“Online Platforms and Market Power, Part 1: The Free and Diverse Press”

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Committee on the Judiciary

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Statement for the Record

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Introduction and Summary

Thank you for soliciting our views on competition in digital markets and its impact on a free and diverse press, local journalism and radio and television broadcasters. I am pleased to submit this statement on behalf of the National Association of Broadcasters (NAB) and its more than 7,500 local television and radio station members who serve your constituents across the United States.

The history of journalism is the history of America. From our country’s beginning, the right of the press to challenge the government, root out corruption and speak freely without fear of recrimination has been a central tenet of our democracy. For 100 years, broadcasters have served democratic values, the First Amendment and the listening and viewing public in beneficial, significant and unique ways that, even today, have no substitute. Broadcast stations continue to be among the most trusted sources of news and information for all communities throughout the U.S. because broadcast journalism is rooted in localism and the public interest. Most importantly, over-the-air radio and television are still free to the public and accessible to all Americans.

In today’s media marketplace, trusted and fact-based news and local content that reflect America’s diverse communities are more critical than ever. The current coronavirus pandemic has illustrated the value and demand for local broadcasting to educate and inform communities and help keep them safe. As during all emergencies or times of crisis, local broadcasters have not only served the public through continued reporting, but also through public service announcements (PSAs) and other myriad contributions, such as organizing food banks and blood drives, airing church services and high school graduations, enhancing children's educational programming and more. To date, TV and radio stations have aired NAB's COVID-19 PSAs more than 765,500 times for an estimated ad value of more than $156,500,000 – and these numbers do not include the likely much greater number of other coronavirus-related PSAs aired by NAB members.

Yet, even as the demand for free, local and reliable content remains high, its provision is being undermined on multiple fronts. In the short-term, the current pandemic has caused massive declines in the broadcast industry's advertising revenues, resulting in severe economic harm that threatens the continued viability of many TV and, especially, radio stations. In the longer-term, the revolution in digital technologies and the exponential growth of the internet have fundamentally altered the media and advertising landscape. This transformation has stacked the competitive deck against broadcast stations and other media providing news and information, especially local content, to communities across the country. As we explain in detail below, local journalism is now at risk due to the unchecked competitive position held by a handful of dominant digital technology platforms in today's marketplace.

As an initial matter, local news production is costly for broadcast stations. News costs consistently account for about one quarter of TV stations' total annual operational expenses, and stations also make major capital expenditures to support their news operations. Unsurprisingly, many studies have shown that TV stations earning higher revenue produce more local news programming. Because broadcast stations provide over-the-air (OTA) services free to the public, they – and their local news operations – must depend heavily (and, in the case of radio, almost entirely) on advertising revenues.

Unfortunately, over the past two decades, radio and TV station ad revenues have significantly fallen, as the advertising market has become dominated by a few giant digital platforms. This year, the U.S. advertising revenues of a single company – Google – are projected to exceed the *combined* ad revenue of *all* TV and radio stations in the country by over $8 billion. The market capitalizations of the largest radio and TV station groups are but a fraction of one percent of the market caps of Google, Facebook or Amazon, and stations increasingly struggle to compete for vital ad revenue against entities of this scale and scope.

Beyond diverting advertisers – and crucial revenue – away from local broadcast stations throughout the country, the digital platforms also control the technologies that power both content discovery (search) and digital advertising. Whether consumers use search engines, social networks, voice or video platforms, or even broadcasters' own apps to access news and other content, decisions made unilaterally by a few dominant digital technology giants impede local broadcasters' ability to connect with their audiences online. Earlier this year, for example, after many local stations added a COVID-19 category to their news apps, Google unilaterally flagged and removed some of those apps from its store, thereby undercutting stations' commitment to providing up-to-date local and state coverage of the pandemic.

The platforms' technological control and lack of transparency also permit them to impose advertising limits and policies that impede stations' ability to effectively monetize their own content online. For instance, the platforms unilaterally determine which content is eligible to be monetized and decide the share of revenue they retain versus the amounts passed on to the content providers that bear all the costs of producing the quality content that financially benefits the platforms. Due to the platforms' market power, local broadcasters, for example, see at best a little more than half of the revenue from video ads on YouTube, and Facebook reportedly offers the same revenue share for in-stream ads.

It is no answer to tell broadcasters that, if they feel disadvantaged by the policies and revenue opportunities offered by the dominant platforms, they can decline to publish their content on Google, YouTube or Facebook and forego availability via various apps or devices. Because hundreds of millions of U.S. consumers use Facebook, Google and YouTube, and own smartphones, tablets and smart speakers produced by companies like Apple and Amazon, local stations have no real choice. Beyond offering OTA services, broadcasters must be available on all major platforms and types of devices to remain relevant to audiences and advertisers in the digital age. As a result, TV and radio stations lack bargaining power when dealing with the digital giants that have become gatekeepers for content providers, including local media outlets, seeking to reach audiences and monetize their content online. The digital giants have clear financial incentives to keep consumers engaged with their own platforms, content and apps, and lack effective incentives to adopt policies and practices that promote or financially reward the providers of other content, including local news.

In short, the dominance of the leading digital platforms significantly and increasingly impairs broadcasters' ability to earn the ad revenues needed to support production of local news and information. Not only do stations struggle to attract advertisers, both on-air and online, while competing against digital giants that dwarf them in scale and scope, but those platforms' control of the technologies that power digital advertising further impede broadcasters from recovering the considerable costs of producing local content in the first place. The coronavirus pandemic and recession, moreover, have only exacerbated the structural economic problems facing ad-supported media outlets that consumers and communities rely on for local news and important coverage of emergency events.

As this Committee considers solutions to the competition problems presented by the digital platforms and their detrimental impact on a free, diverse and reliable press, we emphasize our support for laws and policies that adequately address the unique role of free and local OTA broadcasting and its value in a democratic society. We commend Chair David Cicilline and Rep. Doug Collins on the introduction of the Journalism Competition and Preservation Act. As our newspaper brethren have demonstrated, there are significant antitrust-related concerns for news publishers that directly affect the continued viability of local journalism. While both our industries face similar existential threats, potential solutions need to take account of the unique circumstances affecting radio and TV broadcasting and local stations' news operations.

I. Maintaining Local Broadcast News Operations and Producing Quality Local Journalism Requires Significant Financial and Staff Resources

Local news production is costly for broadcast stations. Over the period 2003-2018, news costs, on average, accounted for nearly 24 percent of TV stations' total expenses (and nearly 26 percent of the total expenses of ABC/CBS/Fox/NBC stations).[1] From 2013-2018, stations nationwide spent an average of over $3.0 million per year producing local news, with major network affiliates expending an average of nearly $3.6 million annually. Stations in larger markets with more resources spend much greater amounts. From 2013-2018, the average news expenses of TV stations in the ten largest markets reached almost $9.7 million annually, while ABC/CBS/Fox/NBC stations in the top ten markets spent an average of nearly $15.8 million annually on news.[2] In addition to these significant annual operational costs, stations also make major capital expenditures (*e.g*., the purchase of satellite trucks) to support their news operations.

Given these high costs, many studies unsurprisingly have found that TV stations earning higher revenues offer more local news and/or public affairs programming.[3] Radio and TV stations in mid-sized and small markets earn but a fraction of the advertising revenues earned by large market stations, due to the smaller economic bases and limited available advertising revenues in those markets.[4] As a direct consequence of their limited ad revenues, broadcast stations in smaller markets can afford to hire fewer news personnel, and they offer lesser amounts of local news programming.[5]

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[1] *See* NAB Television Financial Reports 2004 to 2019.

[2] *See* NAB Television Financial Reports 2014 to 2019.

[3] *See, e.g.,* 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 8 (2011) (Economies of Scale Study), attached to Reply Comments of NAB, MB Docket No. 10-71 (June 27, 2011) (citing numerous empirical studies finding a "positive and statistically significant relationship between revenue and local news production"); *accord* FCC, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, Media Ownership Study #4, Section I, at 21 (2007); P. Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming*: *An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecom., Information, and Media 112, 119 (2004).

[4] According to BIA, in 2018 the average radio station in the smallest Nielsen radio markets (201-265) earned only 7.1 percent of the amount of ad revenue earned by the average radio station in the top-10 markets. Similarly, the average radio station in markets 76-100, 101-150 and 151-200 earned only 13.4, 11.7 and 10.5 percent, respectively, of the average top-10 station. BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, at 14 (Apr. 19, 2019) (BIA Radio Study), Attachment A to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019). In 2017, the average TV station in the top-10 Designated Market Areas (DMAs) earned nearly 12 times the amount of ad revenues earned by the average station in the smallest DMAs (151-210) and about eight times the amount earned by stations in DMAs 101-150. *See* Attachment G to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019) (citing BIA data).

[5] According to the Radio Television Digital News Association's (RTDNA) most recent survey, the average TV news station aired 5.9 hours of local news on weekdays, with small market stations (DMAs 151-210) airing an average of 4.6 hours and stations in the top-50 DMAs airing about 6¾ hours per day. Notably, TV

Notably, RTDNA's surveys also reveal the economic pressures on local broadcast news operations. Over the past five years, only about three-fifths (60 percent) of TV stations have reported profitable local news operations, while many radio stations in markets of all sizes struggle to make local news programming financially viable.[6] Emergency journalism places particular financial stress on broadcasters, as local stations often cover disasters and crises 24/7, foregoing their regular advertiser-supported programming while incurring extra costs, such as overtime for employees.[7] And as TV and radio stations face ever greater financial challenges due to profound competitive changes in the advertising marketplace, they may be unable to maintain their current levels of local news production, let alone improve the quantity or quality of their local journalism.[8]

II. Competitive Dynamics in Today's Advertising Marketplace Are Undermining Broadcast Stations' Ability to Earn the Revenues Necessary to Support Local Journalism

Because broadcast stations provide over-the-air (OTA) services free to the public and cannot rely on subscription fees or pay walls, they – and their local news operations – depend heavily (and, in the case of radio, almost entirely) on advertising revenues. BIA has estimated that, from 2000-2018, local TV stations' total OTA ad revenue fell by 13.4 percent in nominal terms and by 40 percent in real terms (*i.e.*, after accounting for

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stations with very small news staff (1-10 employees) aired only 1.2 hours of local news each weekday, while stations with very large news staff (over 50 employees) aired 8.6 hours per day. RTDNA, Bob Papper, *A Shocking Development*: *A Small Increase in Local TV Newsrooms* . . . *and a Record Amount of Local News* (May 15, 2019). The same holds true for radio stations. *See* RTDNA, Bob Papper, *Most Radio Stations Run Local News* . . . *and a Little More of It This Year* (May 15, 2019) (stating that the "bigger the staff, the more news a [radio] station runs," without exception).

[6] *See* RTDNA, Bob Papper, *The Business of News*: *TV* (May 15, 2019); RTDNA, Bob Papper, *Radio News Profits Edge Down but Budgets Edge Up* (May 15, 2019) (according to responding news directors/general managers with knowledge of their stations' finances, only 12.4 percent reported their stations earned a profit on news in 2018, consistent with the previous five years).

[7] *See* FCC, Steven Waldman, *The Information Needs of Communities*, at 79-80 (July 2011) (citing examples, including one TV station in New Orleans that stayed on air for 16 days straight without commercials during Hurricane Katrina).

[8] Beyond earning additional revenues, broadcasters also could better support their local news operations if they were permitted to achieve greater economies of scale and scope by acquiring more stations in local markets, thereby spreading the high costs of news production across more outlets. Multiple economists have found that TV broadcasting generally, and local news production specifically, are "subject to strong economies of both scale and scope," which are, by definition, "associated with falling unit costs of production" and "hence are *prima facie* welfare enhancing." Economies of Scale Study at 1-3 (concluding that placing undue limits on broadcasters' ability to achieve scale and scope economies "result[s] in higher costs, lower revenues, reduced returns on invested capital [and] lower output," including "significantly reduc[ed]" local news output); *accord* Decl. of M. Israel and A. Shampine, Comments of NAB, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014) (finding that economies of scale and scope exist in TV broadcasting and that both lead "to increased investment in news programming"). Decades-old FCC rules, however, prevent achievement of these beneficial scale economies by, among other restrictions, prohibiting broadcasters from owning more than one TV station in most DMAs.

inflation).[9] BIA data also show that the radio industry's total OTA ad revenues fell 25 percent from 2004 to 2018, even without adjusting for inflation.[10]

Rather than any temporary business cycle effects, the long-term and continuing declines in local stations' ad revenues reflect the transformation of the advertising marketplace due to digital technologies and the explosive growth of a small number of giant digital ad platforms. In just a few short years, these platforms have come to dominate the competitive landscape. As the ad revenues of traditional media fell, Kagan estimated that digital (online/mobile) ad revenues grew by a Compounded Annual Growth Rate of 17.7 percent from 2010-2019, with its share of the total U.S. advertising market growing from 12.6 percent in 2010 to 42.2 percent in 2019.[11] Kagan projects these trends will continue, with digital capturing 59.5 percent of overall U.S. advertising revenue by 2029, and – even more ominously for local TV and radio stations – predicts digital gaining still higher shares of local ad dollars.[12]

NAB and our members have attested to the real-world, local market consequences of this fundamental shift in the advertising market. At the Federal Communications Commission (FCC), radio and TV stations from across the country have recounted losing multitudes of local advertisers across all industry sectors, and large percentages of their ad dollars, to digital platforms, including Google, YouTube and Facebook,[13] which, according to Borrell Associates, has become the most popular marketing vehicle for local advertisers.[14] At a Department of Justice (DOJ) workshop on competition in TV and digital advertising last year, NAB and representatives of TV station groups, cable operators and online platforms all agreed – contrary to DOJ's woefully outdated view of the marketplace – that TV broadcasters, multichannel video providers and digital platforms directly compete for advertising.[15]

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[9] BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction*, at 16 and Fig. 10 (Mar. 15, 2019) (BIA TV Study), Attachment B to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019).

[10] *See* BIA Radio Study at 10-11 and Fig. 7.

[11] Kagan Market Intelligence, Derek Baine, *Rapidly changing video world impacts advertising market*, at 6-7 (2020) (estimating that radio and TV stations had a 4.7 percent and 7.1 percent share, respectively, of total U.S. advertising revenues in 2019).

[12] *See id*. at 8-10 (projecting higher growth rates for digital advertising in local markets than at the national level over the next decade and estimating that digital platforms will earn two-thirds of total local ad dollars in 2023 and surpass 70 percent later in the decade).

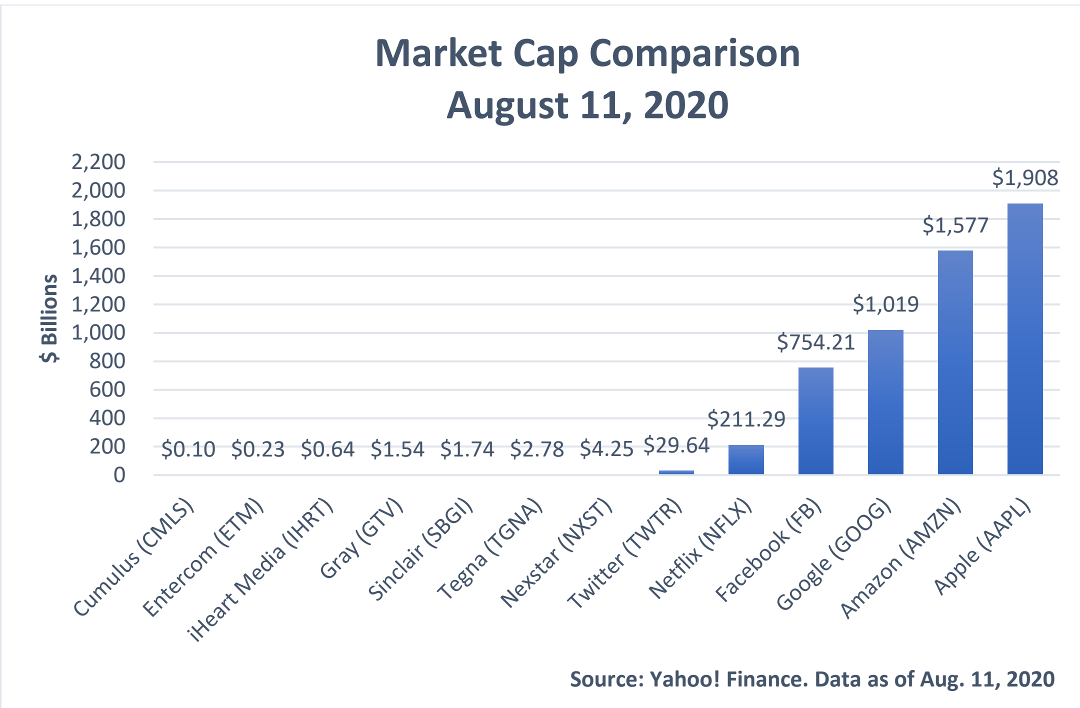
[13] *See*, *e.g*., Comments of Meredith Corp., MB Docket No. 18-349, at 2 (Apr. 29, 2019); Joint Reply Comments of Broadcast Licensees, MB Docket No. 18-349, at 10-13 (May 29, 2019); Comments of Connoisseur Media, *et al*., MB Docket No. 18-349, at Exhibit C (Apr. 29, 2019) (providing declarations from ten radio companies as to their losses of specific advertisers, *e.g*., auto/RV dealers; banks/credit unions; hospitals and various medical service providers; local and chain restaurants and bars; real estate companies; state lotteries; local colleges; and innumerable retail businesses and service providers, including home stores, garden centers, repair services, jewelry stores, dry cleaners, *etc*.).

[14] Borrell Associates, *2019 Benchmarking Local Media's Digital Revenues*, Executive Summary, at 4.

[15] *See* Remarks of Rick Kaplan, general counsel and executive vice president, NAB, "Executive Suite: Competitive Dynamics in Advertising: Does Local Broadcast Compete with Cable Spot and Online Advertising?", Panel at DOJ Antitrust Division, *Public Workshop on Competition in Television and Digital*

The massive shift in advertising to other platforms has profoundly affected local broadcasters. Stations in mid-sized and small markets with limited economic bases have been disproportionately impacted because any significant loss of revenue has an outsized effect on their ability to pay the largely fixed costs required to operate and to produce or acquire news and other programming.[16] Implementation of the next generation broadcast TV transmission system, ATSC 3.0 (Next Gen TV), will require notable investments by local stations. Only those TV stations with sufficient revenues will be able to make the necessary investments and offer the improved services that Next Gen TV enables, including ultra-high definition programming, better emergency alerting, mobile services, interactivity, hyper-local content and more.[17]

The sheer size and scale of the digital platforms that dominate the advertising landscape impair local stations' ability to compete effectively for vital ad revenue. The market capitalizations of the largest TV and radio station groups are but a fraction of one percent of the market caps of Google, Amazon and Facebook.



Advertising (May 2-3, 2019) (DOJ Workshop); Written Comments of NAB, DOJ Workshop (June 17, 2019). Inexplicably, DOJ continues to adhere to its analog-era view that broadcast TV stations compete for advertising only against other TV stations, refusing to recognize that the competitive world has changed since the mid-20th century. As a result, DOJ's merger and acquisition policies continue to prevent local TV broadcasters from achieving the vital economies of scale that would improve their long-term financial viability and provide much needed support for stations' local news operations. *See* note 8, *supra*.

[16] Broadcast stations have substantial fixed costs (*i.e.*, the basic costs of running a station, including engineering, sales, programming, *etc*.) that must be met before they can hire additional staff, upgrade equipment or expand their news coverage. *See*, *e.g*., BIA Radio Study at 31.

[17] *See* BIA TV Study at 2.

In 2020, the U.S. advertising revenues of a single company – Google – are projected to exceed the *combined* ad revenues of *all* TV *and* radio stations in the country by more than $8 billion, and Facebook's advertising revenues will exceed the combined ad revenues of all broadcast stations by a small margin.[18] Industry observers routinely refer to digital advertising as dominated by the Facebook-Google "duopoly," which in recent years has controlled over 60 percent of U.S. digital spending, with Amazon, "[r]ather than disrupting the duopoly," now "looks to have joined it as a third giant."[19] The unregulated and unchecked growth of the advertising and technology giants is in stark contrast to the severe and archaic restrictions placed on the scale and scope of local media providing local news to the public.[20]

When asked about competition in its local market, a radio broadcaster in central New York state said last year:

> If you add all the radio money in the market, it's about 7 cents on the dollar… In five years, Facebook and Google have taken more money out of the marketplace than all the radio companies combined. There has been a pivot point on who the competition is. No longer is it the radio guy across the street.[21]

This statement incapsulates the serious challenges now facing radio and TV stations. Simply put, the structure of today's advertising marketplace, dominated by massive digital platforms present in every local market in the U.S., inhibits TV and radio stations from competing effectively for the ad dollars necessary to maintain their day-to-day operations and to sustain – let alone improve – local news, emergency journalism and other highly valued free, OTA programming.

The coronavirus pandemic and recession have only exacerbated the problems facing local broadcast journalism. The pandemic's shock to the advertising market caused stations' revenues to plummet. This past spring, radio broadcasters reported ad revenue declines between 40-70 percent and local TV stations experienced drops of 40-60 percent.[22] Broadcasters have been forced to reduce salaries and lay off or furlough

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[18] eMarketer estimates that Google's and Facebook's U.S. ad revenues will be $39.58 billion and $31.43 billion, respectively, in 2020. eMarketer, *Google Ad Revenues to Drop for the First Time* (June 23, 2020). According to BIA, local TV and radio station ad revenues (counting both their OTA and much more limited digital revenues) will total $31.3 billion this year. *See* BIA Advisory Services, *BIA Revises Local Radio Advertising Estimates Down to $12.8B in 2020 Due to Pandemic* (June 25, 2020); BIA Advisory Services, *BIA Lowers 2020 Local Television Station Advertising Revenue Forecast to $18.5B* (May 21, 2020).

[19] Nicole Perrin, *Facebook-Google Duopoly Won't Crack This Year*, eMarketer (Nov. 4, 2019) (stating that "[d]igital ad market consolidation shows little sign of stopping," and projecting that in 2020 about 70 percent of U.S. digital ad dollars "will end up with one of the three leading ad sellers").

[20] For example, the FCC's newspaper/broadcast cross-ownership ban – adopted in 1975 – still prohibits common ownership of even a single radio or TV station and a newspaper in the same local market.

[21] David Menconi, *Five Independent Radio Broadcasters Discuss Their Strategies For Small-Market Success*, Billboard (Sept. 17, 2019).

[22] Radio Ink, *Just How Bad Is The Ad Revenue Decline?* (May 7, 2020); Harry Jessell, *Magid*: *Local TV To Feel 'Devastating' Ad Impact*, TVNewsCheck (May 4, 2020).

employees, including news staff, and some radio stations have gone silent.[23] Ironically, these advertising-related layoffs occurred at the same time that viewership of local and national broadcast TV news significantly increased, as Americans sought a trusted source of information about the pandemic.[24] Given that the overall U.S. ad market took nearly a decade to fully recover from the last major recession in 2008-2009, the advertiser support for broadcast journalism – already undermined by the Facebook-Google duopoly – appears increasingly at risk.

III. The Dominant Digital Platforms Control Much of the Technology That Powers Both Content Discovery and Digital Advertising, Inhibiting Stations' Ability to Reach Consumers and Monetize Their Own Content

Beyond diverting advertisers of all types – and their crucial ad dollars – away from broadcast stations in local markets across the country, the dominant digital platforms also essentially control the technology that powers both content discovery (search) and digital advertising. This control of technology further increases the marketplace dominance of the leading digital platforms and exacerbates the struggles of broadcast stations to earn the revenues needed to fund local journalism or even to reach consumers with their content.

Today, the top platforms direct truly remarkable levels of consumer traffic. Google doesn't just lead the search engine market, "it dominates,"[25] with a 87.6 percent share of the market in the U.S. and around 92 percent globally.[26] YouTube (owned by Google) has nearly 70.6 percent of the U.S. online video platform market with about 74 percent worldwide,[27] and Facebook dominates the social media market, with a 61.3 percent share in the U.S. and around 74 percent globally.[28] Consumers access these platforms via smartphones, tablets, smart speakers and other devices designed by a few leading technology companies, such as Apple.

Given their usage by hundreds of millions of consumers, broadcasters must be available via all these platforms and devices to remain relevant to audiences and advertisers in the digital age. Local stations consequently lack bargaining power when dealing with the massive digital companies that essentially have become gatekeepers for content providers, including local TV and radio stations, needing to reach online audiences. These digital giants have clear incentives to keep consumers engaged with

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[23] *See*, *e.g.*, Inside Radio, *Coronavirus-Related Cuts At Saga*, *Alpha Media*, *Forever Media* (Mar. 30, 2020); Al Tompkins, *Tegna* f*urloughs local TV news staff*, *managers take temporary pay cut*, Poynter (Apr. 6, 2020); Inside Radio, *April Saw A Big Spike In Stations Going Silent* (Apr. 29, 2020).

[24] *See*, *e.g*., Lillian Rizzo, *Local TV Sees Spike in Viewers*, *Drop in Ads in Coronavirus Crisis*, The Wall Street Journal (Apr. 3, 2020); Rick Porter, *Network Newscasts Keep Up Ratings Momentum During Pandemic*, The Hollywood Reporter (Apr. 22, 2020).

[25] Sarah Berry, *2020 Search Market Share*: *5 Hard Truths About Today's Market*, WebFX (July 13, 2020).

[26] As of July 2020, statcounter GlobalStats, https://gs.statcounter.com/search-engine-market-share.

[27] https://www.datanyze.com/market-share/online-video--12/Datanyze%20Universe/youtube-market-share, accessed August 17, 2020.

[28] As of July 2020, statcounter GlobalStats, https://gs.statcounter.com/social-media-stats.

their own platforms, content and apps, and no effective incentives to adopt policies and practices that promote the providers of other content, including local news, or permit local stations and other media outlets to fully monetize their online content.

A. Platforms' Unilateral Decisions Heavily Impact Stations' Ability to Reach Consumers

Whether consumers use search engines, social networks, voice or video platforms, or broadcasters' apps to access news and other content online, decisions made unilaterally by a few dominant digital platforms impede local broadcasters' ability to connect online with their audiences. The ranking algorithms used by platforms determine what sources, articles and clips appear, or are "surfaced," to users. While the platforms constantly adjust and tweak them, those algorithms have consistently favored national sources over local sources; frequently favored controversial and polarizing content and opinion sources over high-quality journalism; and can often make it difficult for smaller, local publishers to reach audiences at all. The platforms' ranking changes – often made without consultation with broadcasters or other publishers – additionally can disrupt audience engagement with broadcasters' content, as well as stations' online revenue strategies.

National vs. Local Sources. National sources have a multitude of advantages over local sources online. Regardless of the popularity of a local news source within its market, the total number of page views, shares, followers or other aggregate metrics will necessarily be smaller than those of national outlets. Due to their relatively modest numbers of followers or page views, small market radio and TV stations often have found it difficult to meet the requirements to appear on the first page of search results or even appear at all on news aggregation sites, dramatically reducing their visibility to the online platforms' millions of users. While mid-size and large-market broadcast stations meet the platforms' minimum criteria, national sources are still likely to outrank those local sources due to their greater national followings, even for news stories with significant local components, such as major weather events or natural disasters.

Overall, local news does not seem to be a priority for the major online platforms. For example, even if consumers select local publishers specifically, those local sources do not appear prioritized in their news feed. Local broadcasters also struggle to gain placement on news-centric services. One NAB TV member, for instance, reports attempting to be placed on the Apple News platform for over eight months. During this time, the broadcaster has seen no progress in Apple's monetization review and, due to Apple's review policies, this broadcaster has been unable to gain distribution via Apple News even for non-monetized content.

App store platforms also have policies that heavily disadvantage local news sources. A consumer using their device's app store to install news apps will find national and international outlets' apps recommended at the top of the news category. They will have considerably more difficulty locating the app for their local broadcaster or newspaper, as apps with national reach and a larger potential market inevitably have more users and therefore rank higher in the news category in the platform app stores.

In one revealing case, NAB members report that Apple changed its App Store review guidelines to force station groups that offered a local-specific app to have a single national app. Ultimately, Apple reversed this decision, but notably the number of characters available to describe an app and enable users to search for it would not have been sufficient to include every callsign and/or market information for even mid-sized station groups.[29] Had Apple's initial decision prevailed, it would have been virtually impossible for a local station to reach its viewers or listeners via the broadcaster's own mobile app on Apple's phones.

This case clearly illustrates the power over content that companies like Apple exert through their control of digital technologies. As of early 2020, 85 percent of the total U.S. population ages 12+, or 240 million people, owned smartphones.[30] Apple is the leading brand of smartphone in the U.S., and it possesses the ability to push its own content (Apple TV+, Apple Music) to the millions of its phones and other devices in consumers' hands, to the disadvantage of other content providers, including broadcasters. Reportedly, Google also has been removing applications for duplicate content without considering the established local brands that separate applications serve.

In addition to the mobile and desktop environments, large platforms' decisions that favor national over local sources also manifest on televisions through over-the-top (OTT) video platforms, such as Amazon Prime Video, Apple TV and YouTube TV. The options that viewers see on televisions when accessing OTT platforms also depend on algorithms developed by these giant international platforms. The result is a consumer experience that favors national over local content, making it increasingly hard for viewers to find news stories and other content relevant to their local communities.

Similarly, voice platforms like Amazon Alexa and Google Assistant disadvantage local broadcasters relative to other, especially national, sources. With Amazon Alexa, stations can develop "skills," enabling listeners to access local stations on smart speakers or similar devices.[31] However, even if a station undertakes the effort to develop these skills, it can be difficult for users to activate them because skills are not surfaced based on geography. With Google Assistant, the only option for smaller station groups that wish to be accessed via the platform is to go through an aggregator, thereby inhibiting stations' ability to reach audiences more directly. Preliminary research conducted on behalf of NAB suggests that listeners of stations, particularly in small markets, often have difficulty accessing the intended radio station via a voice platform. Confusion can occur when there are multiple stations sharing the same frequency or common name (*e.g.*, 94.7 or "B101") in different markets, as the algorithms take into

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[29] The Apple App Store limits titles to 30 characters, plus 30 characters for a subtitle, and 100 characters worth of keywords. *See* https://developer.apple.com/app-store/product-page/.

[30] Edison Research and Triton Digital, *The Infinite Dial 2020* (Mar. 19, 2020) (Infinite Dial 2020). Fifty-three percent of those ages 12+, or 149 million people, owned tablets by early 2020. *Id*.

[31] According to Amazon, a skill is "[a] set of actions or tasks that are accomplished by Alexa. Skills are like apps for Alexa, helping customers perform everyday tasks or engage with your content naturally with voice." https://developer.amazon.com/en-US/docs/alexa/ask-overviews/alexa-skills-kit-glossary.html#s.

account the popularity – rather than the geography – of stations in determining which station to play.

Consumers often access voice platforms via smart speakers, which Americans are rapidly adopting.[32] Smart speakers can influence media consumption, again to the disadvantage of local broadcast stations. For example, owners of smart speakers use Amazon Music more frequently than those without smart speakers, which is unsurprising given that Amazon Alexa is the leading brand of smart speaker.[33] Smart speakers also set default news providers, often major national outlets like CNN rather than local news sources.[34]

Reporting vs. Opinion and Controversy. Platforms have often placed a higher priority on stories that users interact with, rather than passively consume. In the case of news stories, this tends to result in amplification of stories users feel most strongly about, rather than those that are primarily informative.[35] Last year Facebook introduced a section specifically for News in an apparent attempt to offset this effect,[36] but its more-popular News Feed continued to rely on user engagement as a key metric to determine ranking. As a result, stories with strong opinions that elicit strong responses are often surfaced at the expense of trusted, fact-based news sources. Again, the platforms' biases negatively impact broadcast stations, which stress factual reporting of local/regional events. More recently, Facebook made another change to its algorithm to prioritize original reporting in its news feed ranking to try to counteract this problem, but it remains unclear how these changes will impact reach.[37]

Platform decisions that impact news coverage. When Facebook initially introduced its ad archive for all political ads,[38] it defined political ads to include any content relating to politics or issues of national importance, which immediately and adversely affected stations' promotion of their news content. Specifically, a publisher may often buy an ad on Facebook to increase the reach of its news story and drive traffic to its website. But if the story is related to coverage of a political campaign or a nationally important issue (*e.g.*, education or immigration policy), then Facebook would deem the publisher's promotional ad to be political, even if the article being linked to was pure fact-

[32] As of early 2020, 27 percent of the 12+ U.S. population (76 million people) owned a smart speaker, up from only seven percent in 2017. Infinite Dial 2020.

[33] *See* Edison Research and Triton Digital, *The Infinite Dial 2019* (Mar. 2019); Infinite Dial 2020.

[34] *See* Rachel Withers, *Is Getting Our News From Smart Speakers a Threat to Media Diversity?,* Slate (Aug. 7, 2018); Nic Newman, *Digital News Project*: *The Future of Voice and the Implications for News*, Reuters Institute, at 24-25 (Nov. 2018).

[35] See *Bringing People Closer Together*, Jan. 11, 2018, *available at* https://about.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/.

[36] Introducing Facebook News, Oct. 25, 2019, https://about.fb.com/news/2019/10/introducing-facebook-news/.

[37] *See* Prioritizing Original News Reporting on Facebook, June 30, 2020, https://about.fb.com/news/2020/06/prioritizing-original-news-reporting-on-facebook/.

[38] Making Advertising Transparent, October 23, 2018, https://about.fb.com/news/2018/10/inside-feed-making-advertising-transparent/.

based reporting. As a result, a station or other publisher would be required to enroll on Facebook as a political advertiser and include the ad promoting its own content in Facebook's political advertising archive. While Facebook has since reversed this policy and exempted most news publishers from its political advertising rules, this and other similar decisions remain solely at the discretion of the dominant platforms, and Facebook and Google are interested parties in the political advertising market. The Facebook-Google duopoly – which, according to eMarketer, "already control[s] 60.8% of the total US digital ad market" – "has an even tighter grip" on digital political ad revenues, "with a combined 77.6% this election cycle."[39]

Likewise, the dictates of the platforms' app stores can inhibit consumers' access to important local news coverage. Earlier this year, as state and local governments were rapidly changing policies and guidance around the coronavirus pandemic by issuing and adjusting stay-at-home orders, mask ordinances and school opening plans, many local stations added a COVID-19 category to their news app and included this new category in the app description. Google flagged and removed some of these apps from its store due to the mention of the coronavirus, as it did not consider local news apps to be an authoritative source of health information. Its action directly undercut stations' commitment to providing up-to-date local coverage of the pandemic and was contrary to Americans' increased reliance on local TV station news as a trusted source about the coronavirus outbreak.[40]

Ranking based on technology choices. Google developed a technology called Accelerated Mobile Pages (AMP), which enables pages to load faster on mobile devices. Currently, broadcast stations are *required* to use AMP to be eligible for the Top Stories category in Google search results. While enabling faster loading on mobile devices can be desirable for many reasons, the use of AMP also reduces the ability of a station both to uniquely brand and to effectively monetize content. In a key finding, a major report on digital platforms by the Australian Competition and Consumer Commission recently concluded:

> The Accelerated Mobile Page (AMP) format impedes the ability of media businesses to monetize content as effectively as on their own websites. It also creates difficulties with attribution, branding and the sharing of data.[41]

Google has announced it is working on a new ranking signal, Google Page Experience, which will replace the requirement for pages to use AMP. These changes, however, will not occur until sometime in 2021, and the impact to stations is still

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[39] eMarketer, *Facebook Dominates 2019/2020 Political Ad Spending* (Feb. 24, 2020).

[40] *See*, *e.g*., Jon Lafayette, *Virus Crisis Bringing Young Viewers to Local Broadcast*, Broadcasting+Cable (Mar. 24, 2020).

[41] Digital Platforms Inquiry Final Report, available at https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf. In particular, the ACCC notes that AMP presents challenges in the areas of monetization by restricting the space available for advertising, diminishes brand awareness by reducing opportunities for publishers to create their own "look and feel," and enables Google to "retain[] users within its ecosystem and reduce[] monetisation opportunities for media businesses outside of AMP."

unknown.[42] Google's development of AMP illustrates how the dominant digital platforms' control of the technologies that publishers must use to reach audiences works to the competitive disadvantage of news providers, including local broadcast stations.

It is, furthermore, unsurprising that the giant digital companies may use their technological control to further their financial interests. Companies earning billions in advertising revenue have incentives to keep consumers engaged with their platforms, content and apps, thereby increasing their traffic and ad revenues. The power of the platforms, combined with their disincentive to promote the providers of other content including local news, results in unilateral decisions that have worked and continue to work to disfavor local media outlets trying to reach online audiences and compete for consumers' time and attention.

B. The Online Platforms' Advertising Limits and Policies Impede Stations' Ability to Effectively Monetize Content and Demonstrate the Platforms' Market Power

Beyond controlling the technologies that power content discovery, the giant digital platforms also control the technologies underlying online advertising and impose advertising policies that impair stations' ability to fully monetize their own content. Advertising on platforms such as YouTube and Facebook is strictly controlled through the platforms' monetization policies. NAB station members report that the determination of what content is eligible to be monetized, as well as revenue splits between the platform and the content owner, are determined *unilaterally* by the platform. This ability to impose the level of compensation that publishers receive clearly demonstrates that the platforms possess significant market power and undue bargaining power over content providers. With regard to local radio and TV stations specifically, the platforms' advertising policies can prove especially detrimental to local broadcasters compared to national sources and fail to provide the same opportunities that broadcasters have for monetizing content on their own websites.

One example of such an ad policy is the minimum content length to be eligible for monetization. Until very recently, Facebook required that videos be at least three minutes long to include advertising, while individual news stories are often less than three minutes. On June 30, Facebook announced that it is testing monetization opportunities for videos as short as 60 seconds, but these are limited to image ads or post-roll ads, which generate less revenue than the mid-roll ads available for longer-form content.[43] Facebook's policy – even assuming Facebook unilaterally determines to alter it – would still adversely impact local stations' monetization opportunities.

Another issue is the inability of broadcasters to sell their own ad inventory for their content placed on third-party platforms. When platforms sell ad inventory, they typically allow advertisers to select or exclude broad categories of content to run their ads against.

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[42] Evaluating page experience for a better web, May 28, 2020, available at https://webmasters.googleblog.com/2020/05/evaluating-page-experience.html.

[43] https://www.facebook.com/creators/new-ways-to-monetize-on-facebook-instagram.

News publishers are bundled into a large "news" category that combines respected local broadcasters with clearly partisan and opinion pieces and even fictitious stories. NAB members state that this approach has a negative effect on ad rates for news content on YouTube compared to other categories of content that advertisers find less polarizing.

YouTube offers some more lucrative advertising options, but local broadcasters have generally been unable to avail themselves of these programs. One such program, called YouTube Select, is available to very large, "brand safe" publishers.[44] This invitation-only program does not appear to include local broadcasters. YouTube also offers some media companies the ability to sell their own ad inventories directly, but the criteria are opaque and the program is not available to all broadcasters, particularly those not owned by larger station groups or major networks.[45] Here again, the platforms' unilaterally-set policies operate to the financial detriment of local TV and radio stations serving local communities.

Notably, the online platforms unilaterally decide the share of revenue to be retained by the platform versus the amounts passed on to the actual content providers, which, of course, bear all the expenses of producing the quality content that financially benefits the platforms. As a result of the platforms' market power, local broadcasters see at best 55 percent of the revenue from video ads on YouTube,[46] and reportedly Facebook offers the same revenue share for in-stream ads.[47] This revenue split, coupled with the depression of revenue opportunities resulting from inclusion within an online news category encompassing unreliable "news" sources, results in limited revenue opportunities for broadcasters on these digital platforms.

Even those platforms such as Amazon Fire TV and Roku, which allow publishers to sell their own ad inventory, commonly require publishers to share a percentage of their ad inventory with the platform, in lieu of sharing their ad revenue.[48] This practice effectively forces publishers to surrender control of their own ad inventory to the platforms as a form of payment. Television broadcasters observe that, overall, the terms available on Roku are better for content creators than the terms on other large platforms, including Amazon Fire TV.

Significantly, much of the technology supporting online advertising is owned by the large platforms. Broadcasters and other publishers rely on the third-party technology platforms to manage and serve relevant ads, based on fees set by the platforms for those

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[44] https://www.youtube.com/ads/youtube-select/.

[45] https://support.google.com/youtube/answer/7438625.

[46] https://adage.com/article/digital/youtube-ad-revenue-disclosed-google-first-time-topped-15-billion-2019/2233811.

[47] https://digiday.com/media/facebook-video-ad-breaks-creators/.

[48] *See* Roku advertising policy available at https://developer.roku.com/docs/features/monetization/video-advertisements.md (requiring that 30 percent of adv inventory be dedicated to Roku with Roku maintaining 100 percent of the revenue on that share). *See also* Amazon Fire TV advertising policy at https://developer.amazon.com/docs/policy-center/fire-tv-advertising.html (requiring that 30 percent of ad impressions be provided to Amazon with Amazon retaining all revenue from those impressions).

services. The proportion of online ad spending that goes to the tech and software intermediaries to execute advertising transactions is quite high according to estimates.[49] These fees are additional costs for local publishers struggling to recover the substantial expenses of producing news and other content relevant to local communities.

When considering the dominant role of the digital platforms in today's advertising and media landscape, it is no answer to tell broadcasters that, if they feel disadvantaged by the policies and opportunities offered by Google, YouTube, Facebook, Amazon and Apple, they can decline to publish their content on those platforms and forego availability on various apps or devices. Because millions of consumers of all ages use digital platforms and devices including smartphones, tablets and smart speakers, local broadcast stations in fact have no real choice. Broadcasters must be available on all major platforms and via all types of devices to remain relevant to audiences and advertisers in the digital age. As a result, local stations lack bargaining power when dealing with the digital giants that are effectively gatekeepers for content providers, including local media, seeking to reach online audiences. Unfortunately, as described above, these platforms' technologies and unilaterally-set policies hurt local providers of quality journalism and prevent stations from effectively monetizing their own content online. Receiving cents on the dollar does not enable TV and radio stations to recover the considerable costs of producing local content in the first place.

IV. Conclusion

At its core, radio and television broadcasting is about localism and serving American communities. Broadcasters take seriously our mandate to serve the public interest and provide viewers and listeners across America with the information and facts they need to be informed citizens. The value of broadcasting and local journalism in an increasingly digital world has never been more obvious; so too, the threat that the digital platforms' power poses to news publishing and the continued viability of local media outlets has never been greater.

The dominance of the leading digital platforms significantly and increasingly impairs TV and radio stations' ability to earn the ad revenues needed to support production of news and other locally-oriented content. Not only do stations struggle to attract advertisers, both on-air and online, while competing against digital giants that dwarf them in scale and scope, but those massive platforms' specific policies also impede broadcasters' and other media outlets' efforts to derive revenue from their content that consumers access via the platforms. Local journalism is now at risk due to the overwhelming competitive position of a handful of technology companies in today's digital marketplace.

NAB appreciates the opportunity to discuss these issues and looks forward to continuing to work with this Committee.

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[49] *See* eMarketer, *eMarketer's New Ad Tech Tax Estimates Show One-Third of Spending Goes to Intermediaries* (Aug. 5, 2019), *available at* https://www.emarketer.com/content/emarketer-s-new-ad-tech-tax-estimates-show-one-third-of-spending-goes-to-intermediaries.