed how such an FCC report and diversity ranking would meet current constitutional standards, as none of them even mentioned the relevant court precedent that would govern review of the proposal.

NAB therefore agrees with those commenters who concluded, for the same reasons delineated above, that the Commission should decline to initiate a rulemaking based on the Petition.³ NAB and broadcasters intend to continue our more practical, effective, and legally sustainable efforts to promote new entry and attract and train a diverse industry workforce.

II. THE PETITION DID NOT IDENTIFY A SPECIFIC MARKET FAILURE OR CONCRETE PROBLEM THAT ITS PROPOSAL WOULD REMEDY IN A PROPERLY FOCUSED WAY

As some commenters observed, the Petition did not identify a specific market failure for the Commission to address in today’s highly competitive video marketplace.⁴ While

³ If the FCC were to move forward in this proceeding at all, it should issue a notice of inquiry.

⁴ See Comments of American Television Alliance, NCTA – The Internet & Television Ass’n, and USTelecom – The Broadband Ass’n (Joint Associations), MB Docket No. 22-209, at 5 (July 22, 2022) (Joint Ass’n Comments) (stating that the Petition did not “address today’s marketplace realities or identify any specific issues in need of redress”).

making numerous references to “diversity” and “viewpoint diversity,” the Petitioner did not demonstrate how the video market fails to offer diverse content or viewpoints to consumers or explain how its proposal would remedy any concrete problem in a material and focused way. Rather than analyzing a market “overwhelming” viewers with “too much” TV,⁵ the Petition referenced several 1970s-era rules that the FCC has repealed or that a court has vacated.⁶

Moreover, despite its concern with viewpoint diversity,⁷ the Petition nowhere established any linkage between viewpoint diversity in the market and the identity of content vendors’ owners, Board members, senior leadership, or full-time employees. That omission is unsurprising. In 2016, the FCC concluded that neither it nor commenters in the 2010 and 2014 quadrennial ownership reviews had been able to identify evidence demonstrating a connection between minority or female *ownership* – let alone factors like Board membership – and viewpoint diversity, or even to “devise study designs that are likely to provide such evidence.”⁸ Neither the Petitioner nor any commenters here gave any hint they could fill the evidentiary gap and provide the requisite linkage between the proposal offered and the effective promotion of viewpoint diversity (or other specific goal).

⁵ Nielsen, *Streaming is the future of TV, but the abundance of platform choice is overwhelming for viewers* (Apr. 11, 2022); L. Holmes, *There’s too much TV to keep up. Have we hit the limit?*, npr.org (May 3, 2022).

⁶ For example, the Petition (at 11) cited the financial interest and syndication (fin/syn) rules and the prime time access rule (PTAR) as illustrating the FCC’s concern with diversity. But in vacating revised fin/syn rules in the 1990s, a federal appeals court rejected the argument that these restrictions promoted diversity because the FCC had failed “to explain *how* [the rules] do this.” *Schurz Communs. v. FCC*, 982 F.2d 1043, 1055 (7th Cir. 1992) (emphasis added) (observing that the FCC “may have thought the link was obvious, but it is not”). The FCC repealed the PTAR in 1995. Report and Order, 11 FCC Rcd 546 (1995).

⁷ See Petition at 8-11 (discussing the “overarching” FCC objective of viewpoint diversity).

⁸ *2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, 9995, 9987-88 (2016) (2016 Ownership Order). See also *id.* at 9995 n. 994 (noting, *inter alia*, the “lack of a reliable measure of viewpoint”).

As other commenters observed, the Petition’s proposed solution to an ill-defined problem also would impose excessive and redundant burdens on a vast array of entities.⁹ The proposal would result in the production of duplicative data by hundreds of TV stations making the same inquiries of the same network and syndicated program suppliers. And nowhere did the Petition consider the difficulty – if not the impossibility in some instances – of broadcasters, MVPDs, and online streaming services obtaining detailed and extensive information¹⁰ from their unregulated, independent content vendors.¹¹ Unlike commenters supporting the Petition, the FCC cannot dismiss the proposal’s heavy burdens and serious practical difficulties as de minimus.¹²

III. THE PETITION DID NOT IDENTIFY A CLEAR SOURCE OF STATUTORY AUTHORITY FOR THE PROPOSAL, NOR SHOW HOW IT WOULD MEET CONSTITUTIONAL STANDARDS

Beyond failing to clearly define a specific problem that its proposal would effectively address, the Petition, as several commenters observed, identified no provision of the Act that authorizes its proposal.¹³ In fact, nothing in the Act authorizes the FCC to impose the proposed broad inquiry and disclosure requirements on the entities it actually has regulatory

⁹ Joint Ass’n Comments at 6-9; Comments of Motion Picture Ass’n, Inc. MB Docket No. 22-209, at 10-13 (July 22, 2022) (MPA Comments). The Petition (at 3) took *seven lines* to list the types of entities that the definition of “content vendor” should “at a minimum” include.

¹⁰ See, e.g., Petition at 4 (stating that data on content vendors’ owners should include information on, e.g., voting v. non-voting shares, partnership rights, or clawback provisions).

¹¹ NAB can only imagine the difficulties that public TV stations, such as WETA here in Washington, D.C., would face, given that they frequently air programming from the United Kingdom, Australia, the European continent, and elsewhere around the world.

¹² Letter from Burke Berendes, Kids Street, MB Docket No. 22-209, at 1 (June 20, 2022); Letter from Freddy Arias, SPLEX One, MB Docket No. 22-209, at 2 (July 18, 2022).

¹³ See, e.g., Joint Ass’n Comments at 10-11; MPA Comments at 7-10; Comments of TechFreedom, MB Docket No. 22-209, at 6-9 (July 22, 2022) (TechFreedom Comments). Notably, those supporting the Petition either ignored the question of statutory authority or, at the most, baldly stated that the Petition cited requisite legal authority.

power over or those regulatees' unlicensed affiliated streaming services, let alone on third-party vendors over which the FCC lacks jurisdiction entirely. And while the FCC has jurisdiction over broadcast TV licensees, its authority does not permit it to turn broadcasters into its own quasi-investigative arm to obtain detailed data from and about unregulated third parties. Simply choosing to do business with an FCC regulatee does not properly bring such third parties into the FCC's regulatory grasp.

Turning to specifics, the Petitioner referenced several provisions of the Act, only some of which it expressly claimed authorizes the FCC to implement its proposal. For example, the Petition cited Section 1, seemingly implying it buttresses the FCC's authority to adopt rules promoting viewpoint diversity.¹⁴ The Petitioner is mistaken. This section's "mandate to serve 'all the people of the United States' is a reference to the *geographic* availability of service," and does not address the content or viewpoint of the programs made available via wire or radio communication services.¹⁵ The Petition (at 17) also claimed that the FCC could "draw on" authority in Section 634. But this section is an EEO statute applicable only to entities operating "cable system[s]," and is only concerned with cable operators' *own* anti-discrimination and diversity efforts and does not force them to survey and gather detailed data on the FCC's behalf about the third parties with whom they conduct business.¹⁶ And to state the obvious, *Congress* imposed these cable industry requirements, not the FCC, as the Petitioner is requesting here.

¹⁴ Petition at 8-9, quoting 47 U.S.C. § 151 (stating that the purposes of this chapter and for creating the FCC included "mak[ing] available . . . to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service . . .").

¹⁵ *MPAA v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (emphasis added) (concluding that Section 1 did not give the FCC authority to "regulate in the area of programming").

¹⁶ 47 U.S.C. §§ 554(a), (b), (c), and (d)(2). Section 624 was added to the Act in 1984.

The Petition (at 15) ultimately relied for statutory authority on Congress’s direction for the FCC to report every two years on the state of the communications marketplace. Section 13 of the Act, 47 U.S.C. § 163, is a remarkably thin reed to support the claimed extension of FCC regulatory power. This section directs the FCC to “assess the state of competition in the communications marketplace,” and focuses on competition among various listed “providers” that “deliver” services to consumers.¹⁷ This reporting requirement does not properly stretch to imposing rules burdening a host of entities, including third-party vendors that do not provide communications services and do not deliver any services to the public. The courts, moreover, have rejected previous FCC attempts to turn a statutory directive to produce a report to Congress into regulatory obligations even on regulated entities.¹⁸

The Petition essentially placed its sole reliance on a requirement in Section 13 to “include[e] market entry barriers” in the FCC’s report.¹⁹ But this directive does not somehow authorize rules burdening a wide range of FCC licensees, unlicensed video streaming services, and, especially, third-party vendors wholly outside the FCC’s jurisdiction. Nor does a single cross-reference to Section 257(b),²⁰ as explained by other commenters, provide any such authority.²¹ In short, Section 13 authority to produce a report is a small mousehole in

¹⁷ 47 U.S.C. § 163(b)(1). Congress’s focus here is clearly competition, as Section 13 uses the terms “competition” and “competitive” 11 times.

¹⁸ See *MPAA v. FCC*, 309 F.3d at 807 (concluding that FCC lacked authority to impose video description rules on TV stations and MVPDs because Congress authorized the FCC only to “report” on video description – “nothing more, nothing less”) (emphasis in original).

¹⁹ Petition at 15, Heading C.1. See 47 U.S.C. §§ 163(b)(3) & (d)(3).

²⁰ See 47 U.S.C. § 163(d)(3) (directing the FCC, in assessing the state of competition, to consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with Section 257(b)).

²¹ See MPA Comments at 9; Joint Ass’n Comments at 11, n. 23. While the D.C. Circuit earlier suggested that the FCC “might” have ancillary authority to “impose disclosure requirements on *regulated* entities” to gather data for a report to Congress pursuant to § 257, placing regulatory burdens on “otherwise unregulated” parties, as the Petition proposed, “on nothing

which to hide elephantine authority to adopt new rules reaching a plethora of parties beyond the FCC's regulatory power.²²

Like other commenters, NAB also has serious doubts as to the constitutionality of the Petitioner's proposal.²³ The Petitioner's very brief discussion of constitutional issues does not show how its proposal would satisfy relevant Supreme Court and D.C. Circuit precedent.

As an initial matter, the Petition (at 19-20) labeled its proposal as just a "data collection" requirement. That description is misleading. The Petition (at 4) called for licensees to conduct detailed surveys of numerous third parties, the results of which the FCC would publish, including identifying the licensees that failed to respond and the "reasons" for such refusal. In addition, the proposed FCC report would "include a ranking of covered companies" to show "how various video sources compare to one another with respect to diversity and inclusion," thereby giving "providers" an "incentive to outperform one another" in the ranking; would provide the FCC a "fuller picture" of "the regulatee's overall commitment to diversity"; and would allow the FCC "to compare viewpoint diversity" across services.²⁴ This is not mere "data collection," but the type of FCC regulation that previously prompted the overturning of EEO rules due to their pressure on licensees.²⁵

more than [the FCC's] obligation to issue a report defies any plausible notion of 'ancillariness.'" *Comcast Corp. v. FCC*, 600 F.3d 642, 659-60 (D.C. Cir. 2010) (emphasis added). And as the Joint Associations observed, the Petitioner's statutory argument has no limiting principle as to the entities that mere reporting authority could stretch to reach.

²² *Whitman v. American Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001) (stating that Congress does not "hide elephants in mouseholes").

²³ See, e.g., Joint Ass'n Comments at 11-12; TechFreedom Comments at 9-16; MPA Comments at 7 n. 26. Those commenters supporting the Petition conspicuously avoided any discussion of constitutional issues.

²⁴ Petition at 1, 5.

²⁵ See *MD/DC/DE Broadcasters Ass'n v. FCC*, 236 F.3d 13, 19 (D.C. Cir. 2001) (finding that EEO rules "create[ed] pressure" on broadcasters in their recruitment and outreach, and noting the FCC's "long history" of "sub silentio pressures and 'raised eyebrow' regulation").

The Petitioner also did not explain how its proposal would satisfy strict (or intermediate) constitutional scrutiny.²⁶ First, the Petition did not establish that the proposal furthers a “compelling” governmental interest. The main purpose of the proposal appears to be promotion of viewpoint diversity,²⁷ but a reviewing court previously concluded that a “desire to foster ‘diverse’ programming content” was not “compelling.”²⁸ Second, assuming viewpoint diversity were found to be a compelling interest, the Petitioners did not show how its proposal actually would “further” that interest. The FCC, commenters in ownership proceedings, and the Petitioner and commenters here have not shown a link, buttressed by evidence, between minority (or female) ownership and viewpoint diversity sufficient to satisfy strict (or intermediate) scrutiny.²⁹ The courts have insisted on such evidence in the past.³⁰ Third, the Petitioner’s expansive proposal would be suspect under the narrow tailoring requirement, as it, *inter alia*, reaches all employees and other individuals associated with

²⁶ See *Adarand Constructors v. Peña*, 515 U.S. 200, 227 (1995) (holding that “all racial classifications” imposed by governmental actors are subject to “strict scrutiny” by reviewing courts; *i.e.*, “such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests”).

²⁷ See Petition at 8-11 (devoting a section to viewpoint diversity and calling it an “overarching” FCC policy); *id.* at 1-2, 6 (referring to goals of competition and viewpoint diversity). While more briefly referring to competition as a goal, the Petition did not make clear how its proposal would promote competition in the video marketplace, beyond asserting the interrelatedness of diversity and competition.” *Id.* at 7-8.

²⁸ *Lutheran Church-Missouri Synod v. FCC*, 141 F.3d 344, 354 (D.C. Cir. 1998) (finding the FCC’s race-conscious broadcast EEO rules unconstitutional under the Fifth Amendment, and indicating that a “real content-based definition” of “diverse programming” might “well give rise to enormous tensions with the First Amendment”).

²⁹ See 2016 Ownership Order, 31 FCC Rcd at 9995; *id.* at 9987-88.

³⁰ The D.C. Circuit struck down under intermediate scrutiny a broadcast policy favoring female license applicants because the FCC failed to show that its gender-based policy was “substantially related to achieving diversity on the airwaves.” *Lamprecht v. FCC*, 958 F.2d 382, 398 (D.C. Cir. 1992) (citing the lack of data establishing a “meaningful link” between female ownership and any particular type of programming).

hundreds if not thousands of third-party content vendors, even those employees and persons with no responsibility for program production.³¹

The Petition addressed none of these issues and none of these cases, but merely asserted (at 20) that collecting demographic data is constitutional. As observed above, however, downplaying the proposal as just “data collection” is inaccurate. Neither the Petition’s citation to 1970s-era appellate court cases involving data collection, nor the references to a 2019 Supreme Court decision involving the federal census, showed how the proposal would satisfy current constitutional standards.³² For these reasons, the record here fails to establish that the proposal would have any chance of withstanding heightened constitutional scrutiny.

IV. BROADCASTERS SUPPORT PRACTICAL AND EFFECTIVE EFFORTS TO PROMOTE NEW ENTRY, TRAIN A DIVERSE INDUSTRY WORKFORCE, AND SERVE DIVERSE AUDIENCES

Rather than supporting the current questionable proposal, NAB and broadcasters support and engage in multiple initiatives that directly address entry and employment in the industry. NAB has long been a leader in efforts to persuade Congress to reinstate the 1978-

³¹ In overturning FCC EEO regulations, the D.C. Circuit stated that those rules, which applied just to broadcasters’ employees, would not meet even “intermediate scrutiny, let alone the narrow tailoring prong of strict scrutiny,” due to the lack of evidence connecting low-level employees to programming content. *Lutheran Church*, 141 F.3d at 356.

³² Despite the Petition’s contention (at 2, 20), *Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2567 (2019), did not turn on the collection of demographic data but the inclusion of a citizenship question in the census. The Court expressly stated it “need not, and [would] not, decide the constitutionality of any other question” (including demographic ones) that “Congress or the Secretary [of Commerce] might decide to include in the census.” And while demographic questions have long been included on census forms, the Census Act requires the Secretary of Commerce to “keep individual answers confidential, including from other Government agencies.” *Id.* at 2561. Nothing about the proposed diversity survey and FCC report would be kept confidential but would be made public with the avowed purpose of pressuring licensees, unlicensed affiliates of licensees, and third-party vendors to take actions so as to show a greater “commitment to diversity” or achieve higher diversity scores than others on a governmental ranking. Petition at 4-5.

1995 tax certificate policy, which is widely recognized as “by far the most effective vehicle for advancing minority broadcast ownership.”³³ The FCC adopted the policy in 1978 – based on a rulemaking petition filed by NAB – and before Congress eliminated it in 1995, the issuance of tax certificates had resulted in the acquisition by minorities of 288 radio stations, 43 TV stations, and 31 cable systems.³⁴

NAB has supported readoption of a tax certificate policy for many years and has made increasing diversity in broadcasting, including by reinstating this successful policy, a major part of its Broadcasters’ Policy Agency for the 117th Congress.³⁵ NAB worked closely with Representatives G.K. Butterfield and Steven Horsford in the House, and Senators Gary Peters and Robert Menendez in the Senate, for the introduction last year of bills to reinstate a revised tax certificate. We helped garner and publicize external support for both bills from various stakeholders, including nine previous FCC Chairpersons and 50 state broadcast associations, and continue working to increase the number of co-sponsors for these bills.³⁶

Given virtually universal agreement, including by nine former FCC Chairpersons, that the “greatest barrier to diversity [in broadcasting] is access to capital,”³⁷ NAB supports and

³³ Multicultural Media, Telecom & Internet Council, *Ex Parte* Communication to Sanford Williams, FCC, MB Docket No. 18-349, at 6 (Aug. 4, 2021).

³⁴ E. Krasnow, *The Life and Death of Minority Tax Certificates*, Radio & Television Business Report (Feb. 9, 2017); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 983 (1978) (adopting diversity tax certificate policy).

³⁵ <https://www.nab.org/bpa2020/agenda.html>

³⁶ See, e.g., NAB News Release, *NAB Statement on Introduction of Broadcast Station Ownership Legislation* (Aug. 5, 2021); Letter of 50 State Broadcasters Ass’ns, Including the District of Columbia and the Commonwealth of Puerto Rico, In Support of the Reinstatement of the Diversity Tax Certificate Program, to Speaker Nancy Pelosi and Leaders Chuck Schumer, Mitch McConnell, and Kevin McCarthy (Aug. 12, 2021); Inside Radio, *Former FCC Chairs Lend Their Support To Reviving Tax Certificate Program* (Sept. 8, 2021) (*Former FCC Chairs*). NAB also has supported the tax certificate in congressional testimony and op-eds.

³⁷ Inside Radio, *Former FCC Chairs*.

urges the FCC and Congress to consider additional approaches to increasing new entrants' access to capital. In congressional testimony, for example, NAB has suggested Congress examine modifying the Small Business Administration's (SBA) loan guarantees to better reflect the realities and challenges of financing broadcast outlets.³⁸ The Commission could help investigate this approach and, if found promising, work with broadcasters and other communications service providers to propose improvements in the SBA's loan programs to Congress. The FCC also could generate interest in its incubator program for radio and work to make effective the only program it currently has to enhance new entrants' and very small broadcasters' access to capital. NAB remains committed to working with the FCC and interested stakeholders to address the access to capital problem faced by new entrants into the broadcast industry and by small broadcasters seeking to expand their station ownership.

NAB and its members, moreover, are committed to finding additional ways to encourage the hiring, retention, and promotion of a diverse workforce in the industry. Through its Leadership Foundation, NAB has established successful programs for assisting minorities and women to enter the broadcast industry, rise in the ranks of broadcast executives, and acquire broadcast stations. The Leadership Foundation's Broadcast Leadership Training Program (BLT), a 10-month Executive-MBA style program intended to help managerial-level employees, particularly women and minorities, advance in the broadcast industry, celebrated its 20th anniversary in 2020. Of its 379 graduates to date, over 65 percent have been promoted one or more times and 60 have been or currently are station owners. The Leadership Foundation maintains two other programs to prepare talented and diverse college students and recent graduates to enter the broadcast industry

³⁸ NAB News Release, Testimony of Diane Sutter, President and CEO of ShootingStar Broadcasting, on behalf of NAB, at House of Representatives Communications and Technology Subcommittee Hearing on Media Marketplace Diversity (Jan. 15, 2020).

through training in media sales and broadcast technology, and last year PILOT, NAB's technology initiative, launched with Howard University a NEXTGEN TV fellowship.³⁹ In 2023, our Leadership Foundation plans to launch a fellowship program designed to increase broadcast industry diversity by providing support in local TV and radio programming and content production.

NAB's TV and radio members also engage in a wide range of diversity and inclusion initiatives to ensure more diverse workforces.⁴⁰ These initiatives include: (1) partnering with foundations and Historically Black Colleges and Universities to cultivate a pipeline of talent for local stations; (2) providing paid internships and fellowships for diverse job candidates and frequently hiring these candidates for permanent jobs; (3) embedding diversity objectives in senior leaders' performance goals and linking meaningful portions of leaders' bonus potential to achievement of diversity and inclusion goals; (4) launching projects and partnering with outside organizations for programs to enhance inclusivity in news storytelling and community coverage; and (5) setting specific, aggressive goals to drive greater workforce diversity at their companies.⁴¹

³⁹ The Media Sales Academy prepares college students and new graduates for internships and entry-level positions at broadcast stations. Participants learn the fundamentals of media sales, with executives of major media companies serving as faculty and recruiters from top companies attending and interviewing participants. The Technology Apprenticeship Program prepares students and recent graduates in technology fields for a career in broadcast technology. Participants receive educational experience through hands-on training at a radio or TV station and exposure to the latest advances in broadcast technology. The NEXTGEN TV fellowship is structured like an early-stage start-up, focused on exploring the capabilities of the ATSC 3.0 standard and developing a concept for a NEXTGEN TV product or service.

⁴⁰ In earlier comments, NAB detailed the efforts of a small sample of our members. Comments of NAB, MB Docket No. 98-204, at 6-10 (Sept. 30, 2021) (outlining the programs of ViacomCBS, iHeart, Graham Media Group, TEGNA, Hearst Television, and Audacy).

⁴¹ *Id.* at 7-9. TEGNA set a goal of increasing diversity of station-level content leadership roles by 50 percent and all management within the company by 50 percent by 2025. *Id.* at 8. CBS network has set specific targets for Black, Indigenous, and People of Color in its script development budgets, writers' rooms, and the budgets and contestants for unscripted

Our members also are committed to providing programming to serve diverse audiences. Two NAB radio members, for instance, have established networks targeted to serving Black Americans and the LGBTQ+ community.⁴² Local TV stations use digital multicasting technology (and will use NextGen TV technology) to air multicast streams focused on underserved communities, including African American audiences, Spanish-speaking and bilingual Latino audiences, and other foreign-language speakers.⁴³

In sum, rather than pursuing the Petition's flawed proposal, the FCC should support the initiatives of broadcasters and other video market participants to address access to capital problems that inhibit new entry in broadcasting and other communications services, as well as work with broadcasters in their on-going efforts to attract, train, and retain talented employees from diverse backgrounds. Both broadcasters and the FCC should spend their scarce time and resources addressing these real-world challenges.

V. CONCLUSION

programs. CBS Studios and the NAACP agreed in 2020 on a multi-year partnership to develop and produce content for linear TV networks and streaming services. *Id.* at 7.

⁴² Channel Q is a radio network airing on Audacy's internet radio service and on Audacy-owned terrestrial radio stations. *Id.* at 9. The Black Information Network (BIN) is a national and local all-news audio service providing coverage with a Black voice and perspective. BIN is distributed through the iHeartRadio app and on all-news local AM/FM radio stations, and also provides the news service for iHeart's Hip Hop, R&B, and Gospel stations across the U.S. Press Release, *BIN: Black Information Network to Expand Local News Coverage in All 32 Affiliate Markets in 2022*, iheartmedia.com (Aug. 23, 2021). iHeart also has pledged that 50 percent of its new podcasts on the iHeartPodcast Network will be from female and diverse creators. Comments of NAB, MB Docket No. 98-204, at 8 (Sept. 30, 2021).

⁴³ Spanish-language and bilingual Spanish/English "diginets" include Nuestra Visión, Estrella TV, TV Azteca, LATV, and Unimas, which targets young adult Hispanics. Bounce and The Griot are two diginets designed to serve Black Americans. In communities such as San Francisco and Los Angeles, local TV stations offer multicast programming in multiple Asian languages.

For all the reasons articulated above, the Commission should decline to move forward with a rulemaking in this proceeding. If the FCC determines to move forward at all, it should at most issue a notice of inquiry.

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