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

In the Matter of:	)	
	)	
2022 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))))	MB Docket No. 22-459

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION OF BROADCASTERS

NATIONAL ASSOCIATION OF
BROADCASTERS
1 M Street, SE
Washington, DC 20003
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Nandu Machiraju

January 16, 2025

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I. INTRODUCTION AND SUMMARY

The FCC's local radio and TV ownership rules are now in their ninth decade of artificially restricting the scale of local broadcasters, and thus their ability to attract investment, audiences, and the advertising revenues needed to serve their communities. The record compiled here[1] reveals no basis for retaining these asymmetric analog-era ownership rules in today's radically transformed media and advertising landscape. Even beyond the lack of any factual or legal support, the Commission has no justification to keep its *ex ante* local radio and TV rules because its license transfer review process would allow it to properly consider relevant competitive factors in its review of transactions, rather than blindly applying arbitrary numerical station caps that ignore actual competitive conditions in now widely

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[1] *See 2022 Quadrennial Regulatory Review*, Notice of Proposed Rulemaking, MB Docket No. 22-459, FCC 25-64 (Sept. 30, 2025) (Notice).

divergent local markets. The National Association of Broadcasters[2] therefore reiterates that the FCC must finally eliminate all its *ex ante* local broadcast ownership rules.[3]

The two main categories of commenters opposing repeal of the local radio and TV ownership rules – or even calling for a tighter TV rule – rely on legally untenable arguments and very selectively chosen data (to the extent they provide data at all) that do not represent the current state of the media and advertising markets, nor the interests of today's consumers. First, certain ideological advocacy groups continue their decades-long opposition to any relaxation of the broadcast-only ownership restrictions. Free Press, for example, has opposed any and all reform of ownership rules since 2003 – the year it was founded – during which time the marketplace for news, information, and enterprise journalism has been completely upended by Big Tech.[4] Here, Free Press and other advocacy

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[2] NAB is the 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.

[3] *See* Comments of NAB, MB Docket No. 22-459 (Dec. 17, 2025) (NAB Comments). *See also* Comments of NAB, MB Docket No. 22-459 (Mar. 3, 2023), attaching to include in the record: Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019); Reply Comments of NAB, MB Docket No. 18-349 (May 29, 2019); Comments of NAB, MB Docket No. 18-349 (Sept. 2, 2021); Reply Comments of NAB, MB Docket No. 18-349 (Oct. 1, 2021); Written Ex Parte Commc'n of NAB, MB Docket No. 18-349 (Feb. 16, 2022); Comments of NAB, GN Docket No. 22-203 (July 1, 2022); Reply Comments of NAB, GN Docket No. 22-203 (Aug. 1, 2022).

[4] *See* Petition for Reconsideration of Free Press, MB Docket No. 02-277 (Sept. 4, 2003) (requesting reconsideration of the FCC's 2002 biennial review order, which had loosened several broadcast ownership restrictions). Beyond consistently opposing the elimination of burdensome broadcast regulations, Free Press has advocated for *reimposing* unnecessary and unduly burdensome rules on broadcasters decades after their elimination. *See* Reply Comments of The Public Interest Public Airwaves Coalition, Center for Creative Voices in Media, Free Press, and the Nat'l Hispanic Media Coalition, MB Docket No. 04-233 (June 11, 2008) (calling for reinstatement of the TV and radio programming guidelines and ascertainment requirements that FCC had eliminated in the early 1980s); *see also, e.g.*, Reply Comments of Free Press, GN Docket No. 25-133 (Apr. 28, 2025) (opposing stopping the collection of EEO information). The Multicultural Media, Telecom and Internet Council and Public Knowledge also have spent many years opposing reform of the broadcast ownership rules and do so again in this proceeding.

organizations repeat arguments NAB previously refuted; claim that studies support their position when they don't; deny the existence of studies that produced results contrary to their position; selectively quote and overstate sources; misstate facts; and generally act as though today's digital world doesn't exist. Free Press cynically also continues to (mis)use the issue of minority and female ownership of broadcast stations to oppose modernization of antiquated station caps, despite its own record of failing to work for – and even opposing – FCC ownership diversity policies.

Second, the pay TV industry, led here by the American Television (Really Pay TV) Alliance, NCTA – The Internet & Television Association, DIRECTV, and Newsmax, continues its crusade opposing liberalization of asymmetric FCC rules that keep broadcasters competitively hobbled. The Commission should ignore the pay TV industry's tiresome advocacy to maintain, or impose additional, ownership restrictions on broadcast TV stations that compete with them for viewers, advertisers, and content and that negotiate with them for retransmission consent. Keeping TV broadcasters artificially small and weak may be in the pay TV industry's interest, but it is not in the public's interest. The FCC should reject the pay TV industry's position due to hypocrisy alone, given pay TV providers' insistence that they need increased scale and scope in today's digital-dominated video and advertising markets but vociferously object to greater scale, whether local or national, for TV broadcasters. "Scale for me but not for thee" is self-interested, hypocritical, and anti-competitive in the extreme.

None of the commenters opposing ownership rule modernization added anything to the record that justifies retaining, let alone tightening, the local radio and TV ownership rules. To start, the opponents of reform again attempted to deny that Section 202(h) of the 1996 Telecommunications Act (1996 Act) is deregulatory, despite appellate court decisions concluding that Congress designed Section 202(h) to continue the process of deregulation; that the 1996 Act is deregulatory in nature and purpose; and that the FCC lacks authority to tighten its rules under Section 202(h). No one successfully refuted these courts' correct interpretation of the 1996 Act and Section 202(h).

The very few parties calling for retention of the 30-year-old local radio caps presented no evidence calling into question NAB's and broadcasters' studies and data demonstrating the profound competitive impact the digital revolution has had on the audio and advertising markets and radio stations' ability to attract audiences, earn vital ad revenues, obtain needed investment, and most importantly, serve their communities effectively. Rather than analyzing how the intense competition in today's marketplace has impacted local radio stations, these less-than-a-handful of commenters instead repeated old arguments that NAB and radio broadcasters already have refuted and said little, if anything, about the public interest necessity for the existing local radio caps in light of competition in 2026. Time has long since run out on these parties' repetitive, unmeritorious, and hypocritical arguments.

In fact, the music industry, as represented by the musicFIRST Coalition and the Future of Music Coalition, has long made clear that its opposition to reforming the radio caps stems from their frustrations about failing to persuade Congress to alter *copyright law* to impose new performance rights fees on radio stations' airplay of music at no charge to the public. This issue is completely irrelevant to the FCC and provides no basis for retaining arbitrary limits on radio station ownership. The three giant global record labels that dominate the music industry, moreover, dwarf even the largest radio station groups in size and, as documented, generate more money ***per hour*** than most radio stations garner ***per year*** in advertising revenues.

Although the pay TV industry calls for keeping and even tightening the local TV rule limiting broadcasters to owning only two stations in any local market, they presented no evidence calling into question NAB's and broadcasters' empirical evidence and economic analyses demonstrating the profound impact the digital revolution has had on TV stations' ability to attract viewers in a market dominated by streaming services, to compete with Big Tech platforms for ad revenues, and to obtain necessary investment. While disregarding these fundamental competitive issues, the pay TV industry instead offers a "wish list" of outdated (and/or previously eliminated) TV ownership restrictions for the FCC to adopt. In their view, this Section 202(h) proceeding is really all about them, and not whether rules placed only on *broadcasters* still remain "necessary in the public interest" – rather than the pay TV industry's interest – "as the result of competition."

The FCC should reject the pay TV industry's umpteenth attempt to do an end-run around the statutory prohibition on government involvement in the prices, terms, and conditions of retransmission consent by gaining negotiating advantages over TV broadcasters kept smaller and weaker via 20th century ownership restrictions. It must summarily dismiss proposals for reinstating any version of the vacated top four ban, such as the proposed "Big Four" network prohibition. Not only does the FCC lack authority under Section 202(h) to tighten its ownership rules, but proposals to prohibit common local ownership of more than one station affiliated with one of the four largest broadcast networks also would run afoul of the First Amendment as a programming-based restriction and would be arbitrary and capricious under the Administrative Procedure Act (APA).

The record thus shows no reason for the Commission to maintain its *ex ante* local ownership rules that prevent many potential station transactions with public benefits. No other media or FCC licensees are subjected to any comparable *ex ante* restrictions. Removing these arbitrary *per se* rules, which fail to address actual local market competition and which rigidly apply numerical caps without regard to facts on the ground, would not hobble but enhance the FCC's ability to ensure that broadcast station transactions serve the public interest. The Commission should jettison its *ex ante* rules and instead review proposed transfers and assignments of radio and TV licenses under Section 310(d) of the Communications Act of 1934 (Act).

NAB accordingly urges the Commission to quickly conclude this proceeding and eliminate its unnecessary and harmful local broadcast ownership rules. Their retention is inconsistent with the Act, Section 202(h) of the 1996 Act, and the APA, impairs the vitality or even the viability of broadcast radio and TV stations that provide over-the-air (OTA) services free to consumers everywhere, and do not promote the public interest.

II. OPPONENTS OF REFORM FRUITLESSLY ATTEMPT TO DENY THAT SECTION 202(H) IS DEREGULATORY

Those commenters opposing repeal or relaxation of the FCC's antiquated *ex ante* local ownership rules – or even supporting increased broadcast-only regulation in a marketplace characterized by unprecedented competition and content diversity – have latched onto the Third Circuit Court of Appeals' erroneous (and divided) view that Section 202(h) of the 1996 Act is not deregulatory. The Commission should ignore the flawed statutory arguments of those parties opposing broadcast ownership deregulation for their own commercial and political self-interest,[5] and reject the outlier

[5] As noted in Section I, Section IV., and earlier NAB filings, the pay TV industry has long engaged in a deliberate strategy to impair broadcast TV – their competitors for viewers and advertisers and with whom they negotiate retransmission consent agreements – by supporting local and national ownership rules and other FCC policies that keep broadcasters weaker and smaller. *See, e.g.*, Comments of NAB, GN Docket No. 24-119, at 43-50 (June 6,

Third Circuit's interpretation of Section 202(h) in favor of the correct construction of the statute as deregulatory by both the Eighth and District of Columbia Circuit Courts of Appeal.

In its initial comments and in earlier proceedings,[6] NAB explained that the text, structure, purpose, and history of Section 202 of the 1996 Act show that Section 202(h) is a deregulatory provision designed "to continue the process of [ownership] deregulation" Congress began due to growing competition to TV and radio broadcasters, including from non-broadcast sources.[7] Last summer, the Eighth Circuit agreed with the D.C. Circuit about the "deregulatory nature of the 1996 Act," found that "*increasing* regulation" is "contrary to the [1996] Act's stated purpose," and concluded that the Commission lacked authority under Section 202(h) to tighten the local TV rule (or, by extension, any other ownership rule reviewed under Section 202(h)).[8] The Eighth Circuit appropriately based its decision on the "two-part framework" of Section 202(h), its text in

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2024). Similarly, representatives of the music industry, including musicFIRST and the Future of Music Coalition, since at least 2018 have involved themselves in FCC proceedings to call for regulation of radio broadcasters, including retention of the harmful local radio caps, due to their unhappiness that Congress has declined to alter copyright law and impose performance rights fees on radio stations' OTA music broadcasts. *See* Section I and Section III.A.; *see also*, *e.g.*, Reply Comments of NAB, GN Docket No. 24-119, at 26-31 (July 8, 2024).

[6] *See* NAB Comments at 12-26; Comments of NAB, MB Docket No. 18-349, at 38-52 (Sept. 2, 2021).

[7] *Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, 1033 (D.C. Cir. 2002) (*Fox I*), *modified on reh'g on other grounds*, 293 F.3d 537 (D.C. Cir. 2002) (*Fox II*) (also stating that in the 1996 Act, "Congress set in motion a process to deregulate" the broadcast industry's structure). *Accord Sinclair Broad. Group v. FCC*, 284 F.3d 148 (D.C. Cir. 2002).

[8] *Zimmer Radio of Mid-Missouri, Inc. v. FCC*, 145 F.4th 828, 860-62 (8th Cir. 2025) (emphasis in original). Because *Fox I* involved challenges to the FCC's *retention* of two broadcast ownership rules in a § 202(h) review, rather than an attempt to tighten any ownership rules as part of a biennial (now quadrennial) review, the D.C. Circuit in that case did not address the question of the FCC's authority to tighten ownership rules under § 202(h).

context, and the 1996 Act's purpose[9] to determine the best reading of the statute, as the Supreme Court has directed.[10]

These two circuit courts' correct interpretation of Section 202(h) as deregulatory also properly reflects this section's imposition of an obligation on the Commission beyond its administrative law duty, recognized in many cases, to reexamine its rules as circumstances change.[11] Despite this long-standing administrative law requirement for the FCC to "monitor" its regulations and make adjustments to reflect "new developments or better understanding of the relevant facts,"[12] Congress nonetheless imposed additional obligations on the Commission under Section 202(h) to: (1) regularly conduct, as part of its broader regulatory reform review under Section 11 of the 1996 Act,[13] an analysis of its broadcast ownership rules in particular to determine "whether any of such rules" remain "necessary in the public interest as the result of competition" specifically; and (2) "repeal or modify" any rules determined by that analysis to be no longer in the public interest. Section 202(h) therefore cannot be read as only imposing the "same old, same old" administrative law obligations but

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[9] *Zimmer Radio*, 145 F.4th at 859-61.

[10] *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 400-401 (2024) (stressing that courts should use all "traditional tools of statutory construction" to "determine the best reading of the statute").

[11] *See, e.g., Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 767 (6th Cir. 1995); *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C. Cir. 1979).

[12] *ACLU v. FCC*, 823 F.2d 1554, 1565 (D.C. Cir. 1987), *citing Am. Trucking Ass'ns v. Atchison, T. & S. F. Ry.*, 387 U.S. 397, 416 (1967).

[13] The 1996 Act added Section 11 to the Act to ensure that the FCC reviewed periodically its regulations governing telecommunications services to "determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition" and to "repeal or modify any regulation it determines to be no longer necessary in the public interest." 47 U.S.C. § 161.

clearly places the FCC "under a mandate that extends beyond its normal monitoring responsibilities."[14]

As NAB earlier described,[15] that encapsulates the divided panel of the Third Circuit's error. The majority in *Prometheus I* misread Section 202(h) by reducing it to merely a timing requirement, contending that the only "deregulatory" aspect of the statute is requiring the Commission "periodically" to justify its existing rules.[16] But if that had been Congress's intent, it would not have placed Section 202(h) within Section 11's broader regulatory reform review. Nor would it have directed the FCC to determine whether any of its rules remain necessary in the public interest due to competition particularly and mandated an outcome (i.e., repeal or modification of unnecessary rules). Instead, Congress would have just directed the FCC to examine its ownership rules periodically. Downplaying the statute's deregulatory purpose and slighting the additional, express requirements placed on the FCC beyond its normal administrative law duties, as the divided panel of the Third Circuit did in *Prometheus I*, makes

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[14] *Cellco P'ship v. FCC*, 357 F.3d 88, 99 (D.C. Cir. 2004) (concluding that, after the FCC has determined under Section 11(a) that a regulation is no longer necessary in the public interest as the result of current competitive realities, Section 11(b)'s directive to "repeal or modify" any such regulation "make[s] clear that the Commission is under a mandate that extends beyond its normal monitoring responsibilities").

[15] NAB Comments at 18-19.

[16] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 395 (3d Cir. 2004) (*Prometheus I*). In his dissent Chief Judge Scirica disagreed, explaining that in the 1996 Act, "[o]n the cusp of an unprecedented revolution in communications technologies, Congress set in motion this statutorily-prescribed process of media deregulation." *Id.* at 438. He also stressed that the FCC bears the "burden for maintaining regulations" in its § 202(h) reviews. *Id*. at 442. *Accord* Comments of the Int'l Center for Law & Economics (ICLE), MB Docket No. 22-459, at 4 (Dec. 17, 2025) (ICLE Comments) (any proposal to retain the ownership rules "as-is" faces a "high legal hurdle," because § 202(h) "places the burden of proof on those who wish to *retain* regulations and requires a demonstration that the rules remain 'necessary' specifically 'as the result of competition'") (emphasis in original).

Section 202(h) virtually redundant and superfluous. The Third Circuit panel's interpretation thus is contrary to "one of the most basic interpretive canons," that a statute should be construed to give full effect to all its provisions so that no part will be "insignificant," "superfluous," or "inoperative."[17]

Needless to say, commenters opposing elimination or any relaxation of the asymmetric local ownership rules and/or calling for tighter rules reflexively agreed with the Third Circuit's unsound interpretation of Section 202(h). They ignored the serious flaws noted above in that court's blinkered view of Section 202(h) as essentially only a timing requirement. These parties also uncritically embraced the Third Circuit's view, soundly rejected by the Eighth Circuit, that the Commission is free to *re*regulate under Section 202(h) because "modify" in the second sentence of that provision authorizes tightening rules.[18] Simply saying that the Eighth Circuit is wrong and the Third Circuit is right, however, isn't convincing,[19] especially given commenters' failure to address the Eighth Circuit's specific explanation as to why the Third Circuit's "brief analysis" was incorrect.[20]

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[17] *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 213 (2018), quoting *Corley v. U.S.*, 556 U.S. 303, 314 (2009).

[18] *See* Comments of DIRECTV, LLC, MB Docket No. 22-459, at 27-28 (Dec. 17, 2025) (DIRECTV Comments); Comments of NCTA – The Internet & Television Ass'n, MB Docket No. 22-459, at 9-12 (Dec. 17, 2025) (NCTA Comments); Comments of Newsmax Media, Inc., MB Docket No. 22-459, at 18-22 (Dec. 16, 2025) (Newsmax Comments); Comment of The Archival Producers Alliance, et al., MB Docket No. 22-459, at 5-8 (Dec. 17, 2025); Comment of the MusicFirst Coalition and Future of Music Coalition (the Coalitions), MB Docket No. 22-459, at 5-6 (Dec. 17, 2025) (Coalition Comments).

[19] *See, e.g.,* DIRECTV Comments at 27 ("We agree with the Third Circuit's analysis and do not believe that Section 202(h) is a 'one-way ratchet.'").

[20] *Zimmer Radio*, 145 F.4th at 861-62 (explaining that the Third Circuit had "improperly suggested" that reading the "repeal or modify" language of § 202(h) as a one-way (i.e., deregulatory) ratchet somehow ignored both "modify" and the requirement that the FCC act "in the public interest," when in fact the Eighth Circuit's interpretation of "modify" in § 202(h) did neither, as the Court went on to explain). *See* NAB Comments at 15-16 (discussing the Eighth Circuit's critique of the Third Circuit's position).

Moreover, commenters interpreting "modify" in Section 202(h) as authorizing the tightening of the FCC's ownership rules were less than convincing in their limited attempts to defend that position. For instance, they cited the "ordinary usage" of the word,[21] rather than the text of Section 202(h), including the term "modify," in context, along with the two-step framework of that provision and Congress's purpose.[22] The Eighth Circuit's holistic interpretation of Section 202(h) is much the more convincing and one that no parties successfully refuted.[23]

Apparently desperate to undermine *Zimmer Radio*, some commenters unsurprisingly resorted to misstating the Supreme Court's decision in *FCC v. Prometheus*.[24] Anticipating this, NAB's initial comments had taken pains to explain that case did not interpret Section 202(h) but was *decided solely under the AP*A.[25] The Supreme Court made clear it did not need to reach arguments about the "text" of Section 202(h) because it was unanimously reversing the Third Circuit's judgment,

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[21] Comment of The Archival Producers Alliance, et al., MB Docket No. 22-459, at 6 (Dec. 17, 2025).

[22] *Zimmer Radio*, 145 F.4th at 859-61. The court further found that, even if it disregarded § 202(h)'s "two-part framework" and assumed that the statutory inquiry turned on the meaning of "modify" alone, it was not convinced by the (former) FCC's argument that "modify" authorized the tightening as well as the loosening of rules subject to § 202(h). The Eighth Circuit observed that dictionary definitions of "modify" from the time of § 202(h)'s enactment were ambiguous and that, in any event, words should not be read in isolation because linguistic and statutory context also mattered. *Id*. at 860-61.

[23] *See, e.g.*, Newsmax Comments at 21 (inaccurately claiming that the Eighth Circuit paid only "lip-service to the statutory text" while "in fact ignor[ing] it," and contending that "modify" must include the tightening of rules without even addressing the primary reason the Eighth Circuit found otherwise, i.e., § 202(h)'s "two-part framework").

[24] *FCC v. Prometheus Radio Project*, 592 U.S. 414 (2021).

[25] NAB Comments at 16, n.35, quoting *FCC v. Prometheus*, 592 U.S. at 417 (concluding that the FCC's 2017 reconsideration order eliminating or relaxing certain ownership rules was "reasonable and reasonably explained for purposes of the APA's deferential arbitrary-and-capricious standard").

which had overturned the FCC's deregulatory 2017 ownership order, "under ordinary principles of arbitrary-and-capricious review."[26] The Court's clarity, however, did not prevent certain parties from pretending that its APA-based decision "strongly implie[d]" that Section 202(h) does not mandate deregulation;[27] that the Court's opinion did not "elevate[] competition above" localism or diversity;[28] or that the Court had "embraced" the FCC's "understanding" that Section 202(h) is not a presumptively deregulatory mechanism.[29] The Commission must reject these fallacious arguments that the Supreme Court's lack of analysis of Section 202(h) and its text somehow translates into support for their preferred position of tightening, or at least retaining, the local ownership rules. While silence may be golden, it cannot be construed to suit these commenters.

In any event, NAB trusts that all the ink certain commenters metaphorically spilled in failing to undermine the Eighth Circuit's conclusion that the Commission under Section 202(h) cannot *re*regulate – i.e., "modify" its ownership rules to make them tighter – will not be relevant, as a practical matter, in this proceeding. Beyond being contrary to the Eighth Circuit's ruling, the pay TV interests' call here to make the local TV rule much stricter by

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[26] *FCC v. Prometheus*, 592 U.S. at 427, n.3.

[27] Newsmax Comments at 18. Pretending that judicial silence can mean whatever its wishes, Newsmax further inaccurately contended that the "Supreme Court's silence" on the FCC's § 202(h) regulatory powers "implies that the Court found no intrinsic problem" with the FCC modifying its ownership rules under § 202(h) to make them tighter or looser. *Id*. at 21. This latter argument is also nonsensical because the FCC order at issue before the Court had not tightened, but had only loosened, ownership rules.

[28] Coalition Comments at 8-9.

[29] Comment of The Archival Producers Alliance, et al., MB Docket No. 22-459, at 6 (Dec. 17, 2025). These commenters also oddly cited an NLRB case from 1998 and two EPA cases to explain the burden the FCC bears in § 202(h) proceedings. *Id*. at 4. This not only conflates the APA and § 202(h) but also ignores the additional obligations that § 202(h) places on the Commission, beyond its general administrative law obligations.

readopting the top four prohibition, and/or reinstating the amendment to Note 11,[30] cannot be justified because the top four/Note 11 limits are not "necessary in the public interest as the result of competition" under Section 202(h) and their readoption would be arbitrary and capricious under the APA. Indeed, NAB and TV broadcasters showed, backed by empirical evidence and economic analyses, that even retaining the existing *ex ante* local TV rule prohibiting ownership of more than two TV stations in all 210 Designated Market Areas would be contrary to Section 202(h) and the APA in today's intensely competitive video and advertising markets.[31] The Eighth Circuit, moreover, specifically rejected the multiple justifications previously offered by the FCC for retention of the top four prohibition, finding that they all ran counter to the evidence.[32] As further detailed in Section IV., the pay TV interests wanting to burden broadcasters with harmful regulatory restrictions have not presented evidence here remotely supporting readoption of the thoroughly discredited top four

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[30] *See* NCTA Comments at 9-12; Newsmax Comments at 15-17; DIRECTV Comments at 25-28. The amendment to Note 11 made the top four ban itself much stricter by extending the ban on owning two stations among the top four-rated beyond full-power TV stations to also include multicast streams and low power TV stations. DIRECTV's claim that reinstating the amendment to Note 11 passed muster under *Zimmer Radio* because that would not "tighten" the local TV rule, but only close "loopholes" in it, doesn't pass the laugh test. DIRECTV Comments at 27. Obviously, further extending the restrictions of the local TV rule to make non-compliant station ownership arrangements that were formerly compliant with the rule amounts to tightening that rule.

[31] *See* NAB Comments at 82-128; Section IV., *infra*. *See also* ICLE Comments at 4 (given the growth of competition from digital media, the burden of proof § 202(h) places on those wishing to retain regulations "is now insurmountable").

[32] *Zimmer Radio*, 145 F.4th at 854-56 (observing that the FCC's "justifications are only as strong as the evidence supporting them"). As one example, the Eighth Circuit pointed to the "ample evidence" in the record showing that the largest audience gaps were *among* the top four-ranked stations, not *between* the fourth- and fifth-ranked stations. *Zimmer Radio*, 145 F.4th at 856, citing NAB comments; *see also* BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction* (Mar. 15, 2019), Att. B to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019). No one has ever even attempted to dispute NAB's evidence that undermined the top four prohibition.

prohibition and/or the amendment to Note 11, even if the FCC had authority to do so in this proceeding (which it does not).

Interestingly, in their Eighth Circuit versus Third Circuit debate, the anti-reform commenters either ignored the only other court to address and apply Section 202(h) (the D.C. Circuit Court of Appeals) or misinterpreted relevant D.C. Circuit cases. The Coalitions blatantly misstated that the D.C. Circuit's *Fox I* "decision" – and by extension its conclusions that Section 202(h) is a deregulatory statute – was "expressly retracted by the D.C. Circuit" on rehearing in *Fox II*.[33] That is patently false.

The *Fox I* decision was *not* retracted. Had these commenters actually read the opinion, they would know that on panel rehearing in *Fox II*, the D.C. Circuit amended a *single paragraph* of its original opinion, excising less than two full sentences in which the Court had briefly opined on the meaning of the term "necessary" in Section 202(h).[34] Specifically, the D.C. Circuit removed language from its original opinion that suggested that "necessary," as used in Section 202(h)'s phrase "necessary in the public interest as the result of competition," imposed a higher standard for the meaning of "necessary," i.e., it meant something akin to "indispensable," rather than "useful."[35] The court stressed that its original opinion vacating one FCC ownership rule and remanding another "did not turn at all upon interpreting 'necessary in the public interest,' and determined to leave open the question of what "necessary" in Section 202(h) precisely meant.[36] The fact that the D.C. Circuit's sole focus on rehearing was the specific meaning of "necessary,"

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[33] Coalition Comments at 5, citing *Fox II*, 293 F.3 at 540.

[34] *See Fox II*, 293 F.3d at 539, 541.

[35] *Id*. at 539. NAB's position here, and in earlier ownership proceedings, that § 202(h) is deregulatory does not depend on any debate about the precise meaning of "necessary."

[36] *Fox II*, 293 F.3d at 540.

rather than any of its findings about the deregulatory purpose of Section 202(h), is shown by the fact that the very limited language removed from *Fox I* had no references to "deregulation," "deregulatory," or "deregulatory presumption" – indeed, the entire *Fox II* decision contains no discussion, or even mention, of those terms.[37]

The Coalitions accordingly badly erred in claiming that *Fox II* "expressly retracted" the "decision" in *Fox I*.[38] They erred still further in contending that, due to the retraction that never happened, NAB cannot rely on *Fox I* for all the other issues addressed and the conclusions reached in that decision, including about Section 202(h) and deregulation.[39] In fact, *Fox I*'s repeated findings that Section 202(h) is deregulatory remain intact.[40] Importantly, the Eighth Circuit clearly disagrees with the Coalitions on this point, as it expressly agreed with the D.C. Circuit in *Fox I* that "'the [deregulatory] presumption in

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[37] The heading of the relevant portion of *Fox II* reads: "I. The Meaning of 'Necessary' in Section 202(h)." *Fox II,* 293 F.3d at 538.

[38] They also badly erred by claiming that NAB "falsely stated" that the Coalitions (and other parties to an amicus brief in *Zimmer Radio*) were incorrect in asserting in their brief that the D.C. Circuit had retracted its *Fox I* decision. Coalition Comments at 5. To the contrary, NAB's statement is the correct one, while the Coalitions have committed two falsities: first, in contending that the D.C. Circuit had retracted its decision in *Fox I*; and second, in accusing NAB of making a false statement when it correctly pointed out the Coalitions' mistake in comments replying to the Coalitions in another FCC proceeding. *See* Reply Comments of NAB, GN Docket No. 25-133, at 19 (Apr. 25, 2025).

[39] *See* Coalition Comments at 5.

[40] The court throughout *Fox I* made clear the deregulatory function and purpose of the 1996 Act and Section 202(h). *See, e.g.,* 280 F.3d at 1033 (in the 1996 Act, "Congress set in motion a process to deregulate" the broadcast industry's structure); *id*. (Section 202(h) instructs the FCC "to continue the process of deregulation"); *id*. at 1042 (the FCC's "wait-and-see approach cannot be squared with its statutory mandate promptly . . . to 'repeal or modify' any rule that is not 'necessary in the public interest'"); *id*. at 1044 (likening the "mandate of § 202(h)" to "Farragut's order at the battle of Mobile Bay ('Damn the torpedoes! Full speed ahead.'"); *id*. at 1048 (Section 202(h) "carries with it a presumption in favor of repealing or modifying the ownership rules"). *Accord Sinclair Broad. Group v. FCC*, 284 F.3d 148, 164 (D.C. Cir. 2002) (finding that the FCC's "wait-and-see approach" to further relaxation of the local ownership restrictions "cannot be squared with its statutory mandate").

[Section] 202(h) would lose much of its bite'" if a reviewing court lacked the power to require the FCC to vacate an ownership rule it had improperly retained and could require the FCC only to reconsider its decision.[41] The *Zimmer Radio* ruling also shows that a heightened standard for defining "necessary" is not needed to understand Section 202(h) as a *de*regulatory provision. After all, the Eighth Circuit concluded that the Commission had no authority to *re*regulate under it, even without discussing what "necessary" meant.[42]

In short, both the Coalitions and all other parties supporting the FCC's unwarranted *ex ante* local ownership rules have failed in their attempts to deny the "deregulatory nature" of the 1996 Act[43] and Congress's intent for the Commission to "continue the process of deregulation" via Section 202(h).[44] As shown below, they also failed to offer any evidentiary or other valid bases for retaining, let alone tightening, the FCC's analog era broadcast-only ownership restrictions in the digital age.

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[41] *Zimmer Radio*, 145 F.4th at 857, n.11, quoting *Fox I,* 280 F.3d at 1048.

[42] *Id*. at 859-62. Finally, NAB is puzzled by one party's claim that the D.C. Circuit's opinion in *Cellco* supports its view that Section 202(h) is not deregulatory in the least. *See* Newsmax Comments at 19. As NAB earlier explained, that case actually supports our position (ultimately adopted by the Eighth Circuit) that use of the word "modify" in § 202(h) does not authorize the FCC to *re*regulate in its quadrennial reviews. *See* Comments of NAB, MB Docket No. 18-349, at 43-45 (Sept. 2, 2021). Specifically, the *Cellco* court observed that even the FCC had acknowledged in the context of § 11 that a "deregulatory presumption" arises after it determines under § 11(a) that a regulation is no longer necessary in the public interest as the result of meaningful economic competition. *Id*., 357 F.3d at 99; 47 U.S.C. § 161(a). Given this "deregulatory presumption," it then follows that the actions directed by § 11(b) – to "repeal or modify" the unnecessary regulation – must be *de*regulatory in nature. *Cellco*, 357 F.3d at 99; 47 U.S.C. § 161(b). Thus, "modify" in § 11(b) and in the second sentence of § 202(h) cannot be interpreted as authorizing the tightening of ownership rules because, as the Eighth Circuit agreed, it would be irrational to tighten a regulation that is no longer necessary. *Zimmer Radio*, 145 F.4th at 859.

[43] *Zimmer Radio*, 145 F.4th at 860.

[44] *Fox I*, 280 F.3d at 1033.

III. THOSE FEW STILL SUPPORTING 20TH CENTURY LOCAL RADIO CAPS IGNORE 21ST CENTURY COMPETITIVE REALITIES AND PROVIDE NO EVIDENTIARY OR LEGAL BASES FOR RETAINING HARMFUL ASYMMETRIC OWNERSHIP RESTRICTIONS

The record here overwhelmingly supports repeal of the analog-era local radio ownership rule. Those commenters calling for elimination of the outdated radio caps provided studies, other extensive empirical evidence and data, numerous real-world examples, and signed declarations all making the case for elimination of the caps.[45] They documented in detail (1) the vast competition local radio stations today face for audiences and vital advertising revenues from online and satellite content providers and digital ad platforms not subject to any comparable restrictions on their scale and scope; (2) the dire negative effects that consumer and advertiser substitution of competing digital audio content and advertising for traditional radio has had on the listenership and advertising revenues garnered by local radio stations, including in

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[45] *See, e.g.*, NAB Comments; Comments of NAB, MB Docket No. 22-459 (Mar. 3, 2023) (NAB 2023 Comments); Joint Comments of Connoisseur Media, LLC, Midwest Commc'n, Inc., Mid-West Family Broad., Townsquare Media, Inc., Bonneville Int'l Corp., Legend Commc'n, LLC, and Frandsen Family Stations (Joint Radio Commenters), MB Docket No. 22-459 (Dec. 17, 2025) (Joint Radio Comments); Joint Comments of Connoisseur Media, LLC, Townsquare Media, Inc., Mid-West Family Broad., Midwest Commc'n, Inc., Frandsen Family Stations, Forever Media, Inc., Neuhoff Commc'n, Eagle Commc'n, Inc., Patrick Commc'n, LLC, and Legend Commc'n, LLC (2023 Joint Radio Commenters), MB Docket No. 22-459 (Mar. 3, 2023) (2023 Joint Radio Comments); Joint Reply Comments of 2023 Joint Radio Commenters, MB Docket No. 22-459 (Mar. 20, 2023) (2023 Joint Radio Reply Comments). *See also* NAB Comments at Att. A, BIA Advisory Services, *Thirty Years After Radio Deregulation: Has the Variety of Programming Expanded?* (Apr. 2025); Joint Radio Comments at Exh. A, Edison Research, *Share of Ear: Share of Time Spent Listening to Audio Services, Q3 2025 Study* (Dec. 2025) (Edison Share of Ear 2025 Study); Exh. B, Borrell Associates, *2025 Digital Advertising Report* (Dec. 2025) (Borrell Dec. 2025 Digital Advertising Report); Exh. C, San Francisco, CA, New York, NY, and Chicago, IL BIA Market Report; Exh. D, Decl. of Larry Rosin and Edison Research, *Americans' Average Share of Time Listening to Audio Sources, 2014 to 2025*; Exh. E, Edison Research 2025 Data Tables; Exh. F-N, signed declarations from nine broadcasters. Similar studies by Edison Research and Borrell Associates were attached to the 2023 Joint Radio Comments.

mid-sized and small markets; and (3) how the retention of asymmetric ownership restrictions has prevented radio broadcasters from gaining local scale to take advantage of important economic efficiencies, obtain investment capital, and better compete for audiences and advertising revenues, and thus enhance – or even maintain – their provision of news, emergency information, and valued entertainment and sports programming in local communities across the country at no cost to the public.

In contrast, the very few parties still supporting retention of the FCC's outmoded asymmetric radio rules provided . . . none of that. They instead cited letters, opinion pieces, a very limited number of comments and other material (often for the second, third, or fourth time), making no effort to analyze competition and actual conditions in today's media and advertising markets. Indeed, proponents of keeping antiquated radio limits essentially ignored the technological and economic transformation of the media and ad markets and did not address the profound impact the digital revolution has had on the competitiveness and financial wherewithal of all terrestrial radio broadcasters since 1996.[46] Accordingly, the Coalitions, NABOB, and Free Press provided virtually nothing relevant to inform the FCC's required Section 202(h) analysis of competition in 2026.[47]

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[46] Among those responding to the Notice, two sets of comments focused specifically and at length on opposing repeal of the local radio rule. *See* Coalition Comments; Comments of the Nat'l Ass'n of Black Owned Broadcasters (NABOB), a Division of U.S. Black Chambers, Inc., MB Docket No. 22-459 (Dec. 17, 2025) (NABOB Comments). Free Press also opposed relaxation or repeal of the radio (and TV) limits on ownership diversity grounds. Comments of Free Press, MB Docket No. 22-459 (Dec. 17, 2025) (Free Press Comments).

[47] *See, e.g., FCC v. Prometheus*, 592 U.S. 414, 419 (2021) (observing that § 202(h) "requires the FCC to keep pace with industry developments and to regularly reassess how its rules function in the marketplace"); *Fox I*, 280 F.3d at 1044 (concluding that retaining the national TV cap was contrary to § 202(h) because FCC did not adequately assess the state of competition in the television industry and thus it failed to meaningfully address the question that Congress required it to answer).

NAB addresses the major issues those commenters did raise below. As shown, the Coalitions, Free Press, and NABOB repeated old arguments that NAB and radio broadcasters have refuted on multiple occasions and said little, if anything, about the public interest necessity for the existing local radio caps in light of competition today.

A. Claims that the Local Radio Ownership Rule Protects Small, Independent Station Owners Are Erroneous and Empirically Unsupported

As it has done for years, the Coalitions continue to claim here that they support retention of the local radio rule to "protect[] independent AM/FM radio owners who compete locally against larger radio clusters."[48] This erroneous, if not cynical, claim must be rejected for numerous reasons.

First, the fact that the Coalitions continue to hold themselves out as protectors of small, local independent broadcasters not just borders on the absurd but crosses over into full-blown absurdity. The Coalitions represent the interests of the music industry, which is dominated by three consolidated international record labels.[49] Compared to even the largest radio station groups, the giant record labels are the 800-pound gorillas of the music world. Those three labels earn billions more in revenue than the approximately 11,000 full-power commercial AM/FM stations combined. As NAB earlier reported, the **three major music**

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[48] Coalition Comments at 10, Heading III. *Accord* Comments of the Coalitions, MB Docket No. 22-459, at 16-17, 30-31 (Mar. 3, 2023) (2023 Coalition Comments); Comments of the Coalitions, GN Docket No. 24-119 at 2-3, 15-17 (June 11, 2024); Comments of the Coalitions, GN Docket No. 22-203, at ii, 7, 9-10 (July 1, 2022).

[49] The members of the musicFIRST Coalition include the Recording Industry Association of America (RIAA), the Recording Academy, and SoundExchange. *See* Coalition Comments at n.1. RIAA's Board is dominated by representatives from Universal Music, Sony Music, and Warner Music, the three globally dominant music companies. *See* https://www.riaa.com/about-riaa/.

companies jointly generated about $2.9 million *per hour* in 2023.[50] In remarkable contrast, in 2023 and 2024 the vast majority of radio stations garnered **less – and often much less – than $2.9 million *per year*** in advertising revenues.[51] Needless to say, the Coalitions have never explained how local radio stations earning such low levels of revenue (and even lower, if any, profits) are supposed to keep talented employees and provide high quality programming, including popular music, sports, and informational programming, such as weather updates and emergency information, OTA and free to the public without achieving increased local scale, greater economic efficiencies, and more robust ad revenues.[52]

Second, the Coalitions discounted, if not virtually ignored, the fact that all radio broadcasters, whether small, mid-sized, or large, compete in their local markets for audiences and ad revenues against vastly larger "internet pureplay companies owned by America's

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[50] Reply Comments of NAB, GN Docket No. 25-133, at 21 (Apr. 28, 2025), citing T. Ingham, *The 3 Major Music Companies Are Now Jointly Generating Approximately $2.9M Per Hour*, musicbusinessworldwide.com (May 15, 2023).

[51] *See* Comments of NAB, GN Docket No. 24-119, at 20 (June 6, 2024) (citing 2023 BIA data). In 2024, the average radio station in Nielsen Audio market ranges 26-50, 51-75, 76-100, 101-150, 151-200, and 201-242 earned less (and frequently much, much less) than $2.9 million in ad revenues (OTA and digital) *for the entire year*. Stations in markets 76-242 garnered on average *less than a million dollars* in OTA+digital ad revenues in 2024, while those in markets 201-242 earned on average *less than half a million dollars* in ad revenue. Even those stations in markets 11-25 earned on average only an hour's worth of revenue for the three dominant record companies (i.e., those stations earned about $2.9 million in OTA+digital ad revenues in 2024). And keep in mind that these low amounts are merely *revenues*, not *profits*, and are averages (i.e., many stations garner even lower levels of ad revenues). Source: BIA Media Access Pro, Nov. 20, 2025.

[52] *See* 2023 Joint Radio Reply Comments at 17-20 (refuting Coalitions' blithe claims that, rather than lifting ownership restrictions to allow stations to compete more effectively, radio stations can create a "better product that connects with listeners," disregarding the fact that broadcasters' ability to create a "better product" depends on increased ad revenue, which, in the current marketplace, can only be achieved through increased scale). *Accord* Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 44-46 (Feb. 16, 2022).

biggest tech companies."[53] It is competition from online content providers and digital ad platforms – not competition from within the radio industry – that has caused the industry's precipitous declines in audience share and advertising revenues over the past two decades. According to Edison Research's recently released Share of Ear for Q4 2025, AM/FM radio's share of time spent listening to audio sources (counting both OTA and AM/FM digital streams) fell from 53 percent to 32 percent from 2014-2025 (a nearly 40 percent decline), while the share of listening time to online sources (pureplay streaming music, YouTube, and podcasts) grew from 19 percent to 50 percent. Essentially, consumers replaced much of their listening to AM/FM radio (and to owned music, which also dropped from 2014-2025) with listening to online audio sources.[54] Focusing on OTA listening to AM/FM radio, the average daily time spent listening to broadcast radio by Americans (ages 13+) fell from 130.1 minutes in 2014 to only 66.2 minutes in 2025, a 49.1 percent decline, while listening to streaming audio sources more than doubled.[55] These listening trends are projected to continue, given younger demographics' wholehearted embrace of all things digital.[56] And according to Borrell Associates, while radio ad revenue from local advertisers declined an estimated 43 percent

[53] 2023 Joint Radio Comments at 21-23 and Heading E (capitalizations omitted); *accord* Joint Radio Comments at 14-23, 36-39 and Exh. F-N (nine broadcaster declarations); Edison Share of Ear 2025 Study; Borrell Dec. 2025 Digital Advertising Report at 2-7; NAB Comments at 44-77.

[54] *See* Edison Research, Share of Time Spent Listening to Audio Sources (Q4 2025). Share of time spent listening to Sirius/XM rose marginally, from 6% to 7%, between 2014 and Q4 2025. The substitution of online audio options in place of traditional radio will only continue to increase because consumers ages 13-34 now spend only 19% of their listening time with AM/FM radio, compared to 38% to pureplay streaming music, 20% to YouTube alone, and 11% to podcasting. *Id*.

[55] Joint Radio Comments at 30-31 and Exh. A, Edison Share of Ear 2025 Study.

[56] *Id*. at Exh. D, Decl. of Larry Rosin, President, Edison Research.

from 2013-2025, digital advertising grew from 26 percent of local ad spending nine years ago to 70 percent in 2024.[57]

Consumer and advertiser substitution of digital content providers and ad platforms for traditional radio has adversely impacted all radio broadcasters. The Coalitions simply disregarded these and other indisputable facts, while filling up pages of their comments with block quotes from a few participants at a 2019 FCC symposium.[58] The Coalitions cannot pretend that the ownership rules remain "necessary in the public interest as the result of competition" because they protect smaller independent radio broadcasters who compete against larger broadcasters, while in fact those rules exacerbate the struggles of the entire radio against myriad non-broadcast competitors. As one small broadcaster reiterated, due to competition from satellite radio, music streaming services, car in-dash infotainment systems, and online advertising platforms, the "radio industry as a whole is slowly dying of '*revenue starvation*' stemming from an unlevel playing field."[59]

Third, the Coalitions again misleadingly suggested that small AM/FM station owners should or generally have opposed relaxation or repeal of the radio caps due to their difficulty competing against larger local groups.[60] As is evident from the record in

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[57] Joint Radio Comments at 15 and Exh. B., Borrell Dec. 2025 Digital Advertising Report at 2, 6.

[58] *See* Coalition Comments at 12-15 & n.53 (quoting extensively from selected participants at the FCC's 2019 Symposium on Current and Future Trends in the Broadcast Radio and Television Industries, but choosing not to quote from certain radio panelists, including those from Beasley Media and Connoisseur Media, both of whom have long argued for repeal of the radio caps, including in this proceeding).

[59] Written Ex Parte Communication of Press Commc'n, LLC, MB Docket No. 22-459 (May 5, 2023), attaching Comments of Press Commc'n, LLC, MB Docket No. 18-349, at 2-3 (Aug. 30, 2021) (emphasis in original).

[60] *See* Coalition Comments at 15-16. *See also, e.g.*, Comments of the Coalitions, GN Docket No. 24-119, at 2-4, 16-18, 34-35 (June 11, 2024).

this proceeding, and as NAB documented in previous proceedings,[61] this is inaccurate. Indeed, the Coalitions – to establish their *bona fides* as defenders of small independent radio – insisted they speak to such small broadcasters to "understand their plights" and to support them, and advised NAB to speak to three specific small broadcasters.[62] While NAB thanks the Coalitions for their kind advice, it is wholly unnecessary. NAB represents 407 separate owners of radio stations, 71 of which have only a single station. NAB accordingly understands only too well the "plights" of radio broadcasters of all sizes and works every day to support them in today's ruthlessly competitive audio and advertising markets.

In fact, a number of small and mid-sized broadcasters have called in this proceeding for repeal or at least relaxation of the local radio caps, including a broadcaster owning only two stations and others owning radio stations in only one market.[63] These

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[61] *See, e.g.*, Reply Comments of NAB, GN Docket No. 24-119, at 14-17 (July 8, 2024); Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 30-32 (Feb. 16, 2022).

[62] The Coalitions advised NAB to talk to Mt. Wilson FM Broadcasters, Inc., KJLH/Taxi Productions, Inc., and Redrock Broadcasting, Inc., along with NABOB. *See* Coalition Comments at 16.

[63] *See* Comments of American Limited Partnership and Reno Media Group, L.P., MB Docket No. 22-459 (Dec. 17, 2025); Comments of Seven Bridges Radio, LLC, MB Docket No. 22-459 (Dec. 17, 2025); Comments of The Cromwell Group, Inc., MB Docket No. 22-459 (Dec. 17, 2025), also attaching and incorporating by reference Joint Comments of Clarke Broadcasting Corp., Galaxy Syracuse Licensee LLC, Galaxy Utica Licensee, LLC, Golden Isles Broadcasting, LLC, Hancock Communications, Inc., HEH Communications, LLC, The Cromwell Group, Inc., The Cromwell Group, Inc. of Illinois, and WYCQ, Inc., GN Docket No. 25-133 (Apr. 11, 2025); Comments of JVC Media LLC, MB Docket No. 22-458 (Nov. 18, 2025); Comments of Rose Commc'n, MB Docket No. 22-459 (Dec. 15, 2025); Comments of Bee Broadcasting, Inc., MB Docket No. 22-459 (Dec. 17, 2025); Comments of O'Brien Betterment, LLC, MB Docket No. 22-459 (Dec. 9, 2025); Comments of Mobile Radio Partners Inc., MB Docket No. 18-349 (Dec. 19, 2025). Other mid-sized and smaller broadcasters, including Mid-West Family Broadcasting, Midwest Communications, Inc., Bonneville International Corp., Legend Communications, LLC, and Frandsen Family Stations, supported repeal of the local radio caps as part of the Joint Radio Comments.

broadcasters uniformly stressed the competition they face for listeners and advertisers in their local markets from online audio sources and digital ad platforms, and provided concrete examples of profound financial impacts stemming from their loss of ad revenues. For example, one small broadcaster with radio stations only in the Reno, Nevada market explained that the total revenue of radio stations in the Reno market fell from $27.62 million in 2004 to $15.189 million in 2024, with further significant declines projected for 2025, all the while stations experienced "higher costs for salaries, rent, electricity, music royalties, and SoundExchange payments."[64]

Broadcasters also have explained their need for increased local scale and investment in face of the loss of ad revenues and consequent harm to local services.[65] Most importantly,

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[64] Comments of American Limited Partnership and Reno Media Group, L.P., MB Docket No. 22-459, at 4 (Dec. 17, 2025). *See also, e.g.*, Decl. of Michael Paterson, Mid-West Family Broad., Exh. K to Joint Radio Comments (stating that radio owners are "boxed into choosing to serve the community or pay the utility company," due to less predictable revenue and "rising prices for business essentials like insurance, accounting services, utilities, music royalties, and health care benefits"); Decl. of W. Lawrence Patrick, Legend Commc'n, LLC, Exh. L to Joint Radio Comments (attesting that even in small Wyoming markets like Cody, banks, furniture stores, medical/dental practices, hardware stores, and auto dealers have reduced their radio advertising in a shift to digital); Decl. of Kristin Okesson, Connoisseur Media, LLC, Exh. G to Joint Radio Comments (describing acceleration of movement of long-time radio advertisers to digital in her Connecticut market, including by auto dealers, an airline, credit union, law firm, and other businesses); Decl. of Ryan Hatch, Bonneville Int'l Corp., Exh. M to Joint Radio Comments (reporting that their Phoenix stations' spot ad revenues declined by 25% just from 2022-2025, due to competition from social media and large digital ad platforms); Comments of Beasley Media Group Licenses, LLC, MB Docket No. 22-459 (Dec. 17, 2025), attaching Comments of Beasley Media Group Licenses, LLC, GN Docket No. 25-133, at 5-9 (Apr. 11, 2025) (offering real-world examples of advertisers in Beasley's markets, including fast food chains, national and regional furniture stores, a major cable/broadband provider, car dealers, several legal firms, a national insurance company, a large clothing retailer, and a major national bank with a strong local presence, all substantially reducing or cutting entirely their radio advertising in a shift to digital).

[65] *See, e.g.*, Decl. of David Bevins, Connoisseur Media, LLC, Exh. H to Joint Radio Comments (attesting that the loss of a single large advertiser (a federal credit union that formerly spent $600,000 annually on radio advertising in Long Island) can result in reductions in local on-air

broadcasters, including small and mid-sized ones, have described how scale in various local markets across the country has improved and will further enhance service to the public if ownership limits are repealed.[66] In particular, the record confirms that removal of the aged ownership caps will facilitate provision of improved and more varied programming in local markets.[67]

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positions, fewer live and local programming hours, cuts to local news gathering, elimination of internships and entry-level positions, and/or reduced community outreach, and explaining how owning additional stations locally would enable radio stations to compete better for digital ad dollars); Decl. of Michael Paterson, Mid-West Family Broad., Exh. K to Joint Radio Comments (explaining that instead of having duplicated processes within different separately-owned offices, revised local ownership rules would allow for investment in greater community service, and observing that in the current unpredictable revenue environment, it is increasingly difficult for stations to invest in their newsrooms, support local non-profits, join local chambers of commerce, or engage in other community development); Decl. of W. Lawrence Patrick, Legend Commc'n, LLC, Exh. L to Joint Radio Comments (due to loss of local ad revenue to giant digital platforms, his company moved to more syndicated programming and reduced its commitment to local service to preserve the jobs of employees and the company's necessary bottom line).

[66] For example, broadcasters have observed in their local markets a number of stations able only to "keep the power on" and unable to offer local programming, which they want to acquire and revitalize by providing local services, but cannot do so under the FCC's restrictions. *See* Joint Radio Comments at Exh. N (Decl. of M. Kent Frandsen discussing Logan, UT) and Exh. G (Decl. of Kristin Okesson describing Connecticut markets); 2023 Joint Radio Comments at Exh. G (Decl. of W. Lawrence Patrick discussing small markets in Wyoming). Broadcasters also attested in declarations that acquiring more stations locally would enable them to hire additional staff and to better coach and train their staff; better compete for employees; and hire staff not only to operate their radio stations and sell radio advertising but also to place digital ad buys for their advertisers, expand into video, and provide video ads and other production services for customers. *See* Joint Radio Comments, Exh. G, K, and N. In a case where a Connecticut broadcaster was able to achieve greater scale due to geographic proximity to New York City, that broadcaster attested that its scale enabled its stations to "serve as a central community hub" by producing extensive public service programming, supporting over a hundred nonprofit organizations, and increasing its local high school sports coverage. *Id*. at Exh. G.

[67] *See* Joint Radio Comments at 61, 63 and Exh. J, Decl. of Ricky Mitchell, Connoisseur Media, LLC (stating that permitting their cluster in Jackson, MS to add more stations would enable the addition of more and different formats and would give listeners more choices for local music). NAB submitted a report from BIA Advisory Services reconfirming that greater

Clearly the Coalitions do not speak for these radio broadcasters. The Commission summarily must reject any implication that smaller broadcasters *en masse* oppose modernization of the local radio caps and that only "radio conglomerates" support elimination of the 30-year-old local ownership limits.[68] The Coalitions appear unable to wrap their heads around the concept that many broadcasters support repeal of the local radio caps because they need greater scale in only one, a handful, or an otherwise modest number of local markets – not because they are or are aspiring to become national "conglomerates" but because they need a larger local footprint in their local markets to remain competitively viable and to serve their local communities.

Relatedly, NABOB – likely primarily on behalf of its president's current or former private clients – again referred to the findings of a 2022 BIA report that 72 percent of the Black-owned radio stations located in Nielsen markets grossed less than $1 million per year in OTA advertising revenues.[69] Citing BIA ad revenue data for 2023, NAB previously explained that these data about the OTA revenues of Black-owned stations were consistent with the economic struggles of smaller radio broadcasters and those in mid-sized and small markets

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local common ownership of radio stations results in increased variety in programming formats in local markets, and that repealing the outdated radio caps should again spur growth in the diversity of programming on local stations, as it did after the relaxation of the caps in 1996. *See* NAB Comments at 69-76 and Attachment A. NAB further explained that local scale helps enable improvements in local news programming, and that removal of the caps would lead to dramatic improvements in local service by permitting economically viable station groups to acquire and revitalize underperforming stations unable to maintain a real local presence or offer informational programming.

[68] Coalition Comments at 2, 12-13.

[69] NABOB Comments at 10, citing *Black Owned Radio Station Ownership and Revenue Report*, Exh. A to Comments of NABOB, MB Docket No. 22-459 (Mar. 3, 2023).

more generally.[70] Examining 2024 radio station ad revenues reveals the same result. In that year, the average radio station in Nielsen Audio markets 51-75, 76-100, 101-150, 151-200 and 201-242 all garnered under – and often well under -- $1 million in OTA ad revenues and the average radio station in markets 151-200 and 201-242 garnered *under half a million dollars* in OTA ad revenues, with the average station in markets 101-150 only slightly exceeding that half million level.[71] Over two-thirds (68.8 percent) of Black-owned radio stations are located in revenue-scarce mid-sized and small markets or unrated areas.[72]

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,[73] then a very large proportion of radio 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 the hundreds and continues to drop.[74] Rather than somehow supporting the retention of outmoded ownership caps, as NABOB suggested, radio stations' limited and declining ad revenues call for repeal of those economically harmful local caps. In a

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[70] *See* Reply Comments of NAB, GN Docket No. 24-119, at 9-10 (July 8, 2024). NAB showed that 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 OTA ad revenues and that the average radio station in markets 151-200 and 201-246 garnered *under half a million dollars* in OTA ad revenues in 2023, with the average station in markets 101-150 only slightly exceeding that half million level.

[71] Source: BIA Media Access Pro, Nov. 20, 2025.

[72] *See Black Owned Radio Stations Ownership and Revenue Report*, at 1, Exh. A to Comments of NABOB, MB Docket No. 22-459 (Mar. 3, 2023) (reporting that 45.2% of Black-owned radio stations are located in Nielsen Audio markets 51 or smaller and that 23.6% of Black-owned stations are in areas unranked by Nielsen, which are generally smaller communities and more rural areas.

[73] NABOB Comments at 10, Heading B (capitalizations omitted).

[74] *See* NAB Comments at 60-61.

competitive environment in which radio stations' ad revenues have declined, according to estimates by BIA Advisory Services and Borrell Associates, by over 30 percent from 2007[75] or by 43 percent just since 2013,[76] no case can be made for retaining rules directly impeding stations' ability to achieve economies of scale and attract vital advertising revenues and investment capital. The serious financial problems experienced by radio broadcasters today are not caused by "too much" common ownership of AM/FM stations but by the intense competition for audiences and ad revenues in the audio and ad markets, exacerbated by artificial restrictions on broadcasters' local scale.

Despite their avowed concern for small local broadcasters, the Coalitions notably neglected to explain how broadcasters – especially smaller ones and those outside the largest markets – are supposed to cover their substantial fixed costs of operating radio stations *and* earn sufficient revenues to continue providing, let alone improve, their free OTA programming services, attract and retain staff (including those trained to create and sell digital ad products and campaigns), and invest in their physical plant and improved

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[75] See NAB Comments at 59-60 (showing that radio stations' total ad revenue (OTA+digital) dropped 30.1% from 2007-2025, even without accounting for inflation).

[76] *See* Borrell Dec. 2025 Digital Advertising Report at 6 (estimating 43% decline of local radio ad revenue from 2013-2025). Rather than estimating the ad revenues obtained by local broadcast stations from local advertisers and from national advertisers that choose to advertise on local radio and TV stations, as BIA does, Borrell examines the other side of the local advertising marketplace. That is, Borrell analyzes the ad and marketing expenditures of local businesses within local markets, to arrive at its estimates for the advertising shares and revenues of media outlets in local markets. *See id*. at 1. Borrell now estimates that broadcast radio's collective share of all advertising expenditures by local advertisers is only *4.7%*, down from 7.0% just since 2019. *Id*. at 2. Advertising by local businesses, not national ones, represents the bulk of total radio station ad revenues. *See* J. Nielson, *Broadcast Investor: Radio and TV station annual outlook, 2025*, at 4, S&P Global Market Intelligence (July 11, 2025) (estimating that 81.3% of total radio spot revenue in 2025 was local).

technologies.[77] As the Joint Radio Broadcasters succinctly stated, "radio cannot exist on that less than 1%" of total local advertising share that individual stations receive across local markets.[78]

While failing to even nod toward the actual competitive conditions impacting the radio industry, including smaller operators, in 2026, NABOB again block quoted an evidence-free opinion piece (also quoted by the Coalitions) and a letter, both from 2018, to contend yet again that the FCC should forget about relaxing or repealing the radio caps because greater local scale would not help broadcasters compete for advertising in today's market anyway.[79] These very skimpy materials represent the "evidence" cited by these parties for that unfounded and illogical assertion.

This claim can be very simply refuted. According to the Commission, the "primary source of revenue" for commercial AM/FM radio is advertising and that to "secure the highest rates and to compete for advertising market share, stations strive to gain the largest audience of listeners possible."[80] Locally owning more stations that each air different types of programming designed to attract the widest possible range of listeners will help

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[77] *See, e.g.*, NAB Comments at 61-67 (explaining that broadcasters need greater scale to attract investment and realize economic efficiencies, which would enable them to cover their fixed costs, improve service to the public, and better compete for ad revenues).

[78] Joint Radio Comments at 26; Borrell Dec. 2025 Digital Advertising Report at 2.

[79] *See* NABOB Comments at 23-24. NABOB here quoted for at least the fourth time a 2018 opinion piece from Radio Ink and a 2018 letter from iHeart to the FCC. *See* Comments of NABOB, MB Docket No. 22-459, at 18-19 (Mar. 3, 2023); Comments of NABOB, MB Docket No. 18-349, at 14-15 (Sept. 1, 2021); Comments of NABOB, MB Docket No. 18-349, at 11-12 (Apr. 29, 2019) (all block quoting the same material quoted in its current comments). For their part, the Coalitions quoted NABOB quoting the same 2018 Radio Ink opinion piece, and it also block quoted a similar 2018 interview published in Radio Ink. *See* 2023 Coalition Comments at 20-21.

[80] *2024 Communications Marketplace Report*, GN Docket No. 24-119, FCC 24-136, at ¶ 287 (Dec. 31, 2024).

broadcasters grow their audiences; secure more favorable advertising rates; increase cash flow by taking advantage of scale economies; enable the investment in staff, training, and digital advertising products necessary to take greater advantage of digital ad opportunities; and thus compete more effectively for both digital and traditional ad dollars. It flies in the face of the most basic economic facts for these few commenters to contend that eliminating the FCC's asymmetric ownership rules to acquire additional stations, realize scale efficiencies, attract investors, and increase their audiences would not enhance their competitiveness in the media and ad markets.[81]

Beyond our earlier refutations, NAB and individual broadcasters already have refuted NABOB's and the Coalitions' counterfactual and economically uninformed argument again in this proceeding. The Joint Radio Commenters explained in detail that allowing greater levels of local ownership would increase broadcasters' ability to compete with digital media for advertising revenue by enhancing investment in the broadcast industry, and would increase station revenues by improving broadcasters' programming and, in turn, attracting audiences and thus more advertisers.[82] NAB similarly explained that

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[81] NAB elaborated on and buttressed by evidence this straightforward refutation of NABOB's and the Coalitions' identical claim in the last quadrennial review. *See* Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 36-44 (Feb. 16, 2022).

[82] *See* Joint Radio Comments at 55-64. Among other important questions, the Joint Radio Commenters discussed how greater local scale would enable radio stations to compete more effectively with digital outlets for advertising revenue. *Id*. at 55-59. *See also id*. at Exh. H, Decl. of David Bevins (attesting that with additional stations under common ownership, broadcasters could deliver unified reach and frequency across key demographics through one point of sale; create integrated, market-wide campaigns that combine multiple formats, audiences, and dayparts, which digital platforms provide but radio cannot under current caps; reduce transactional friction for advertisers, who now must negotiate with multiple sellers, contracts, invoices, and reporting systems to purchase radio advertising; reinvest scale-driven efficiencies into local content, talent, and community engagement, strengthening radio's value proposition relative to purely digital offerings; and offer more competitive pricing and

repealing asymmetric ownership caps and permitting station acquisitions would enable broadcasters to obtain more investment and realize vital economies of scale; attract larger, more varied audiences and thus more advertisers; and with these additional resources pay, train, and retain talented sales staff, create stronger digital ad products, and offer multimedia marketing campaigns to attract both digital and traditional advertising.[83] The fact that NABOB and the Coalitions want to deny all-sized broadcasters, including smaller ones, the opportunity to achieve greater local scale, attract investment, increase their audiences, and better compete for traditional and digital advertising, shows either their unwillingness to fully confront today's marketplace realities or, in the case of the Coalitions, the desire to keep the radio industry artificially weak.

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packaging, making radio a more viable alternative for advertisers); Exh. N. Decl. of M. Kent Frandsen (broadcaster explaining that, in a situation where geographic proximity to another market permits his company to own more local radio stations than might otherwise be possible, that scale has allowed his stations to "be the local voice for advertisers" and hire staff not only to sell radio advertising but also to act as a marketing agent for their advertisers in placing digital media buys, provide video ads and other production services for customers, and distribute their video ads in their own digital products and to connected TV platforms serving the area); and Exh. F, Decl. of Katie Philippi (explaining that due to the FCC's ownership restrictions, advertisers must work with the systems used by multiple broadcasters in local markets (even smaller ones), thus requiring those advertisers to deal with multiple sales reps, pay multiple invoices, and interpret multiple rate cards from each broadcaster in order to reach audiences in their target demographics, in contrast to the digital space where nearly every impression is available to be bought and sold by a single vendor).

[83] NAB Comments at 62-69. As NAB earlier discussed, because many advertisers want to buy from companies selling multimedia packages of digital and traditional media ad products, the radio industry has significant opportunity to increase ad revenues by offering both on-air and digital ad options, as well as video, to local businesses. In fact, Borrell found last year that traditional local media companies (including broadcasters and newspapers) had "clawed back" a modest amount of locally spent digital advertising "by offering what the large pureplay [digital] companies can't: personalized service, multimedia marketing campaigns, and creative advice and services." Borrell Associates, *2025 Annual Report Benchmarking Local Digital Media*, at 5, 8-9 (May 15, 2025) (noting that traditional local media companies had captured 14.9% of locally spent digital advertising in 2024, up from 12.3% in 2020). But as NAB and the Joint Radio Broadcasters showed, local radio broadcasters lacking scale also lack the resources, including the trained staff, to provide such advertising services.

Fourth, the Coalitions – in a clear display of regulatory rent-seeking – have made a practice of opposing modernization of the radio ownership rule and other FCC rules impacting broadcasters, thereby disproportionately burdening small broadcasters with the fewest resources and those stations in mid-sized and smaller markets with limited ad revenues. Frustrated by their inability to persuade Congress to alter copyright law and impose a performance tax on radio stations' OTA music broadcasts, the Coalitions and the multi-billion dollar record labels express their ire against NAB by urging the Commission to retain harmful ownership regulations on local radio stations.[84] But the Coalitions' unhappiness over their frequent failures on Capitol Hill to convince Congress to rewrite copyright law is not a reason for the FCC to retain asymmetric radio ownership caps or any other outdated broadcast restrictions. NAB has refuted on multiple occasions[85] the Coalitions' wholly erroneous and repetitive claim that AM/FM radio stations "enjoy a significant and unfair advantage over every other audio delivery service" because Congress has not imposed a performance rights fee (in addition to the royalites broadcasters already pay) on local stations' OTA music broadcasts.[86] The FCC accordingly should reject the music industry's tiresomely repetitive invitation to become involved in a decades-long legislative debate about copyright policy.

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[84] *See* 2023 Coalition Comments at 22-24 (discussing their support for legislation changing copyright law); *see also, e.g.,* Joint Comment of the Coalitions, MB Docket No. 18-349 (Apr. 29, 2019); Reply Comments of the Coalitions, MB Docket No. 18-349 (Oct. 1, 2021).

[85] *See, e.g.*, Reply Comments of NAB, GN Docket No. 24-119, at 26-31 (July 8, 2024); Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 13-15 (Feb. 16, 2022); Reply Comments of NAB, GN Docket No. 22-203, at 19-25 (Aug. 1, 2022).

[86] 2023 Coalition Comments at 22.

NAB first wants to dispel the Coalitions' repeated, misleading assertion that radio stations do not "compensate music creators."[87] In fact, radio broadcasters pay royalties to the composers of the music they air OTA and stream online. Broadcasters that webcast also pay millions of dollars in 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, and thus often the three giant ones. 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.

The Coalitions' repetitive claims that AM/FM radio stations have a significant competitive advantage over other participants in the audio marketplace due to one aspect of federal copyright law is nonsense. Terrestrial radio stations 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 world.[88] The idea that terrestrial radio broadcasters have any "significant" or "unfair" competitive advantage over such corporate behemoths is absurd. In addition, Congress requires radio broadcasters to provide their product – their signal – for *free* to the public. Do the recording companies want to take on that same obligation?

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[87] 2023 Coalition Comments at 22.

[88] 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 102.

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, as noted earlier, 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. The FCC has observed that online audio providers "do not incur the same Commission regulatory compliance costs" as broadcast licensees.[89]

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 any relevant competitive advantage and are not a valid basis for the FCC to retain three decades-old radio ownership caps or other antiquated broadcast regulations. Despite asserting since 2018 that terrestrial radio stations enjoy a significant and unfair competitive advantage over every other audio delivery service, the Coalitions have never explained – because they cannot – how those

[89] *2024 Communications Marketplace Report*, GN Docket No. 24-119, FCC 24-136, at ¶ 304 (Dec. 31, 2024).

services have managed to expand and thrive, while many AM/FM stations struggle to earn adequate advertising revenues to cover their fixed costs and remain viable, let alone improve their services to the public.[90]

While pretending in this proceeding to cry yet another river over the struggles of small broadcasters to compete, the Coalitions now have spent years trying to persuade Congress to impose a performance rights fee on local radio stations, including smaller broadcasters, those in mid-sized and small markets with particularly restricted advertising revenue opportunities, and minority-owned stations including NABOB's members. The Coalitions neglected to explain how imposing new fees on stations generating modest annual revenues (and likely miniscule profits, if any) would enable those stations to better compete and serve their local communities in today's hyper-competitive audio marketplace. 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.[91]

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

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[90] *See* NAB Comments at 59-62; Written *Ex Parte* Communication of NAB, MB Docket No. 18-349, at 34-36 (Feb. 16, 2022).

[91] *See, e.g.*, 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 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); Comment of the Coalitions, MB Docket No. 24-14 (Mar. 11, 2024) (taking issue with FCC's earlier repeal of the main studio rule).

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, ten, or more 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 inability to convince Congress to impose additional royalty payments on local radio stations' OTA broadcasts of music. The Commission should summarily reject their arguments here.

B. Claims that the Radio Subcaps Should Be Kept to Protect AM Radio and AM Station Owners Are Erroneous and Empirically Unsupported

The Coalitions and NABOB repeated their specious claims that the Commission should retain the 30-year-old caps and subcaps, especially on FM station ownership, to supposedly protect AM radio and owners of AM stations.[92] Those commenters offered no empirical evidence or any convincing rationales for their misguided arguments, which NAB has previously refuted and which have become even more untenable.[93]

As an initial matter, the Coalitions gave no sound reasons for their split position opposing any FM deregulation while not opposing AM deregulation and offered nothing to address the serious competitive problems facing many FM stations and the radio industry as a whole. NAB and other commenters have repeatedly shown with studies

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[92] NABOB opposed any changes to the 1996 caps and subcaps, while the Coalitions opposed any loosening or repeal of the limits on FM ownership and took no position on relaxing the limits on AM ownership. NABOB Comments at 3; Coalition Comments at 1-2.

[93] *See, e.g.*, Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 46-49 (Feb. 16, 2022); Reply Comments of NAB, MB Docket No. 18-349, at 51-54 (May 29, 2019).

and empirical evidence that the radio industry overall, including FM stations, faces vastly expanded competition in the media and ad markets, especially from online content providers and digital ad platforms.[94] These data stand unrefuted. Thus, no economic basis justifies regulatory relief for the AM service but not for FM, and the Commission should reject the idea that FM radio should be left to decline under harmful local restrictions while relief is granted to AM stations.

Nor does any other putative rationale support the notion that the existing subcaps (whether both AM and FM or FM only) should be maintained. Claims that granting regulatory relief to FM radio would cause serious harm to the AM service and AM station owners should be rejected as unsupported by data or sound reasoning.[95] No empirical evidence bolsters these claims, with the Coalitions and NABOB citing assertions from a 2019 symposium,[96]

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[94] *See, e.g.*, NAB Comments at 46-62; Joint Radio Comments at 13-47 and Exhibits A (Edison Share of Ear 2025 Study); B (Borrell Dec. 2025 Digital Advertising Report); D (Decl. of Larry Rosin, President, Edison Research); E (Edison Research 2025 Data Tables); and F-N (declarations of radio broadcasters and station brokers); 2023 Joint Radio Comments at 9-31 (also attaching reports on competition in the audio and ad markets from Edison Research and Borrell Associates). *See also* Reply Comments of NAB, MB Docket No. 18-349, at 66-68 and Attachment A (Oct. 1, 2021) (documenting stark declines in FM stations' nominal and real ad revenues and Average Quarter Hour listening, the audience metric upon which advertising is sold); Comments of NAB, GN Docket No. 20-60, at 18-19 (Apr. 27, 2020) (documenting significant declines in FM stations' nominal and real ad revenues).

[95] *See* NABOB Comments at 17, 20-22; Coalition Comments at 17-21.

[96] Coalition Comments at 17 (citing the same 2019 FCC symposium referenced above).

letters to the FCC from 2018 and 2019,[97] a very few comments lacking actual data,[98] and each other.[99]

Not only is it unproven and unlikely that repealing the FM caps would significantly harm the AM service, but this claim also ignores the actual cause of the entire radio industry's competitive struggles – the competition for audiences and ad revenues presented by myriad audio (and video) content providers and advertising options, including digital. As the Joint Radio Broadcasters have documented, while radio stations compete with each other, most of the radio industry's "toughest competition" for audiences and ad revenues now comes from pureplay streaming and online content providers and the giant digital ad platforms.[100] NABOB's reliance on the disadvantages that AM stations faced in *1992* when the audio market consisted solely of broadcast stations cannot remotely justify retention of the aged radio subcaps in 2026.[101]

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[97] NABOB Comments at 20-21; Coalition Comments at 18 & n.64. Interestingly, both NABOB and the Coalitions cited a June 2018 letter from Salem Media to FCC Chairman Pai expressing concern about the negative effect that eliminating or relaxing the subcaps would have on the value of AM radio. In October 2025 in this proceeding, Salem Media expressed support "for eliminating all restrictions on AM station ownership, while allowing broadcasters to own up to eight FM stations in Nielsen Audio Markets 1-75." Salem Media, Notice of Ex Parte Communication, MB Docket No. 22-459, at 1 (Oct. 17, 2025). NABOB also quotes a 2018 iHeart letter to the FCC claiming that relaxation or repeal of the limits on FM ownership would result in mass divestiture of AM stations and a dramatic devaluation of AM radio stations. NABOB Comments at 20-21. There is no sound basis for believing that reforming or repealing the radio subcaps would cause such claimed abandonment of AM. After all, if the radio caps for both AM and FM are removed as NAB and many broadcasters urge, station owners would not need to divest their existing AM holdings to acquire additional FM stations.

[98] Coalition Comments at 18-22.

[99] Coalition Comments at 21-22 (quoting NABOB at length).

[100] Joint Radio Comments at 36, Heading 3 (capitalizations omitted); *id*. at 15, citing Borrell 2025 Digital Advertising Report.

[101] *See* NABOB Comments at 17 (citing FCC's adoption of subcap limits in its 1992 order modestly loosening the local radio rule). NABOB (at 18-20) also quoted at length the FCC's

To restate the obvious, handicapping FM stations by refusing to grant any regulatory relief to them will not help AM stations meet their competitive challenges in today's digital-centric marketplace. That is why NAB and many broadcasters support repeal of both the AM and FM limits, thereby allowing broadcast owners to acquire AM (and FM) stations beyond the 1996 subcap levels. As JVC Broadcasting recently explained, the AM/FM subcaps prevent broadcasters from pairing AM stations with stronger FM assets or radio clusters that could sustain them, including by investing in digital simulcasting, and concluded that "[a]rtificial ownership distinctions do not preserve AM radio" but "hasten its decline."[102] The International Center for Law and Economics similarly criticized the subcaps as impeding the "creation of robust, mixed-signal groups that can cross-subsidize and innovate," concluding that the subcaps, rather than protecting the viability of AM radio, might "instead promote fragility across the AM band."[103]

While NAB certainly agrees that AM stations provide valued service to the public,[104] the value of AM services provides no rational basis for declining to grant regulatory relief to FM stations, which similarly provide highly valued programming,

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2013 rulemaking notice and 2015 order on AM revitalization about the challenges of AM radio, such as competition from higher fidelity alternatives – notably including "satellite radio, personal media players, podcasts, and audio streams provided over the Internet," as well as FM – and declining listenership and advertising revenues. *Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15222-23 (2013). Even in 2013, the FCC recognized that the "sustainability of the AM broadcast service has been threatened by the migration of AM listeners to newer media services." *Id*. (noting that "[d]igital media sources can also provide advanced consumer-friendly features, such as real-time data and information displays, that are not available via analog AM radio"). These challenges do not justify retaining caps on FM (or AM) ownership, given that all radio broadcasting is struggling to thrive, or even survive, against pervasive competition from digital media sources in 2026.

[102] Reply Comments of JVC Broadcasting, MB Docket No. 22-459, at 2 (Dec. 22, 2025).

[103] ICLE Comments at 10-11.

[104] *See* Coalition Comments at 17, 22; NABOB Comments at 21.

including EAS alerts and emergency journalism. Under the Communications Act, the Commission should consider and address the continued viability of the public's radio service as a whole and across all-sized markets.[105] Contrary to NABOB's position, it also would be inappropriate for the FCC to effectively coerce broadcasters into acquiring or retaining one type of radio outlet over another,[106] or retain, as the Coalitions argued, limits on FM ownership to protect companies that "chose to invest in AM radio" by "help[ing] them maintain the value of their AM holdings."[107] Given the hostility that the Coalitions show toward all radio broadcasters but the very smallest, their apparent belief that the government should maintain restrictions for the purpose of protecting even the largest broadcasters' investments seems surprising.[108] Nor is it appropriate to keep ownership rules that effectively require broadcasters to continue AM operations even if they believe that offering content on FM

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[105] See NAB Comments at 9-12, quoting *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992) and S. Rep. No. 102-92, at 36 (1991) (urging FCC to reform its broadcast regulatory regime – and first and foremost its ownership restrictions – because the broadcast "industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability" and Congress has explicitly directed the FCC to "ensure that our system of free broadcasting remains vibrant").

[106] In identical language from its ownership filings in 2023, 2021, and 2019, NABOB again supported retention of the 1996 ownership caps because "companies seeking to maximize the number of stations they own in a market *must* own AM stations" and opposed giving radio owners "*permission* to abandon AM radio as part of their market maximization strategies." NABOB Comments at 21-22 (emphases added). Beyond improperly coercing owners into one type of investment over another, NABOB's reasoning is not even logical. NAB proposes no limits on AM or FM ownership so owners could "maximize" their number of AM stations in all markets without any FCC limit, and no owners would need to divest any of their currently owned AM stations to purchase additional FMs.

[107] Coalition Comments at 18 (citing 2018 and 2019 letters to the FCC).

[108] According to the Coalitions, two types of radio broadcasters exist: very small, local independent broadcasters that locally program their stations and "radio conglomerates" that cut staff, eliminate jobs, air remotely produced nationally syndicated programming, and fail to invest in local programming. *See* Coalition Comments at 2-3, 11-12. The Coalitions' fantasy view of the radio industry already has been refuted. *See, e.g.*, 2023 Joint Radio Reply Comments at 17-20, 24-25; Joint Radio Comments at 59-64 and Exh. F-N; NAB Comments at 69-77; Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 44-46 (2022).

stations would better serve their audiences and/or reach a larger audience.[109] That is not the meaning of the public interest under the Communications Act and would not fulfill the FCC's Section 202(h) obligations.

C. Claims that the Local Radio Ownership Rule Promotes Minority and Female Ownership of Broadcast Stations and New Entry Are Erroneous and Empirically Unsupported

Finally, Free Press, NABOB, and the Coalitions repeat unfounded claims that local ownership restrictions promote minority and female station ownership and new entry, and thus viewpoint diversity as well.[110] As NAB has explained in detail on multiple occasions, the FCC's maintenance of local and national ownership restrictions for over eight decades has failed to effectively advance minority and female ownership because ownership caps do not address the problem that everyone, including the FCC since at least 1978, agrees actually impedes such ownership and new entry – the lack of access to capital.[111] The artificial, asymmetric ownership caps in fact exacerbate that problem, as well as undermining the competitive viability of the broadcast industry, by hindering new investment in broadcasting.[112]

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[109] *See* ICLE Comments at 10; Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 49 & n.202 (Feb. 16, 2022).

[110] *See* Free Press Comments at 37-41; NABOB Comments at 12-16, 22; Comments of NABOB, MB Docket No. 22-459, at 2-3, 9-12 (Mar. 3, 2023); Coalition Comments at 3, 21-22; 2023 Coalition Comments at 25-27.

[111] In 1978, the FCC's Minority Ownership Task Force stated that the "principal barrier to minority ownership is the availability of funding" and concluded that "minorities must gain access to capital markets, or else they will continue to remain underrepresented among the ranks of station owners." FCC, *Minority Ownership in Broadcasting*, Minority Ownership Taskforce Report, at 11-12 (May 17, 1978).

[112] *See, e.g.*, NAB 2023 Comments at 5-9; Reply Comments of NAB, GN Docket No. 24-119, at 31-38 (July 8, 2024); Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 51-56 (Feb. 16, 2022); Reply Comments of NAB, MB Docket No. 18-349, at 20-27 (Oct. 2, 2021); Comments of NAB, MB Docket No. 18-349, at 9-19 (Sept. 2, 2021).

Beyond the long-term problem of lack of access to capital, NAB previously explained that the only recent additional barrier to increased diversity of station ownership is the FCC's transaction review process.[113] On the precipice of one of the largest infusions of capital into the broadcasting business by a minority owner in history, the Media Bureau, under the direction of former FCC Chairwoman Rosenworcel, remarkably rejected the proposed Standard General-TEGNA transaction, even though in its hearing designation order, the Bureau did not state that the transaction would violate any FCC rules.[114] By artificially depressing the number of minority-controlled broadcast stations, the previous Commission made it abundantly clear that when faced with an unprecedented opportunity to increase diversity in broadcasting, rather than kowtowing to those hostile to the broadcast industry, including the pay TV industry, diversity suddenly became not all that important. At that point, the FCC's and advocacy groups' time for crying wolf about diversity expired.

So too has the time for Free Press, the Coalitions, and NABOB here. Despite NAB having earlier refuted highly questionable claims linking structural ownership rules to fostering of diverse station ownership, these three parties repeated them here, yet again without providing empirical evidence or studies establishing that ownership restrictions effectively promoted minority/female ownership or viewpoint diversity in the past or that their removal would harm ownership diversity in the future. As an initial matter, the levels of diverse ownership were notably *lower* in the past when the ownership rules were much *stricter* than today, indicating that retaining structural

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[113] NAB 2023 Comments at 6-7.

[114] *See* Hearing Designation Order, MB Docket No. 22-162, DA 23-149 (Feb. 24, 2023).

ownership rules for 80-plus years has not fostered minority and female ownership.[115] The Supreme Court, moreover, found in 2021 that the FCC's own data sets[116] and Free Press' 2007 studies "showed the same long-term *increase* in minority ownership" after the local TV and radio rules were relaxed in the 1990s.[117] Based on 2023 FCC data, Free Press reported here that the number of full-power commercial radio and TV stations owned by women and people of color has further increased since their 2007 studies, thereby "indicating <u>some</u> progress."[118] Despite these data showing that past relaxation or repeal of the FCC's multiple and cross-ownership rules did not result in declines in minority/female station ownership but coincided with increases in such ownership, Free Press illogically still insisted that loosening or eliminating the local radio rule would "deal a devasting blow to radio ownership diversity"[119] – an assertion directly contradicted by the data it set forth. In any event, neither

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[115] In 1978, minorities "control[led] fewer than *one percent*" of the commercial radio and TV stations in the U.S. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 981 (1978) (emphasis in original). In the mid-1970s, FCC rules (1) set the national TV cap at seven stations; (2) prohibited the common ownership of more than one TV station in the same local market; (3) banned common ownership of a newspaper and a single radio or TV station in the same market; (4) prohibited common ownership of one radio station (or an AM/FM combo) and a single TV station in the same market; (5) banned common ownership of a cable TV system and a broadcast TV station in the same area; (6) set the national radio cap at seven AM and seven FM stations; and (7) prohibited common ownership of more than one radio station in the same service in the same local market.

[116] In 2016, the FCC 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. It concluded then that "[n]o data provided in the record support a contention that the [local TV] duopoly rule has reduced minority ownership or 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." *2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, 9895, 9911-12 (2016) (2016 Ownership Order).

[117] *FCC v. Prometheus Radio Project*, 592 U.S. 414, 426 (2021) (emphasis added). *See* Free Press Comments at 39 (referencing those same 2007 studies).

[118] Free Press Comments at 39-40 (emphasis in original).

[119] *Id*. at 41.

Free Press, NABOB, nor the Coalitions have provided empirical data or statistical analyses demonstrating that relaxing the radio (or TV) ownership restrictions would harm ownership diversity *in the future*, as the Supreme Court has indicated may be required.[120]

For all these reasons, the FCC should reject these parties' woefully unsupported claims that the *ex ante* local ownership rules promote diverse station ownership – and it must ignore Free Press' multiple contradictory and hypocritical arguments.[121] Time has long run out for parties that failed to work for – or that even opposed – FCC ownership diversity policies who nonetheless sought and continue to seek to use the issue of minority/female station ownership to oppose modernization of analog-era FCC ownership rules that harm broadcasters.

Similarly, empirical evidence showing that the existing (or even former) broadcast ownership rules have promoted viewpoint diversity in the past, or would be likely to do so in

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[120] In upholding the FCC's 2017 decision eliminating or reforming several ownership rules, the Supreme Court unanimously found that no party had produced "evidence indicating that changing the rules was likely to harm minority and female ownership," and specifically found wanting the two 2007 Free Press studies in the record there (and referenced again here) 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*, 592 U.S. at 426.

[121] Free Press additionally spoke out of both sides of its mouth when referencing the FCC's radio ownership incubator program. On page 39 of its comments, Free Press derided that policy as a "fig-leaf" that was "never going to make any meaningful progress" in promoting ownership diversity. Two pages later, it excoriated relaxation or repeal of the local radio caps and observed that such reform would "directly undermine" that same radio incubator program, the FCC's "<u>only</u> proactive ownership diversity policy." Free Press Comments at 39, 41 (emphasis in original). To be clear, Free Press claimed that the FCC must not loosen the local radio rule because doing so would undermine an ineffective "fig-leaf" policy that Free Press, along with other parties, challenged in the Third Circuit Court of Appeals (and subsequently at the Supreme Court). The illogic, inconsistency, and hypocrisy are breathtaking.

the future, remains conspicuous by its absence in this proceeding. That absence is hardly surprising. In 2016, the FCC concluded that neither it nor commenters in the 2010 and 2014 quadrennial reviews 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 generally impeding study of the connection between viewpoint diversity and ownership, including the "lack of a reliable measure of viewpoint."[122] To NAB's knowledge, the FCC has never demonstrated a connection, buttressed by empirical evidence, between ownership of media outlets, any of its existing or former structural ownership rules (e.g., the newspaper/broadcast cross-ownership ban), and viewpoint diversity in the marketplace.[123] The Coalitions, Free Press, and NABOB do not come close to filling this yawning evidentiary gap.

NABOB also cited Black audiences' reliance on radio as supporting retention of the local radio rule.[124] But that engagement with radio does not show that keeping ownership caps dating from 1996 serves the public interest in 2026's highly competitive audio and ad markets. In fact, it is *more* important for any audiences reliant on broadcasting that the Commission ensures its ownership rules allow local broadcasters to achieve the economies of

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[122] 2016 Ownership Order, 31 FCC Rcd at 9995 and n.944; *see also id*. at 9987-88.

[123] As discussed in several filings incorporated into this proceeding, NAB previously 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* such diversity. *See, e.g*., Reply Comments of NAB, GN Docket No. 22-203, at 27-28 & n.81 (Aug. 1, 2022); Comments of NAB, MB Docket No. 18-349, at 67-68 & n.261-262 (Apr. 29, 2019). These studies' results are unsurprising, given the extensive scholarship identified by NAB that factors other than separate ownership (e.g., market forces, especially consumer preferences) primarily drive viewpoint/content diversity on media outlets. *See id*.

[124] NABOB Comments at 9.

scale and attract the investment, audiences, and advertisers necessary for them to support quality, free OTA services. And while Black audiences use traditional OTA radio, they also spend more time per week than the overall U.S. population on websites and apps.[125] Fifty-eight percent of Black Americans also listen to or watch podcasts at least monthly, higher than the 55 percent of the U.S. population ages 12+ as a whole.[126] Black consumers, like Latino audiences and American consumers generally, have fully embraced the digital media revolution.[127]

Ironically, while NABOB and the Coalitions apparently recognize, as have the FCC, other government agencies, Congress, and innumerable broadcasters, that lack of access to capital hinders diverse broadcast ownership,[128] they either fail to understand or ignore that their

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[125] Nielsen, *Engaging Black Audiences*, at 7 (2025). Nielsen reported that "Black audiences are driving trends across digital media," *id*., and found in 2024 that video "streaming makes up a larger share of Black audiences' total TV time compared to the overall U.S. population." *Id.* at 9.

[126] NAB Comments at 49, citing Edison Research, *The Podcast Consumer 2025*, at 13-14 (July 23, 2025) and Edison Research, *The Infinite Dial 2025*, at 41 (Mar. 20, 2025).

[127] *See, e.g.*, Nielsen, *Curating the Narrative: How Hispanic viewers are creating their media experiences*, Nielsen Diverse Intelligence Series (2025) ("streaming now commands the lion's share of Hispanic audiences' attention," with Hispanic viewers' time spent with streaming on TV exceeding the time spent with streaming by the U.S. population generally); G. Winslow, *Nielsen: Hispanic Consumers 'Leading the Way' in Consuming Streaming Content*, tvtechnology.com (Sept. 11, 2025) (citing new research from Nielsen that Hispanic consumers are early adopters of digital technologies and are "leading the way when it comes to consumption of streaming content"); G. Winslow, *Latinx Viewers Are Avid Streamers and More Likely to Be Pay TV Subscribers*, tvtechnology.com (Apr. 24, 2025) (citing new data from Horowitz Research showing that Latinx consumers are more likely to use FAST channels and have higher subscription rates for SVOD streaming services).

[128] *See* NABOB Comments at 16; 2023 Coalition Comments at 25 (quoting NABOB); *see also, 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) (documenting universal agreement that access to capital is the predominant barrier to station ownership by new and diverse entities). NABOB also identified Congress's repeal of the minority tax certificate policy in 1995 and the Supreme Court's *Adarand* decision as contributing to the dearth of Black-

"solution" – maintaining existing ownership restrictions – will not solve or even directly 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. Numerous economic studies have found that asymmetric regulation of an industry creates regulatory distortions, drives up the regulated industry's costs, causes scarce capital to flow to less regulated industries, undermines innovation, and deters new firm entry into the regulated industry.[129]

Predictably, NABOB, the Coalitions, and Free Press failed to address *how* structural ownership rules would better enable new entrants, including minorities and women, to obtain investment capital needed to acquire and operate stations.[130] It strains reason to believe that they do. As explained in previous FCC proceedings, ownership restrictions actually 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; artificially depress the value of broadcast stations, which if anything disproportionately increases the ability of white male investors, who

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owned broadcast stations. NABOB Comments at 13-15. As NAB earlier explained, the tax certificate policy succeeded in fostering minority station ownership because it addressed the lack of capital problem. *See* Reply Comments of NAB, MB Docket No. 18-349, at 16-17 (Oct. 1, 2021).

[129] *See* NAB Comments at 62-65; Comments of NAB, GN Docket No. 24-119, at 30-37 (June 6, 2024).

[130] *See, e.g., Schurz Communs. v. FCC*, 982 F.2d 1043, 1055 (7th Cir. 1992) (rejecting argument that the financial interest and syndication rules promoted diversity because FCC had failed "to explain *how* [the rules] do this") (emphasis added).

generally have greater access to capital than women and minorities, to acquire broadcast stations; and reduce the long-term attractiveness of broadcasting relative to other investment opportunities.[131]

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."[132] 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

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[131] Reply Comments of the Center for Regulatory Effectiveness, MB Docket No. 06-121, *et al*., at 2-3 (Oct. 25, 2007); *see also* Decl. of W. Lawrence Patrick at 2, Exh. L to Joint Radio Comments (radio station broker stating that some radio station owners wanting to sell their stations have found no interested buyers in markets ranging from San Francisco, Salt Lake City, San Antonio, Boston, San Diego, Orlando, Richmond, Lansing, and Alexandria to several dozen unrated markets, and that these owners remain "locked into a declining asset situation," especially because they cannot sell to other in-market broadcasters due to the FCC's ownership rules).

[132] Letter from David Honig, President, MMTC, MB Docket No. 13-50 (Apr. 15, 2013). *See also Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, 33 FCC Rcd 7911, 7915 & n.19 (2018) (New Entry Order) (noting conclusion of FCC advisory committee that the "current state of financing for media transactions is dire").

needed capital to acquire or improve stations, as small radio broadcasters have explained.[133]

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."[134] 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.[135] 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 rules, and noted that its long-standing, stricter rule had not fostered minority ownership.[136] The Commission accordingly concluded it would be "inappropriate" to "retain or adopt [ownership] rules in order to deflate market

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[133] *See, e.g.*, New Entry Order, 33 FCC Rcd at 7915 & n.19-20 (citing numerous small broadcasters and station brokers agreeing that banks were very reluctant to provide capital to broadcasters because they lacked traditional tangible collateral and were especially hesitant to provide financing for new entrants).

[134] Report and Order, 100 FCC 2d 17, 48 (1984) (1984 Ownership Order) (reforming 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*.

[135] *Id*. at 48-49.

[136] *Id.*

prices artificially."[137] Notably, the FCC also recognized that its ownership rules were "not designed to foster minority ownership in the broadcasting industry" and have "not yielded such an effect."[138]

In short, the Commission must reject commenters' claims that retaining its existing antiquated ownership rules will foster new entry and diversity. It would be arbitrary and capricious and contrary to Section 202(h) for the FCC to retain competitively unsound structural ownership rules for the purported purpose of promoting new entry, diverse ownership, and by implication viewpoint diversity because (1) it lacks sound empirical evidence showing that such rules have in the past effectively promoted ownership or viewpoint diversity or that changes to those rules would likely harm future levels of minority/female ownership; (2) it has explicitly found that the primary barrier to increased ownership diversity is the lack of access to capital, which structural ownership rules do not remedy; and (3) asymmetric regulations discourage investment and entry by reducing the attractiveness of broadcasting to lenders, equity investors, and potential new entrants and help starve existing and prospective broadcasters of necessary capital.[139]

NAB instead urges the Commission to eliminate its *ex ante* radio (and, as addressed below, TV) ownership rules to encourage investment in existing and prospective station owners and allow broadcasters to achieve needed economies of

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[137] *Id.* at 49.

[138] *Id*. at 48.

[139] *See* Decl. of W. Lawrence Patrick at 2, Exh. L to Joint Radio Comments ("The decline in growth at most radio stations has made the industry less attractive to new entrants and to companies that provide financing to potential station buyers. Thus, we have seen the value of broadcast stations plummet over the last decade. In markets all across the country, stations are selling for a fraction of what they would have sold for a decade ago – if buyers can be found at all.").

scale. 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 create yet more options for both in the future – a future in which broadcasters want to remain a vital component, assuming the FCC's regulatory regime will let it.

IV. COMMENTERS SUPPORTING RETENTION OF THE UPDATED *EX ANTE* LOCAL TV OWNERSHIP LIMIT FAIL TO DEMONSTRATE THAT THE RULE REMAINS NECESSARY IN THE PUBLIC INTEREST DUE TO COMPETITION, AS REQUIRED BY SECTION 202(H)

The record overwhelmingly supports NAB's proposal to eliminate the *ex ante* local television ownership rule, given revolutionary changes to the marketplace in which local TV stations compete for viewers, advertising dollars, programming, and investment.[140] To maintain their existing marketplace advantages in terms of both scale and fewer regulations, however, pay TV industry commenters continue to urge the Commission to retain or even increase asymmetric ownership restrictions on local TV stations. For their part, the ideological advocacy groups continue their decades-long opposition to any relaxation of broadcast ownership restrictions by repeating arguments NAB previously refuted, selectively quoting and overstating sources, mispresenting studies, misstating facts, and ignoring the realities of the digital media marketplace.

NAB strongly urges the Commission to resist these calls for retaining or expanding the outdated local TV ownership rule. The rule unquestionably harms TV broadcasters' ability to provide quality local OTA service and compete with their much larger, less regulated competitors and cannot be justified in the current marketplace. Commenters supporting

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[140] *See* NAB Comments at 82-128; Comments of Gray Media, MB Docket No. 22-459, at 1-23 (Dec. 17, 2025) (Gray Comments); Comments of Nexstar Media Inc., MB Docket No. 22-459, at 1-20 (Dec. 17, 2025) (Nexstar Comments); Comments of Sinclair, Inc., MB Docket No. 22-459, at 3-6 (Dec. 17, 2025); ICLE Comments at 12-16.

retention and/or expansion of the rule have not (and cannot) provide any valid legal or factual basis for their proposals.

A. Pay TV Providers Have Not Justified Their Self-Serving "Wish Lists" for Additional Outdated Broadcast Regulation

Perhaps the initial comment deadline in this proceeding was too close to the holidays, because pay TV providers' comments look more like a young child's present list for Santa than genuine engagement with the serious issues affecting local television stations and their viewers. Proposals from the pay TV industry are written as though the Commission has a statutory mandate to ensure that pay TV providers have low-cost inputs into the services they build their businesses off of by reselling them to consumers. Of course, no such mandate exists, and no rational governmental entity would believe that regulating the prices paid by pay TV providers for such inputs would benefit the public unless the government also regulated consumer prices for pay TV service – which pay TV operators strenuously oppose.[141]

As in previous proceedings, the pay TV interests here have failed to show that broadcast TV station combinations result in higher retransmission consent rates. Even if limiting those combinations could be shown to reduce pay TV providers' retransmission consent rates, this still is not a *public interest* consideration since there

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[141] *See, e.g.,* Comments of NCTA – The Internet & Television Ass'n, MB Docket No. 24-20 (Mar. 8, 2024); Comments of the American Television Alliance, MB Docket No. 24-20 (Mar. 8, 2024); Comments of NTCA—The Rural Broadband Ass'n, MB Docket No. 24-20 (Mar. 8, 2024); Letter from Michael Nilsson, Counsel to ACA Connects—America's Communications Ass'n (ACA) to Marlene H. Dortch, FCC Secretary, MB Docket No. 24-20, at 1 (Mar. 8, 2024) (documenting ex parte meetings where ACA supported positions taken in comments filed by ATVA, of which it is a member); Comments of DISH Network LLC, MB Docket No. 24-20 (Mar. 8, 2024) (each opposing an FCC proposal to require cable operators and direct broadcast satellite (DBS) providers to give their subscribers rebates when those subscribers cannot access video programming on their multichannel platform due to contractual disputes with broadcasters or other programmers).

is no guarantee – or even a reasonable expectation – that any cost savings would be passed along to consumers. The Commission should not become involved in the pay TV industry's continuing effort to make an end-run around a statutory provision it simply does not like: the Section 325 requirement for an MVPD to obtain a broadcaster's consent to carry its signal with no governmental involvement in the prices, terms, and conditions of that consent.

Pay TV providers advanced a variety of proposals, including retention of the two-station limit, reinstatement of some version of the top four prohibition vacated by the Eighth Circuit Court of Appeals, treatment of multicast streams and low-power television stations as full-power stations, adoption of a presumption that certain transactions are contrary to the public interest (because of how they will affect pay TV providers), and certain retransmission consent rule changes. As explained below, these pay TV-centric proposals would violate Section 202(h), other Communications Act provisions, the APA, and/or the Constitution and should be jettisoned.

1. The Commission Should Not Adopt a Pay TV-Centric View of the Marketplace for Purposes of Its Public Interest Analysis in This Proceeding or in Individual Transactions

Several pay TV commenters urged the Commission to retain the two-station limit,[142] but their proposal is based on a pay TV-centric view of the marketplace not relevant to the FCC's analysis of its local television ownership rule or its public interest review of specific

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[142] NCTA Comments at 2-3; Comments of the American Television Alliance (ATVA), MB Docket No. 22-459, at 1 (Dec. 17, 2025) (ATVA Comments); DIRECTV Comments at i, 2; Newsmax Comments at 15. Although Newsmax is a pay TV programmer rather than an MVPD, it is (like the pay TV providers) involved in this proceeding exclusively for purposes of retaining or expanding its competitive advantages over its heavily regulated counterparts in the broadcasting industry, so we will respond to some of its arguments here. NAB and several broadcasters earlier showed that Newsmax objected to repeal of the national broadcast TV cap for similar anti-competitive reasons. *See* Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 48-53 (Aug. 22, 2025).

transactions. Given the extensive evidence of the competitive landscape[143] and broadcasters' need to achieve additional scale to continue providing vital services to local viewers,[144] Section 202(h) requires the Commission to eliminate the rule.[145]

The centerpiece of pay TV providers' argument that the Commission should retain the local television ownership rule is that broadcast stations compete in a "retransmission consent" product market that consists exclusively of broadcast TV stations affiliated with the four largest broadcast networks.[146] As NAB explained in our initial comments, however, the Commission need not define any product markets for purposes of analyzing its local TV ownership rule under Section 202(h).[147] Defining product markets is a task antitrust authorities undertake on a case-by-case basis with respect to particular transactions involving specific companies, not with respect to entire industries across every potential geographic market in the country for purposes of developing *ex ante* rules. The analyses in antitrust cases rely on the idiosyncratic facts of the specific product markets, geographic markets, and market participants under investigation at a specific snapshot in time. This task is inapposite to the FCC's role here, which is to evaluate the public interest merits of a rule of general applicability across an entire country and an entire industry. Pay TV providers provided no justification for broadly imposing a market

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[143] *See, e.g.,* NAB Comments at 83-103; Gray Comments at 2-6 and 21-23; Nextstar Comments at 5-13.

[144] *See, e.g.,* NAB Comments at 103-120; Gray Comments at 8-17; Nexstar Comments at 17-20.

[145] *See* NAB Comments at 12-26.

[146] *See* ATVA Comments at 2-9; DIRECTV Comments at 3-12 and Appendix A, *The Commission Should Consider Impacts on Retransmission Consent Fees as Part of its Quadrennial Review of Local Broadcast Rules*, William P. Rogerson (Dec. 15, 2025) (Rogerson Report); NCTA Comments at 7-8. *See also* Free Press Comments at n.14.

[147] NAB Comments at 26-39.

definition for years (even decades) to come based on Department of Justice (DOJ) findings concerning one or even a few transactions, particularly transactions that are nearly a decade old.[148] Such an approach would be arbitrary and capricious in violation of the APA.

Applying DOJ findings in antitrust settlement complaints to the FCC's definition of a product market also raises several procedural and transparency issues. Parties eager to close their transactions are likely to acquiesce to settlements even if they strongly disagree with the DOJ's underlying allegations because they would rather settle than face the uncertainty, expense, and additional delays of litigation. Moreover, unlike FCC proceedings where the arguments of all interested parties are publicly available, the transacting parties' advocacy in connection with antitrust review is not publicly available, and complaints are not required to contain a detailed discussion of such advocacy. Finally, DOJ complaints are just that – *complaints* that have not been litigated – which means no court has had an opportunity to evaluate or rule upon the DOJ's analysis or the opposing views of the transacting parties, intervenors, or amici. Given the very limited scope and purpose of DOJ complaints, their lack of transparency, and the lack of court review, DOJ complaints should not form the basis for any FCC decisions about market definition for nationwide, industrywide regulation.

If the Commission does choose to define a product market for purposes of its local television ownership rule, it certainly should not define the market in the MVPD-centric

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[148] The DOJ complaints cited by pay TV commenters are already at least 4.5 years old, making them too dated to inform the FCC's approach to market definition today. *See* ATVA Comments at 3, n.11; DIRECTV Comments at 5, n.13 (citing complaints from 2016-2021). *See also* NAB Comments at 26-27(discussing recent dismissal of the Federal Trade Commission's (FTC) monopolization suit against Meta Platforms, Inc. (Meta), *FTC v. Meta Platforms, Inc.*, 2025 U.S. Dist. LEXIS 226858 at *9 (D.D.C. Nov. 18, 2025)). Because of rapidly shifting market conditions over a five-year period, the court ruled that the FTC failed to properly define a market where Meta exhibited monopoly power and dismissed the lawsuit.

manner proposed by ATVA and DIRECTV.[149] The FCC's goal is to ensure that *viewers* have viable choices among over-the-air broadcast television stations, not that the market is set up to promote the needs of *pay TV providers.* Given the FCC's public interest objectives of competition, diversity, and localism, the product market most relevant to the FCC's analysis is the market consisting of products that *viewers* consider to be substitutes, which would include *at least* OTA television broadcast stations generally (not just those affiliated with the four largest broadcast networks) and other video services that *viewers* substitute for local broadcast stations such as pay TV and streaming services and the programming delivered via these outlets.[150] Relatedly, some pay TV providers contend that cable networks do not compete with local television stations because many stations offer local news while cable networks (generally) do not.[151] While local news is a valuable competitive differentiator for some local television stations, pay TV providers have presented no evidence that this makes local TV stations – and indeed all of them (considering that many cannot even afford to produce local news) – an entirely different product. A myopic definition focused exclusively on the broadcast stations that pay TV providers believe are most important for their business plans should not guide the FCC's public interest analysis.

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[149] ATVA Comments at 2-10; DIRECTV Comments at 3-24.

[150] *See* NAB Comments at 39-44; Sinclair Comments at 3-6; Gray Comments at 20-28. Although local television stations are substitutes from the perspective of viewers, economic analyses have concluded that MVPDs regard broadcast television stations as complements, not substitutes for purposes of retransmission consent. *See, e.g.* Supplemental Comments of NAB, MB Docket No. 10-71 (May 29, 2013) at 15, n.38, *citing* Reply Declaration of J.A. Eisenach and K.W. Caves, attached to NAB Comments, MB Docket No. 10-71 (June 27, 2011) at 14, *citing* Christopher S. Reed, *Regulating Relationships Between Competing Broadcasters*, Hastings Communications and Entertainment Law Journal 33 (Fall 2010) 1, 35.

[151] DIRECTV Comments at 9-10; ATVA Comments at 7.

DIRECTV further asserts that the Commission also should adopt a presumption under which certain broadcast transactions would be deemed anticompetitive depending on how much of the "retransmission consent" market they will reach.[152] The proposed presumption should not be adopted because it is inapposite to the FCC's obligations under Section 310(d), would obviate the need for Commission review of transactions since it would merely replicate DOJ review, and because it would serve no public interest purpose since pay TV providers still have not shown that local television ownership combinations result in higher retransmission consent rates, or that lowering those rates will have *any impact* on the prices MVPDs charge consumers.

More specifically, the FCC's public interest analysis under Section 310(d) is intended to consider a range of factors relating to competition, diversity, and localism. It is not limited only to competition, and certainly not to the pay TV-centric definition of competition proposed by DIRECTV and other pay TV providers. In addition, if DIRECTV is correct and DOJ already undertakes this analysis with respect to all broadcast television transactions before it, then having the FCC undertake the exact same test would be completely duplicative of the DOJ process. The proposed presumption would impose on every broadcaster with a transaction before the DOJ, other interested parties, and the Commission completely unnecessary costs and burdens. DIRECTV offers no rationale for the FCC to simply repeat the same analysis it claims that DOJ already conducts with respect to many transactions.[153]

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[152] Under DIRECTV's proposal, transactions that would result in a highly concentrated "retransmission consent product market" (i.e., with an HHI over 2,500) and that increase the HHI by more than 200 points would be presumed likely to enhance market power and substantially lessen competition. DIRECTV Comments at 21-24.

[153] NAB acknowledges that some transactions that are reviewed by the FCC may not be subject to DOJ review, but DIRECTV does not limit its proposal only to those transactions.

Most importantly, pay TV providers including DIRECTV have not demonstrated that local television station combinations have a negative impact on retransmission consent fees or that restricting such ownership combinations will have any impact on the prices consumers pay for MVPD service. Pay TV providers rely heavily on past DOJ actions, citing DOJ settlement agreements that required broadcasters to *divest* prospective interests in stations that *would have* resulted in local television ownership combinations.[154] Prospective transactions that did not occur cannot serve as proof of what would happen if additional TV station combinations are permitted in local markets.[155] Thus, no basis exists for either retaining the existing two-station limit or adopting DIRECTV's or any similar presumption that certain TV station transactions are not in the public interest.

As always, pay TV providers complain they are paying high (or "too high") retransmission consent fees, but in fact those fees are declining and are predicted to continue declining for the next several years.[156] Significantly, the pay TV commenters also have not shown that past increases do not simply reflect the market value of broadcast signals. While pay TV providers complain about paying retransmission

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[154] *See, e.g.,* DIRECTV Comments at 23, n.69 and Appendix A, Rogerson Report at 5 (noting that divestitures were required in *United States v. Gray Television, Inc.*, No. 1:21-cv-02041, ECF No. 1 (D.D.C. Oct. 15, 2021); *United States v. Nexstar Media Grp., Inc.*, No. 1:19-cv-02295 (Feb. 10, 2020); *United States v. Gray Television, Inc.*, No. 1:18-cv02951 (D.D.C. June 5, 2019); and *United States. v. Nexstar Broad. Grp., Inc.*, No. 1:16-cv-01772 (D.D.C. Nov. 16, 2016)); Newsmax Comments at 13.

[155] *See also* Reply Comments of NAB, MB Docket No. 18-349, at 50-51 (Oct. 1, 2021); Reply Comments of NAB, MB Docket No. 18-349, at 69 (May 29, 2019) (also discussing how pay TV citations to DOJ actions requiring divestiture cannot serve as evidence of what occurs when two stations combine).

[156] NAB Comments at 98 (Kagan data show that retransmission consent revenues are no longer on the rise, with consistent drops in total MVPD retransmission fees paid since 2023, and further declines predicted through at least 2030).

consent fees increases, broadcasters' costs of acquiring marquee sporting events and other highly valued programming aired on their signals have skyrocketed,[157] and there are more platforms competing to distribute sports programming and other original programming content.[158] Prohibiting broadcasters – and only broadcasters – from gaining additional scale to compete for marquee programming content makes it increasingly difficult for consumers to access such content without it being behind a Big Tech or pay TV paywall.

Moreover, as Gray observed in its comments, although pay TV often blames consumer price increases on retransmission consent fees, data shows that "the vast majority of the programming fees that MVPDs pay are to national cable networks – many of which are vertically integrated with MVPDs."[159] Gray submitted data from S&P Global showing that broadcast retransmission consent fees represented only 27 percent of the total programming fees paid by MVPDs in 2025 (with the remaining 73 percent paid to cable networks).[160] Gray also submitted evidence that broadcast signals remain undervalued in the retransmission consent marketplace relative to cable networks given their respective viewership.[161] And in the event that retransmission rates increase following a local TV

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[157] *See, e.g.,* NAB Comments at 118, *citing* W. Friedman, *Sports Rights Costs Grow Faster Than Revenue Gains*, Television News Daily (Aug. 29, 2025) (sports media rights payments in the U.S. skyrocketed to $30.5 billion in 2025, up 122 percent from $13.8 billion in 2015, far outpacing increases in revenues earned by their media partners, and raising questions about the ability of broadcasters to continue to afford sports rights).

[158] NAB Comments at 117-18 and n.367 (discussing migration of sports to Big Tech platforms).

[159] Gray Comments at 17-18.

[160] Gray Comments at 17-18.

[161] Gray Comments at 18-19 (observing that the most popular cable news program, which airs at 5 PM and is available in more than 60 million households, has fewer viewers than the combined total of all of Gray's 5 PM local newscasts, which can be seen in only 28 million households).

combination, this does not necessarily mean that the new rates are anti-competitive. An increase may reflect changes in the station's programming or ratings since the last time a retransmission consent agreement was negotiated, or simply that an MVPD was not paying true market value for the broadcast signal in the past because negotiations previously involved a very large MVPD and a small or mid-sized broadcaster.[162]

Although pay TV commenters' primary focus is retransmission consent, they make a few unsupported assertions concerning the potential impact of local television combinations on the advertising marketplace. Newsmax, for example, makes sweeping assertions about potential harms to small businesses seeking to place advertisements absent retention of the two-station limit and reinstatement of the top four ban. Ironically, the very businesses Newsmax claims will struggle to find ways to advertise if local television stations combine, such as "[t]he local car dealership, law office, restaurant, or plumber," are the exact sorts of local businesses broadcasters have been losing to digital platforms for years.[163] It is

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[162] *See, e.g.,* Letter to Marlene Dortch, FCC Secretary, from Rick Kaplan, NAB, MB Docket Nos. 18-349, 22-459, at 6-7 (Dec. 19, 2023) (discussing how so-called "testimony" from certain pay TV providers does not demonstrate that retransmission consent fees increased as a result of multicast and LPTV affiliations with Big Four networks given many other potentially relevant variables).

[163] The declarations of radio broadcasters described in Section III.A. detailed stations' loss of advertisers, such as auto dealers, law firms, furniture and hardware stores, clothing retailers, medical/dental practices, and banks/credit unions, to digital platforms in all-sized markets, including small ones in Wyoming. *See also, e.g.,* Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019) at 24. As of 2018, auto dealers spent 41 percent less to advertise a new car than they did five years earlier because, using digital ad products, it was "easier to hit a specific target, which means dealers can be more efficient with their ad buys." *Id. citing* Borrell Associates, *Automotive Advertising Takes a Sharp Turn, 2018 Outlook,* at 4 (Borrell Car Ad Study). By 2020, auto dealers were spending more on streaming video than on broadcast media (radio and television) combined. Borrell Associates, *2022 Local Automotive Advertising Outlook,* at 4; Reply Comments of NAB, MB Docket No. 18-349 (May 29, 2019) (discussing a TV broadcaster's documented shifts in advertising spending from broadcasting to digital within its own customer (or former customer) base across a variety of industries in different

not surprising that Newsmax had this all wrong, given that its entire basis for its lengthy diatribe on the harms to "rural heartland" businesses – which it has absolutely no experience interacting with or serving as a national network – is a blog post from a single marketing executive.[164] There is in fact no shortage of advertising options for local businesses of any size in any market. As NAB and other broadcasters have documented in this and prior proceedings, the advertising budgets for businesses of all sizes long have been shifting away from broadcast stations and into Big Tech's coffers.[165]

In any event, the Commission likely lacks authority to impose broadcast ownership restrictions in the name of protecting advertisers, given that the "FCC's public-interest authority must be interpreted in light of the 'targets' of the Communications Act."[166] Nowhere in the Act does it say or even suggest that advertisers or advertiser welfare are "targets" of the statute, rather than the interests of the listening and viewing public.[167] It is DOJ's job, not the FCC's, to address the competitive effects of mergers on advertisers.

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local markets including a law firm, a sandwich franchise, a car dealer, a paint company, a hospital and a telecom provider, all of which moved 50-100% of their advertising budgets from broadcasting to digital).

[164] Newsmax Comments at 10, *citing* Lannie Byrd, *Why Local Still Wins: The Hidden Power of Community in Big Decisions,* MHP.SI (Oct. 6, 2025), https://mhp.si/why-local-still-wins-the-hidden-power-of-community-in-bigdecisions/. NAB also notes that in the "rural heartland," small market radio and TV stations are often outsized by the "local" businesses, e.g., outlets of large national chains such as Wal-Mart, CVS/Walgreens, Home Depot/Lowe's, etc.

[165] *See, e.g.*, Borrell Dec. 2025 Digital Advertising Report, Exh. B to Joint Radio Comments; NAB Comments at 56-57, 91-93 (discussing, *inter alia*, Borrell Associates, 2025 Annual Report Benchmarking Local Digital Media (May 15, 2025)).

[166] NAB Comments at 34-35, *quoting Nat'l Religious Broad., et al. v. FCC*, 138 F4th 282, 292 (5th Cir. 2025).

[167] *Id*. at 35, citing *FCC v. Pottsville*, 309 U.S. 134, 138 n.2 (1940); 47 U.S.C. § 307(b).

The pay TV industry remains driven to find an end-run around Section 325's prohibition on governmental involvement in the prices, terms, and conditions for retransmission consent.[168] By keeping broadcasters artificially smaller and weaker through decades-old ownership limits, pay TV providers seek to keep broadcast TV stations from becoming more viable competitors for audiences, advertisers, and content and more effective negotiators for retransmission consent. NAB urges the FCC to decline the pay TV industry's repetitive, unmeritorious request for additional competitive and negotiating advantages over broadcasters. Pay TV providers have not advanced a public interest justification for retaining the *ex ante* local television ownership rule.

2. The Proposed Reinstatement of a Modified Top Four Ban Is Unlawful Under Multiple Provisions of the Communications Act and the First Amendment

NCTA urges the Commission to reinstate a modified version of the top four prohibition vacated in *Zimmer Radio*.[169] Specifically, rather than prohibiting broadcasters' ability to own more than one station ranked among the top four in terms of audience share, NCTA urges the Commission to prohibit common ownership of more than one station affiliated with

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[168] The Commission has authority to adopt rules governing good faith negotiations and adjudicate complaints of violations of those rules, but that is the extent of its involvement in the retransmission consent negotiation process. As the FCC has observed, in directing it to adopt rules governing good faith negotiations, Congress did not "contemplate an intrusive role for the Commission with regard to retransmission consent" or "grant the Commission authority to impose a complex and intrusive regulatory regime" or "intend the Commission to sit in judgment of the terms of every retransmission consent agreement executed between a broadcaster and an MVPD." *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 ¶¶ 13, 23 (2000) (Good Faith Order). The FCC's limited role with respect to retransmission consent negotiations ensures that the resulting agreements reflect marketplace conditions and not government intervention, as Congress intended.

[169] NCTA Comments at 6-7. *See also* Newsmax Comments at 17 (urging FCC to reinstate the top four ban or another similar limit in addition to retaining the prohibition on owning more than two stations per DMA).

one of the four largest broadcast networks (i.e., the "Big Four" networks).[170] As discussed in detail in Section II., the Commission lacks statutory authority to adopt this proposal to tighten the local TV rule under Section 202(h). Moreover, even if the Commission *could* lawfully make the rule more restrictive, the Commission *should not* do so, given the vast competition facing local television stations and their need to gain scale to remain viable, as discussed in NAB's and broadcasters' initial comments. Such a restriction would disserve the public interest and be unlikely to survive judicial review, given that the Eighth Circuit dismissed as unsupported by evidence all the justifications the Commission had presented to defend its retention of the now-vacated top four prohibition.[171]

In addition to these flaws, adopting a new top four prohibition based, not on ratings, but on airing the programming of particular speakers would place the Commission in the invidious position of controlling whether and how stations can offer certain content. But neither the Communications Act nor the Constitution permits the Commission to restrict the programming broadcasters choose to air.

First, the Commission lacks statutory authority to dictate what content broadcast licensees can or cannot carry. In *MPAA*, the D.C. Circuit rejected FCC claims it had authority to adopt rules requiring TV broadcasters to air programming with video descriptions. The court found that "Congress has been scrupulously clear when it intends to delegate authority to the

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[170] NCTA Comments at 7 (asserting that the previous top four prohibition, "which focused on station ratings in the market, was an imperfect proxy for where actual competitive harm lies, namely, ownership of multiple stations in the same market affiliated with the Big Four networks").

[171] *See Zimmer Radio*, 145 F.4th at 854-56; Section II., *supra*.

FCC to address areas significantly implicating program content,”[172] and concluded that Sections 1, 4(i), and 303(r) of the Act did not provide the FCC with authority to impose video description rules. Because (1) the FCC cannot rely on its general Section 1 authority to regulate broadcasters’ program content under *MPAA*, 309 F.3d at 803-805; and (2) Congress has not clearly delegated authority to the FCC to regulate the affiliation that provides the programming that stations broadcast (or to otherwise regulate the content stations air, with the express exceptions of indecency and political), then the FCC does not have authority to adopt NCTA’s proposal under Sections 303(r) or 4(i) of the Act.[173] That proposal to limit which broadcasters/stations could air what programming (“Big Four” network) thus would be *ultra vires*.

Beyond exceeding the FCC’s authority, the imposition of the pay TV industry’s proposal would contravene Section 326 of the Act[174] and the First Amendment. The courts have made clear that under the Act the “choice of programs rests with the broadcasting stations licensed by the FCC,”[175] and that the “Government cannot control the content or selection of programs to be broadcast” over TV stations.[176]

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[172] *MPAA v. FCC*, 309 F.3d 796, 805 (D.C. Cir. 2002) (providing examples, including 18 U.S.C. § 1464, regulating obscenity and indecency via radio communications and 47 U.S.C. § 315, governing provision of broadcast time to candidates for public office).

[173] *See MPAA*, 309 F.3d at 806-807. The D.C. Circuit concluded that the FCC lacked authority to adopt video description rules under these provisions because the “FCC must act pursuant to *delegated authority* before any ‘public interest’ inquiry is made under § 303(r)” and because the FCC’s authority under 4(i) must be “‘reasonably ancillary’ to other express provisions.” (emphasis in original, citation omitted).

[174] 47 U.S.C. § 326 (denying the FCC the power of censorship and providing that no FCC regulation can interfere with the right of free speech via radio communication).

[175] *McIntire v. Wm. Penn Broad. Co. of Philadelphia*, 151 F.2d 597, 599 (3d Cir. 1945).

[176] *Community-Service Broad. of Mid-America, Inc*., 593 F.2d 1102, 1110 (D.C. Cir. 1978).

Congress did not intend the FCC to exercise its statutory licensing or rulemaking power to regulate broadcast stations' programming.[177]

The broadcaster's editorial right to choose programming is protected speech.[178] Content-based and speaker-based restrictions to control content are subject to strict First Amendment scrutiny, under which the government must prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.[179] Content-based restrictions, moreover, are subject to strict scrutiny when imposed on broadcast stations.[180] Even assuming, however, that strict scrutiny arguably would not apply to any review of NCTA's proposal, it would still fail because that proposed restriction is not "narrowly tailored to further a substantial governmental interest."[181]

The pay TV industry's proposal is without doubt content based. Even though NCTA tried to dress up its proposal to appear to be about competition, its effort does not make its proposed rule any less content based. Regardless of purpose, the proposed regulation is content based on its face because it would bar the airing of particular content (Big Four network programming) by particular TV station speakers in a particular manner.[182] Unlike

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[177] The Communications "Act does not essay to regulate the business of the licensee. The Commission is given no supervisory control *of the programs*, of business management or of policy." *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 475 (1940) (emphasis added).

[178] *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 651 (1994).

[179] *Reed v. Town of Gilbert*, 576 U.S. 155, 163, 169-70 (2015).

[180] *See Action for Children's Television v. FCC*, 58 F.3d 654, 660 (D.C. Cir. 1995) (en banc) (applying "strict scrutiny to [content-based] regulations . . . regardless of the medium affected by them").

[181] *FCC v. League of Women Voters*, 468 U.S. 364, 380 (1984) (striking down restriction on editorializing by noncommercial educational broadcast stations receiving grants from Corporation for Public Broadcasting).

[182] *See Reed*, 576 U.S. at 166 (stating that "strict scrutiny applies either when a law is content based on its face *or* when the purpose and justification for the law are content based") (emphasis added).

traditional structural ownership rules, moreover, NCTA's proposal would not simply regulate the number of TV licenses a single entity may hold. Rather, it would restrict the content that a licensee of two TV stations may choose to carry and, along with NCTA's proposal to reimpose regulation of multicast streams via reinstatement of the amended Note 11, would even restrict the programming that the licensee of *one* TV station may choose to air on its single six-megahertz channel. Thus, the proposed restriction would fail First Amendment scrutiny, whether strict or another form of heightened scrutiny.

Finally, even if NCTA's proposed rule would be subjected to the same "rational basis" standard of review that structural ownership rules have been in the past, it would still fail First Amendment challenges. Structural ownership rules previously have been upheld based on a finding that the rules were "rationally related to substantial government interests in promoting competition and protecting viewpoint diversity."[183] Adoption of NCTA's proposal would never meet this standard of review (much less the more rigorous standard for content-related regulation), due to the lack of evidence it would promote *any* public interest objective. Assuming MVPDs could demonstrate that negotiations involving stations affiliated with a major broadcast network resulted in higher retransmission consent fees (which they have not yet come close to doing), reducing the costs of pay TV inputs – whether programming or bucket trucks – is not a substantial government interest. And even if the Commission were to contend it has a substantial interest in reducing consumer bills for MVPD service, NCTA's proposal certainly would not be "narrowly tailored" nor even "rationally related" to that outcome, because there is no guarantee, let alone a

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[183] *Prometheus Radio Project v. FCC,* 652 F.3d 431, 464 (3d Cir. 2011).

likelihood, that any cost savings would actually be passed on to consumers, rather than used to line the pockets of the pay TV industry. NAB urges the Commission to avoid the constitutional issues raised by the programming and content-related regulations proposed by NCTA.

Relatedly, pay TV providers urge the Commission to reinstate the amendment to Note 11 concerning changes to network affiliations involving LPTV stations and multicast programming streams.[184] But as NAB and TV broadcasters have demonstrated, the Commission should eliminate the *ex ante* local television ownership rule, 47 C.F.R. § 73.3555(b) in its entirety, including all related Notes. In the event the Commission retains any aspect of the local television rule, it should not reinstate Note 11.[185] In a recent appeal of an FCC enforcement action under the original Note 11, a concurring opinion joined by two of the three judges on the 11th Circuit panel expressed "grave doubts that the FCC has statutory authority to enforce Note 11" because "there is no statutory authority for the FCC to regulate the affiliation that provides the content that a licensed station broadcasts."[186] The highly questionable basis for the FCC's authority under the Act to adopt Note 11 in the first place is another strong reason for not *re*adopting it.

Neither should the FCC reinstate the amendment to Note 11 governing multicast streams and LPTV stations, nor otherwise treat multicast streams and LPTV stations as full-power stations. As discussed in Section II., adopting a more restrictive local TV ownership rule

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[184] NCTA Comments at 4-12; DIRECTV Comments at 25-28.

[185] *See* Notice ¶ 24 n.65 (observing that the Eighth Circuit's vacatur of the top four prohibition "renders all of Note 11 a nullity").

[186] *Gray Television, Inc. v. FCC*, 130 F.4th 1201, 1226 (11th Cir. 2025) (citing, *inter alia*, *MPAA* and NAB's amicus brief). In its opinion, the Court declined to consider this statutory authority argument because the FCC had not been given an opportunity to pass on it.

by treating multicast streams or low power stations as full-power stations (or by any other means, such as reinstating the original Note 11) is beyond the FCC's Section 202(h) authority.

Treating multicast streams, satellites stations, and/or LPTVs as stations subject to the local TV rule generally, or some form of top four/Big Four stricture specifically, also would be arbitrary and capricious because they are not equivalent to the full-service TV stations regulated under the FCC's ownership rules.[187] As NAB has previously explained, moreover,[188] the pay TV industry's view that multicast and LPTV affiliations with the four major broadcast networks are a problem to be solved disregards multiple Congressional actions[189] and prior Commission decisions emphasizing the value of multicast Big Four affiliations and the potential harms of bringing multicast streams or LPTVs within the scope of the local TV

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[187] *See, e.g.*, Comments of NAB, MB Docket No. 18-349, at 79-81 (Apr. 29, 2019) (explaining that neither multicast streams nor LPTV stations are the equivalent of full-power TV stations in terms of must-carry or revenues and that LPTVs also operate on a secondary basis and have limited coverage areas and restricted power).

[188] *See, e.g.,* Reply Comments of NAB, MB Docket No. 18-349, at 53-58 (Oct. 1, 2021); Comments of NAB, MB Docket No. 18-349, at 99-106 (Sept. 2, 2021); Comments of NAB, MB Docket No. 18-349, at 73-74 (May 29, 2019); Comments of NAB, MB Docket No. 18-349, at 78-81 (Apr. 29, 2019).

[189] In the Satellite Television Extension and Localism Act of 2010 (STELA), for example, Congress provided broadcasters with explicit incentives to use multicast streams and low power stations to ensure that short markets could receive the full complement of network programming. *See* Congressional Research Service*, How the Satellite Television Extension and Localism Act (STELA) Updated Copyright and Carriage Rules for the Retransmission of Broadcast Television Signals* at Summary, 1, 15-16 (Jan. 3, 2013) (STELA "[c]reated an incentive for broadcasters . . . to use their digital capabilities to offer multiple video streams ('multicasting') by requiring satellite operators to pay royalty fees for the programming on the non-primary, as well as primary, video streams"; STELA also gave broadcasters the incentive to use multicasting "to offer otherwise unprovided network programming in so-called 'short markets'" by defining households as "served" if they can receive multicast signals, thereby prohibiting importation of distant signals to those households, and gave broadcasters incentives to use LPTV stations to air broadcast network programming).

rule.[190] Indeed, the Eighth Circuit, when vacating the amendment to Note 11 due the FCC's lack of authority under Section 202(h) to adopt it, also referred to "persuasive record evidence showing that the amendment to Note 11 may be bad policy" because it could deprive consumers in "'short markets' – about a quarter of all television markets –" of "access to significant programming," such as the programming of the "major networks."[191] To the extent, furthermore, that any reinstatement of Note 11 is structured as a limitation on a broadcasters' ability to select the *content* to air on its full-power stations, multicast streams, or LPTV stations, Note 11 would suffer the same First Amendment and Section 326 infirmities as NCTA's proposed "Big Four" prohibition discussed above.

3. NCTA's Proposals Concerning the Retransmission Consent Good Faith Rules Are Misplaced

NCTA makes two additional proposals urging the Commission to modify aspects of its retransmission consent good faith negotiations rules, which plainly cannot be addressed in the instant proceeding concerning the broadcast ownership rules because the Commission has not requested comment on changes to the good faith rules.[192] NCTA is free to file a petition for rulemaking urging the Commission to modify its good faith rules, or to urge Congress to consider these issues. But the proposals are irrelevant to the FCC's statutorily mandated review of its broadcast ownership rules.

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[190] *See, e.g., 2014 Quadrennial Regulatory Review,* Second Report and Order, 31 FCC Rcd 9864, 9892 (2016), *citing 2014 Quadrennial Regulatory Review,* Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4399-4400 (2014).

[191] *Zimmer Radio*, 145 F.4th at 861, *citing* Reply Comments of NAB, MB Docket No. 18-349, at 53-54 (Oct. 1, 2021).

[192] Specifically, NCTA urges the Commission to clarify that certain violate the ban on joint retransmission consent negotiations among stations within the same market and to expand the existing ban on joint retransmission consent negotiations involving non-commonly owned stations within the same market to stations in other markets. NCTA Comments at 12-13.

B. Commenters Clamoring to Keep the *Ex Ante* Broadcast TV Rule in Reality Want the Commission to Judge Local Content

A few commenters argue that further relaxing or repealing the *ex ante* local broadcast TV rule will lead to less or worse local content. They cloak their arguments in an air of a "public interest" analysis. But make no mistake, they really seek to enlist the Commission into the business of picking what these commenters believe is "good" local content versus "bad" local content. Not only would this invite the Commission to unacceptably base decisions about the local TV rule on the types of local news that broadcasters may offer, but these commenters also base their evaluation of local news on deeply flawed premises.

More specifically, Free Press and a group led by the Democracy Forward Foundation and Gigi Sohn at G Squared Strategies (collectively, Democracy Forward Commenters) both peddled their own egregious variations of spurious arguments.[193] Sohn's partner-in-crime Newsmax also echoed many of the same flawed claims, undoubtedly for the rent-seeking purpose of preventing their broadcast competitors from expanding their reach and capabilities, which also motivates Newsmax's opposition to reform of the national TV ownership cap.[194] These commenters contended that local broadcast TV station markets are highly concentrated, and because of that high concentration, broadcast TV stations face distorted incentives in providing the local news. Of course, no part of these convoluted arguments stands up

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[193] Free Press Comments; Comment of The Archival Producers Alliance, The Future Film Coalition, The Media and Democracy Project, The Multicultural Media, Telecom, and Internet Council (MMTC), Public Knowledge, Patricia Aufderheide, J. Israel Balderas, Victor Pikard, and Christopher Terry, MB Docket No. 22-459 (Dec. 17, 2025) (Democracy Forward Comment).

[194] NAB and multiple broadcasters explained in the FCC's proceeding proposing repeal of the national TV cap that Newsmax opposed the potential emergence of any stronger and larger broadcast competitors to its own news brand. *See* Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 48-53 (Aug. 22, 2025) (National TV Rule Reply Comments).

to even the slightest scrutiny, especially given that they purported to analyze competition in the marketplace of 2026 by virtually ignoring Netflix, YouTube, Amazon Prime, and the other real giants of the video world.[195]

1. No Evidence Presented on the Record Supports the Argument that Broadcast TV Markets are Concentrated

To start, Free Press engaged in a half-baked market concentration analysis where it summed revenues from two totally different markets with two different and unrelated classes of purchasers – local broadcast TV spot advertising and retransmission consent revenues.[196] This is about as useful as summing up the revenue from raw chicken thighs, bubble gum, and dental floss to develop concentration measures for supermarkets. Whatever Free Press was trying to prove, it is analytically unsound. Free Press also purported to analyze concentration based on retransmission consent revenues alone because they are "a slightly closer proxy for those stations that do air news because such stations will tend to command higher retrans rates and the bulk of the retrans revenues in a market."[197] Free Press provided zero basis for linking retransmission consent revenues and the broadcasting of local news, and apparently did not consider, for example, that the type of programming most popular on broadcast TV stations (NFL games)

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[195] *See, e.g.,* Comments of the Screen Actors Guild-American Federation of Television and Radio Artists (SAG-AFTRA), MB Docket No. 22-459, at 3-4 (Dec. 18, 2025) (SAG-AFTRA Comments). SAG-AFTRA opposed any relaxation of the TV or radio local ownership rules because the "current media landscape is highly consolidated with a small number of conglomerates having expansive reach, leaving little room for competition." *Id.* at 3. NAB might be inclined to agree with SAG-AFTRA if they were talking about Amazon, Google/YouTube, Apple, and Netflix, but they only referred to three TV station groups (Gray, Nexstar, and Sinclair), ignoring the Big Tech and global streaming platforms that actually dominate the current media landscape.

[196] Free Press Comments at 11-12.

[197] Free Press Comments at 12.

might have more to do with retransmission consent fees than the type of programming Free Press deems worthy. As it did with most of its filing, Free Press assumed much without proving anything. Finally, as NAB laid out in detail in our initial comments, there is no basis for relying on the commercial sides of broadcast TV operations – both advertising and retransmission consent agreements – to draw conclusions about the presence of market power on the viewer side of broadcast TV operations, with which the FCC should be concerned.[198]

No doubt recognizing the tenuousness of linking broadcast TV stations' commercial operations to the provision of video programming to the public, Free Press went for a Hail Mary by trying to concoct a viewer-based market definition based on a mangled understanding of economics. It started by citing a 2024 study claiming that "conglomerate owners consistently increase advertising duration during local newscasts."[199] Free Press then leapt to a conclusion that because there is "often above a 5 percent increase in time devoted to advertisements, with no significant loss of viewers," local TV news must be a relevant market.[200] This conclusion is unfounded and nonsensical for several reasons.

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[198] *See* NAB 2022 Comments at 32-33. Free Press also claimed that years of DOJ precedent, which it asserted is based on rigorous economic analysis, has found that there is a separate market for broadcast radio and for broadcast TV. Free Press Comments at 14. As we discuss in detail in Section IV.A.1., DOJ consent decrees are not litigated "precedent" and should not be treated as such for FCC reviews. Newsmax also claimed that the DOJ has "brought suit against multiple mergers based on the [alleged] fact that broadcast advertising is its own product market." Newsmax Comments 11. This also is wrong. The DOJ has filed complaints that are a necessary precondition to entering a settlement that actually allows the merger to go through.

[199] Free Press Comments 13 (quoting G. Martin, N. Mastrorocco, J. McCrain & A. Ornaghi, *Media Consolidation*, Kilts Center at Chicago Booth Marketing Data Center Paper, at 1 (May 28, 2024) (Martin 2024 Study).

[200] Free Press Comments at 13-14.

First, contrary to Free Press's representation, the Martin 2024 Study did *not* find that ad loads necessarily increase by over 5 percent. Instead, it found that different station groups employ different strategies regarding the content and ad mix that they provide to their markets. Some use more national content, some offer more local content, and some don't meaningfully change the national/local news content mix after becoming more consolidated.[201] Even with ad loads, the effect is ambiguous.[202] Given that it found that content and advertising changes are a function of varying corporate strategies rather than a naturally occurring incentive flowing from station combinations, the Martin 2024 Study doesn't support Free Press's argument that station combinations create incentives to reduce or diminish local news content. Finally, given that it concluded that corporate strategy appears to drive actions, the Martin 2024 Study's focus on three station groups doesn't tell us much about what other station groups might do after a station combination. Bluntly, Free Press gets it wrong.

Second, ads aren't "prices" that viewers pay to watch free shows. Ads attempt to provide information to viewers about products and services. Some ads are a nuisance. But some are humorous, thought-provoking, or compelling in other ways. Unlike a "price," which when paid is entirely a cost to a consumer that can induce them to turn to an alternative, ads can be positive, in which case viewers may be all too happy to stick around and watch the ads. That's important when engaging in a market definition exercise because viewers need to experience an unambiguous cost that will induce them to decide whether they want to bear that cost (which means the market can be defined at least that broadly) or move onto an

[201] Martin 2024 Study at 3-4.
[202] Martin 2024 Study at 4.

alternative where viewers don't have to bear that cost (meaning the market should be broadened). But because ads have positive attributes, a viewer's decision to stick around could be because they're willing to bear the cost of the nuisance or it could be because they're happy with what they see. Indeed, the study found that viewers don't leave even local newscasts as ad loads increase, which might indicate that viewers derive positive value from the ad.[203]

Even if viewers don't like ads, they have other options than to switch away from the local newscast. They can grab a snack from the kitchen, perform a quick task, or – as many people do these days – death-scroll through an app on their smartphones. The Martin 2024 Study doesn't purport to capture any of these or other alternatives, which undercuts Free Press's shoddy attempt at using this study's results to define a market around viewers of local TV news. Treating a service that may bring viewers positive value as a price is just "Grade F" economics.

Third, it's worth dwelling on three core learnings of the Martin 2024 Study: (1) Viewers continue to watch local news irrespective of the change in the mix of national/local news and/or ads;[204] (2) It found no effect on viewers' political knowledge from station combinations;[205] and (3) Corporate strategy appears to drive broadcast TV station behavior, rather than station combinations per se.[206] Put simply: The Martin 2024 Study doesn't identify evidence that station combinations overall are harming localism. People still are happy enough with their local news that they aren't

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[203] Martin 2024 Study at 4.

[204] Martin 2024 Study at 4.

[205] Martin 2024 Study at 5.

[206] Martin 2024 Study at 33 ("We show that the effects of this consolidation for news coverage that outlets produce is highly dependent on the identity of the acquirer.").

switching channels or turning off the TV in the face of more ads. There isn't really evidence that viewers are less informed about their local politics. And there isn't evidence that combinations create an incentive to provide less local news.[207] If anything, the Martin 2024 Study undermines Free Press's arguments.

For its part, SAG-AFTRA conducted a mangled "Porter's Five Forces" analysis to try to justify maintaining *ex ante* ownership rules.[208] SAG-AFTRA averred that broadcasting has "barriers to entry" because the airwaves are a scarce public resource. But it isn't the (incorrectly) assumed scarcity of spectrum that inhibits competition.[209] Instead, the FCC's *ex ante* broadcast-only ownership rules create an artificial barrier to entry that prevents the owners best situated to invest resources into TV (and radio) stations, especially struggling ones, so they can better compete. To SAG-AFTRA's credit, they recognize that "the threat of substitutes (Porter's fifth force), particularly from digital and online media is very real," but they question whether those other media players "automatically

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[207] The paper's authors also claimed that somehow restrictions on ownership may be important to "limiting the impacts on knowledge and should not be undermined." Martin 2024 Study at 34. But the paper did not directly study this issue. Nor did it study whether *ex ante* ownership regulations are necessary, or whether transaction-by-transaction review would achieve the same results. This observation is speculation rather than a logically drawn conclusion from their study.

[208] SAG-AFTRA Comments at 5-6.

[209] As NAB repeatedly has explained, the concept of scarcity lacks relevance in a 21st century marketplace characterized by proliferating outlets, platforms, digital devices, and consumer choice. Indeed, the FCC concluded in the 1980s that "there is no longer scarcity in the number of broadcast outlets" available to the public. *Syracuse Peace Council*. 2 FCC Rcd 5043, 5054 (1987), *affirmed*, *Syracuse Peace Council v. FCC*, 867 F.2d 654 (D.C. Cir 1989). Congress found 30 years ago that the "scarcity rationale for government regulation [of broadcasting] no longer applies." H.R. Rep. No. 104-204, at 54 (1995). *See* Written Ex Parte Communication of NAB, MB Docket No. 18-349, at 11-12 (Feb. 16, 2022) (refuting claims about spectrum scarcity) And broadcast licenses are not 'scarce" in the sense of greater demand for licenses than supply, given the outcome of FCC auctions in which notable numbers of AM. FM, and TV construction permits remained unsold. *See* Comments of NAB, GN Docket No. 24-119, at 33-34 (June 6, 2024) (discussing results of multiple auctions).

replicate the competitive constraints that matter most for the public interest broadcasters are meant to serve."[210] As NAB discussed at length in its initial comments, digital and online media competitors don't need to exactly replicate broadcasting to provide vigorous competition that impels broadcasters to lean into their competitive differentiating content, such as local news.[211] Indeed, digital and online media outlets don't need to exactly replicate broadcast TV or radio programming so as to divert the majority of station' audiences and advertisers away from broadcasting and to online platforms, and thus threaten their very viability. The newspaper industry can attest to that fact.

The advocacy groups here have thrown every conceivable form of economic argument against the wall but while they certainly smelled bad enough, nothing has stuck. These commenters produced ill-conceived concentration measures, misread and miscited empirical studies, and badly used business school frameworks. Despite their attempts to alchemize evidence out of nothing, the advocacy groups failed to make a remotely colorable case that the broadcast TV industry is overly concentrated in today's media marketplace, which is a foundational point of their arguments.

2. Studies Do Not Support the Argument that Broadcast TV Station Combinations Lead to Less Local Content

Free Press also alleged that broadcast TV station groups have "a strong incentive to maximize short-term profits," which they claim incentivizes the production of "cheap sensationalistic content produced at the lowest possible cost."[212] Later in its

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[210] SAG-AFTRA Comments at 6.

[211] NAB Comments at 40, 78, 104-105.

[212] Free Press Comments at 15.

submission, Free Press additionally argued that this profit-maximizing incentive produces "homogenized content," which apparently "favors chasing ratings through shock, fear, and sensationalism, as well as through repetitive emphasis on weather updates and breaking news stories."[213] The Democracy Forward Commenters and Newsmax offered many of the same unmeritorious arguments as well.[214] To support their point, these commenters claimed that numerous studies demonstrate how acquisitions diminish localism. Yet again, their arguments are wildly off base.

First, Free Press and the Democracy Forward Commenters attacked one station group as a launching point to attack all broadcast TV station group combinations. Never mind that the studies they cited have significant deficiencies and can't be broadly generalized.[215] And as noted above, the Martin 2024 Study that *Free Press* relied on provides evidence that corporate strategy – rather than some abstract incentive inherent in broadcast station ownership – drives programming decisions.[216] Indeed, NAB has pointed that out before and

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[213] Free Press Comments at 29-30.

[214] Democracy Forward Comment at 13; Newsmax Comments at 6.

[215] For example, Free Press and the Democracy Foundation/G Squared Strategies cited a study by Gregory Martin and Joshua McCrain. Free Press Comments 22 (citing G. Martin & J. McCrain, *Local News and National Politics*, 113 Am. Political Science Rev. 372, 373 (2019)); *accord* Democracy Forward Foundation Comments at 12. NAB has refuted the findings of this study many times before. National TV Rule Reply Comments at 35-36; Written *Ex Parte* Communication of NAB, MB Docket No. 17-318, at 19-27 (May 13, 2022). NAB pointed out that this paper relied on an extremely small sample size of TV stations (10 commercial stations over a very limited period), only looked at one modest transaction involving one station owner, used that transaction to draw unduly broad conclusions about the TV industry as a whole, and used a comparison group of stations that it failed to identify. For all those reasons, the results of this paper rely upon an unrepresentative sample, are biased, and lack sufficient transparency to permit verification.

[216] Martin 2024 Study at 33 ("We show that the effects of this consolidation for news coverage is highly dependent on the identity of the acquirer. Rather than a general effect of consolidation per se, consolidation-driven changes in news content appear to vary widely

has amply supported it with evidence.[217] Having failed to produce tangible evidence that broadcast TV station combinations lead to incentives that predict some public interest harm, both commenters exaggerated pieces of evidence to serve their arguments.

Free Press next raised a few issues on its own. It cited a study by Nicole Mastrorocco and Arianna Ornaghi that purportedly showed that broadcast TV station combinations result in a decrease in news coverage of local crimes, which Free Press approvingly cited as evidence of how broadcast TV station combinations harm the public interest.[218] But like the other studies it cited, Free Press's discussion of this study is misleading and its applicability to this proceeding is tenuous. The Mastrorocco 2025 Study claimed that post-acquisition, news reports of "covered municipalities" (i.e., those historically in the news a lot) were *1.8 percent less likely* to mention a crime story than "noncovered municipalities" (i.e., those that historically did not receive much mention in the news).[219] The study estimated a 3.3 percent reduction in clearance rate in covered municipalities, but it also found that violent crime clearance rates *increased* (i.e., the police solved more violent crimes) in noncovered municipalities.[220] As it turns out, the effects identified by the Mastrorocco 2025 Study

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depending on who is doing the acquiring."). Even SAG-AFTRA recognized that idiosyncratic corporate strategy rather than an incentives analysis drives decision on what broadcast station groups cover. SAG-AFTRA Comments at 10 (recognizing that "different broadcast conglomerates pursue different strategies").

[217] *See, e.g.*, Written Ex Parte Commc'n of NAB, MB Docket No. 17-318, at 25-26 (May 13, 2022) (explaining Gray's strategy of acquiring top-ranked local TV stations and expanding their local news brands).

[218] Free Press Comments at 21-22 (citing N. Mastrorocco & A. Ornaghi, *Who Watches the Watchmen? Local News and Police Behavior in the United States*, 17 Am. Econ. J.: Econ. Pol. 285 (2025) (Mastrorocco 2025 Study)).

[219] Mastrorocco 2025 Study at 287.

[220] *Id*.

are tiny and ambiguous. Moreover, any violent crime effect that the study identified evaporates in short order.[221]

The Mastrorocco 2025 Study also drew several conclusions about media ownership, but many of those conclusions are mere speculation. For instance, while the study found that violent crime clearance rates go up in noncovered municipalities, it guessed that this might be a result of a new slant to the news, which isn't an effect that the paper directly studied.[222] To the extent changes in news coverage affect policing, the authors fully recognized that it may just change the mix of where police departments focus their resources rather than any effort to engage in less police activity. Finally, the study only looked at one station group, which says nothing about how other broadcast stations behave. Put simply, the Mastrorocco 2025 Study doesn't support Free Press's argument that station combinations decrease the provision of local news, whether generally or news about crime specifically.

Beyond the (de)merits of the Mastrorocco 2025 Study, there is yet another issue with Free Press's use of it. The study's findings are completely at odds with what Free Press claimed is good local journalism. Indeed, Free Press lamented later in its comments about how consolidation has led to increased breaking news coverage, "such as crime and accidents."[223] But the Mastrorocco 2025 Study observed that the acquisitions of the one

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[221] *Id*. at 306, n.20 (noting that even if the news is slanted, viewers appreciate the slant and compensate accordingly).

[222] *Id*.

[223] Free Press Comments at 29-30 (quoting Thomas E. Patterson, *Can They Do Good and Still Do Well? Local TV Stations and Communities' Information Needs*, Harv. Kennedy Sch. Shorenstein Ctr. On Media, Pol. & Pub. Pol'y, at 12 (June 2025) (Shorenstein Study)).

station group it examined lead to *less* crime reporting. So is an increase in crime reporting good for localism or bad?[224] For Free Press, it just depends on the page of their comments.

Free Press also cited a study by University of Delaware professors Danilo Yanich and Benjamin E. Bagozzi, apparently finding that station combinations lead to news duplication.[225] Free Press's reliance on this study, however, is entirely misplaced. The Yanich & Bagozzi Study reported that the most significant duplication occurred among stations involved in joint service agreements. There was much less news duplication among station pairs owned by the same entity.[226] "Service-Agreement-controlled station pairs exhibited much more duplication than did owned station pairs across all the station groups."[227] Based on this conclusion (and Free Press's assumption that all news duplication is automatically bad), Free Press should be supporting rather than opposing repeal of FCC rules that prevent common ownership of TV stations.

The Yanich & Bagozzi Study sheds no light on why stations duplicate more news content when part of shared services arrangements than they do when commonly owned. One possible implication is that common ownership *lessens* the incentive to duplicate news content. The study did not show causation or even really correlation between combined station ownership and a greater incidence of news duplication. Nor

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[224] Of course, Shorenstein Study takes no such position on whether breaking news or crime reporting is "good" or "bad." It noted that "[l]ocal TV news has traditionally prioritized weather, crime, and breaking stories, assuming they capture and hold viewer attention." Shorenstein Study at 19. It further characterized a "breaking news strategy" as "an effective option." *Id*.

[225] Free Press Comments at 34 (citing D. Yanich & B. Bagozzi, *Reusing the News: Duplication of Local Content*, University of Delaware (May 2025) (Yanich & Bagozzi Study).

[226] Yanich & Bagozzi Study at 3.

[227] *Id*. at 30.

did the authors investigate how ownership combinations change incentives for TV stations to engage in news duplication.

Moreover, Free Press and the Yanich & Bagozzi Study took a cut-and-dried stance on news duplication, but neither rigorously considered whether some amount of news duplication may occur for important reasons. For instance, the study found that higher proportions of station pairs in smaller DMAs duplicate news content than station pairs in larger markets.[228] That result is unsurprising.[229] For stations without the financial resources to maintain independent local news operations or produce enough local news to fill entire newscasts, wouldn't some degree of news sharing and duplication be preferable to local stations not showing news at all? The Yanich & Bagozzi Study failed to evaluate what stations would do if they couldn't air some duplicative news content (e.g., would the station be able to still air any local news?). Neither the study's authors nor Free Press grappled with these important normative questions, and yet, they are all too happy to draw unsupported broad-based normative conclusions. The Yanich & Bagozzi Study stands for far less than Free Press suggested.

Free Press raised several other arguments that it repeated practically verbatim from its national TV cap filing – all of which NAB has extensively rebutted.

- Free Press cited Radio Television Digital News Association (RTDNA) reports to assert that the number of local TV stations originating news has declined from 1996 to

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[228] *Id*. at 3.

[229] As NAB has demonstrated many times, TV stations in mid-sized and small markets earn vastly lower levels of ad revenues than stations in large markets and thus struggle to maintain local news operations. *See* NAB Comments at 95, 109-112 (citing multiple studies and FCC decisions recognizing the challenges smaller market TV broadcasters face in providing local news).

2025.[230] Free Press, however, ignored that RTDNA data show that the percentage of TV stations reporting that their local news operations turn a profit fell from 72 percent in 1996 to only 49.7 percent in 2025.[231] Although Free Press likes to claim that broadcast TV stations boast "massive increases in revenues and profits,"[232] the evidence shows otherwise. NAB, moreover, has demonstrated that greater scale among TV broadcasters leads to more local news.[233]

- Free Press claimed that, according to RTDNA data, station employment has been essentially flat at approximately 28,000 jobs from 2012 to 2014.[234] First, the FCC is not charged with regulating employment or the labor market.[235] Second, Free Press seems to think that allowing a status quo where newsroom finances remain squeezed will somehow support newsroom employment. The one sure way to ensure newsroom employment declines is by leaving rules in place that prevent broadcasters from obtaining investment and realizing scale economies.[236] The catastrophic decline of the newspaper industry proves that point.

- Free Press argued that local TV newsroom salaries are too low and that newsroom employees are suffering from burnout because they're forced to handle all aspects of stories, including multimedia.[237] As NAB previously pointed out, newsroom salaries have increased over time,[238] and in any event, Free Press provided no evidence that station combinations have yielded higher or lower salaries. Moreover, to the extent station employees are forced to take on multiple roles within the station, the very point

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[230] Free Press Comments at 25 (comparing B. Papper, M. Gerhard & J. Misiewicz, *Another Growth Year for News and Staff*, RTNDA (June 1997), and B. Papper, K. Henderson & T. Mirabito, *Amount of local news stays steady – for a change*, RTDNA (June 21, 2025); *see also* National TV Rule Reply Comments at 40.

[231] *See* NAB Comments at 112-113 & n.345-349, *citing, inter alia,* B. Papper, K. Henderson, and T. Mirabito, RTDNA/Syracuse University, *TV news profitability drops to lowest level since 2010*, at 1 (July 28, 2025) (reporting that the number of local news operations showing a profit declined over RTDNA's last three surveys).

[232] Free Press Comments at 25. NAB and individual TV broadcasters refuted these same Free Press claims in 2025, and Free Press provided no new or additional information here to respond to broadcasters' thorough rebuttal last August. *See* National TV Rule Reply Comments at 44-48.

[233] NAB Comments at 105-107 (showing increase in hours of news and numbers of newscasts as the number of separately owned TV station groups declined due to consolidation).

[234] Free Press Comments at 25.

[235] National TV Rule Reply Comments at 62.

[236] National TV Rule Reply Comments at 62-63.

[237] Free Press Comments at 29.

[238] National TV Rule Reply Comments at 63.

of in-market station combinations is to leverage scale efficiencies, including hiring employees who can provide services across multiple stations.

- Free Press misleadingly cited a 2025 study from the Shorenstein Center claiming that employment, morale, and reporting quality have declined, which Free Press is all too quick to attribute to station consolidation.[239] Never mind that the Shorenstein Study did not evaluate the impact of station combinations on any of these variables.[240] While it did probe whether surveyed respondents believed the quality of news had declined in recent years, the Shorenstein Study asked respondents to consider "*all* TV, radio, print, and digital news outlets" – which very well could speak about other media sources (e.g., the newspaper industry, which has experienced a significant decline in recent years).[241]

Democracy Forward Commenters raised a few arguments that can best be characterized as navel-gazing observations – none of which are relevant to the current proceeding, and some of which are downright wrong.[242] These commenters spent pages discussing the historical and academic importance of local news for localism and diversity.[243] NAB fully recognizes how important local news is to a functioning democracy. Indeed, the very reason why NAB advocates for eliminating the local broadcast TV ownership rule *is because* that rule creates inhospitable conditions for providing local news and other local content.

The biggest whopper in the Democracy Forward Comment was the assertion that "[t]he only evidence that the FCC has released itself on whether economies of scale improve localism found that the answer is no."[244] Perhaps they missed the FCC study for an earlier quadrennial review showing that common ownership of TV stations in the same local

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[239] Free Press Comments at 26-28, 30,

[240] National TV Rule Reply Comments at 36.

[241] Shorenstein Study at Appendix A, Question 10 (asking respondents to consider all TV, radio, print, and digital news outlets); *see also* National TV Rule Reply Comments at 36-37.

[242] Democracy Forward Comment at 13.

[243] *Id*. at 9-10, 14-18.

[244] Democracy Forward Comment at 13.

market resulted in a "large, positive, statistically significant impact on the quantity of news programming," and that for each additional co-owned TV station within the same market "there is an increase in the amount of news minutes by 24 each day, about a 15% increase."[245] Other studies commissioned by the FCC for its ownership reviews also concluded that co-ownership of TV stations promotes localism and viewpoint diversity.[246] Apparently these commenters also didn't see the list of empirical studies, compiled by economists Jeffrey Eisenach and Kevin Caves, that found news output to be positively correlated with station revenues, and that increasing revenues, such as by combining stations to attract more investment, viewers, and advertisers, leads to more local news production.[247]

Democracy Forward Commenters also complained that some local media markets encompass large areas that comprise many different municipalities, which means local residents receive less tailored news.[248] Maybe that's so; maybe not – in any event, it's entirely irrelevant to this proceeding. Whether TV stations combine or not has nothing to do with the size of the area any station serves. That is a function of the station's FCC license and signal coverage, as well as its DMA assignment (which

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[245] FCC, Ownership Study No. 4, Section 1, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, at 21 (2007).

[246] *See* L. George and F. Oberholzer-Gee, *Diversity in Local Television News* (2011) (finding that increases in ownership concentration often encourage diversity and that greater concentration increases the number of politicians covered in local news); A. Rennhoff and K. Wilbur, *Local Media Ownership and Viewpoint Diversity in Local Television News* (Dec. 2012 Update) (finding that viewpoint diversity is positively associated with increases in the number of co-owned TV stations in a market).

[247] J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 4, 45-46 and Table 6, 8 (2011).

[248] Democracy Forward Comment at 11.

impacts carriage on MVPDs), and has nothing to do with FCC rules regulating station ownership.

In perhaps the most transparently insincere comments, Newsmax bemoaned that eliminating *ex ante* ownership rules would lead to local broadcast TV consolidation that would diminish local voices.[249] Indeed, Newsmax lamented how the loss of local newspapers has led to an increase in public and corporate malfeasance.[250] Of course, Newsmax ignored how the FCC's rigid newspaper/broadcast cross-ownership rule hampered local newspapers from saving themselves – and the public – from a secular demise. As Chairman Carr has written, the prohibition on newspaper cross-ownership made it harder for newspapers to gain competitive scale. Due to competition from internet giants that the FCC, like Newsmax and the advocacy groups here, "refused even to recognize," the newspaper industry foundered, "at least in part because the FCC failed to react quickly enough to changes in the marketplace."[251] The Commission should dismiss the arguments of those commenters urging it to the do same with TV broadcasters.

Overall, Free Press, the Democracy Forward Commenters, and Newsmax adduced several studies – all of which are either miscited, mischaracterized, miss crucial context, or . . . well . . . just miss. It would be one thing if they were citing these studies to diligently identify

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[249] Newsmax Comments at 6.

[250] Newsmax Comments at 7 (citing D. Murphy, *When local papers close, costs rise for local governments*, Columbia Journalism Rev. (June 27, 2018); M. Hendrix, *How the Decline of Local News Threatens Local Democracy*, Governing (Oct. 5, 2020) ("In the three years following a newspaper's exit, the cost of government goes up: taxes, payrolls, average wages, deficits and borrowing costs all rise . . . .").

[251] Dissenting Statement of Commissioner Brendan Carr, *2018 Quadrennial Regulatory Review*, 38 FCC Rcd 12782, 12873 (2023).

how local TV station combinations can diminish the provision of news. But unfortunately, there is something more perilous in their position.

3. Claims That Station Combinations Diminish Local News Ultimately Boil Down to A Preference for Certain Types of Local Content

While Free Press and the Democracy Forward Commenters cited every possible study under the sun – however flawed, contradictory, or otherwise irrelevant it might be – to argue that broadcast TV combinations will harm local news, their endless effort to find some errant finding or quote to support their arguments exposes the glaring problem with their comments. What they really want is for the Commission to get into the business of judging broadcast TV stations by what type of local news they produce.

These commenters apparently think that the good kinds of local news can only be produced by broadcast TV stations operating in DMAs with multiple independently-owned stations that all have their own independent news operations. Breaking news, weather, or crime reporting? Some repetition of important stories that perhaps should be shown to viewers multiple times? News provided by one station to another via shared services agreements (even though that may well be the only way many stations can afford to provide local news at all, especially in smaller markets)? According to these commenters, those types of news stories are evidence of diminished localism and diversity even if those stories are local and, given their urgency, reflect a desire to serve viewers. While Free Press and the Democracy Forward Commenters can grouse all they want about whether station combinations lead to slight changes in the *types* of local news content that stations air, that is not a reason to maintain *ex ante* ownership rules which obviously stymie the production of local news overall and even threaten the viability of broadcast TV stations.

V. CONCLUSION

NAB and numerous radio and TV broadcasters have presented a compelling case for repealing the local radio and TV ownership rules due to the digital revolution and resulting competitive transformation of the media and advertising markets. While the need to eliminate these rules is clear and urgent, the self-interested parties calling for retaining or even tightening the existing local ownership rules offered no legal or evidentiary bases justifying these analog-era rules in the digital age. Given the FCC's authority under the Act to review all broadcast license assignments and transfers to ensure they serve the public interest, *ex ante* rules preventing proposed transactions – regardless of their public interest benefits – at the outset are not only unnecessary, but harmful. NAB urges the Commission to conclude this proceeding quickly and finally rid the media marketplace of these artificial and competition-distorting restrictions imposed on broadcasters alone.

Respectfully submitted,

NATIONAL ASSOCIATION OF BROADCASTERS
1 M Street, SE
Washington, DC 20003
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Nandu Machiraju

January 16, 2025