

Before the  
U.S. Department of Justice  
Antitrust Division  
Washington, D.C. 20530

U.S. Federal Trade Commission  
Washington, D.C. 20580

In the Matter of )  
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Guidance on Business Collaboration ) ATR Docket No. 2026-0001  
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**COMMENTS OF  
THE NATIONAL ASSOCIATION OF BROADCASTERS**

**I. INTRODUCTION**

The National Association of Broadcasters (NAB)<sup>1</sup> commends the U.S. Department of Justice’s Antitrust Division (Antitrust Division or Division) and the U.S. Federal Trade Commission (FTC or Commission) (collectively “Antitrust Agencies”) for opening this proceeding to gather “input on the value and potential content of guidance concerning the range of collaborations utilized to drive innovation and promote competition in the modern economy.”<sup>2</sup> Television and radio broadcasters are highly fragmented because of far-reaching regulations that restrict station ownership. Broadcasters also face extensive competition in the media marketplace from cable, satellite, streaming services, and Big Tech firms. No

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<sup>1</sup> The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

<sup>2</sup> U.S. Dep’t of Justice Press Release, *Justice Department and Federal Trade Commission Seek Public Comment for Guidance on Business Collaborations* (Feb. 26, 2026) (Press Release).

matter how one looks at the media marketplace, broadcasters face a torrent of competition both from other broadcasters and other media marketplace rivals. Broadcasters therefore do not possess market power, and correspondingly, the antitrust risk of coordination is low. Coordination, however, may be required to enable broadcasters, who operate a century's old technology, to better compete against new, better capitalized rivals. But the potential for criminal liability or treble damages under Section 1 of the Sherman Act can have a chilling effect on such beneficial coordination.

In this Comment, NAB highlights areas where the Antitrust Agencies should recognize how procompetitive collaborations should not merit antitrust scrutiny. At the outset, NAB describes the robust competitive landscape facing broadcast television and radio broadcasters and the overall fragmentation among broadcast television and radio stations. Against the backdrop of this competitive landscape, NAB outlines three areas where coordination not only doesn't require scrutiny, but in fact, is *necessary* to help broadcasters keep pace with their competition. In particular, NAB describes: the completion of the transition to the ATSC 3.0 standard; joint licensing of broadcaster content to artificial intelligence (AI) platforms; and trade association activity that supports industry advocacy and technological innovation. As they consider what areas to cover in the proposed Collaboration Guidelines, we encourage the Antitrust Agencies to recognize the procompetitive nature of these activities and address these types of situations to ensure the marketplace has clear guidance on the kinds of activities that are unlikely to be challenged under Section 1 of the Sherman Act.

## **II. BROADCAST TELEVISION AND RADIO FACE A SURGE OF MEDIA MARKETPLACE COMPETITION**

Television and radio broadcasters operate an over-a-century-old technology. Since the first, long-distance radio broadcast of human voice and music on Christmas Eve, December

24, 1906, broadcasters have brought news, sports, weather, emergency alerts, and other noteworthy stories to the American public.<sup>3</sup> Television and radio broadcasters have spent more than a century informing the public with timely, trustworthy local news. They knit communities together by spotlighting neighborhood achievements, elevating local culture, and giving residents a shared sense of identity. They inform the public about their local governments by covering city halls, school boards, and public-safety issues that directly shape daily life. They warn the public of impending weather events and safety issues. And by airing local sports – high school, college, and hometown teams – broadcasters build loyalty, pride, and connection in ways that strengthen the entire community.

In recent decades, however, new media competitors have burst into the marketplace. Broadcast television and radio face intense competition for audiences and advertisers from a growing number of video and audio content providers in a highly fragmented market. Such competitors include traditional players such as legacy pay TV and satellite TV and radio, as well as new players such as streaming and Big Tech services, social media platforms, and online audio and video services.<sup>4</sup> With the ubiquitous adoption of digital and “smart” devices, these newer, internet-based forms of media are easy to access and increasingly popular among advertisers and consumers alike. As the Federal Communications Commission (FCC) recently indicated, “today, broadcasters are competing in a much larger, broader, and competitive environment,” in which “[t]hey are competing against digital advertisers and they are competing for viewers and listeners against various technology platforms – from

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<sup>3</sup> *The Development of Radio*, PBS.com (accessed Apr. 16, 2026).

<sup>4</sup> Applications for Consent to the Transfer of Control of TEGNA Inc. to Nexstar Media Inc., MB Docket No. 25-331, LMS File Nos. 0000280940 et al., Memorandum Opinion and Order ¶ 76 (Mar. 19, 2026) (FCC Order).

streamers to podcasts.”<sup>5</sup> Below, we review the highly competitive, fragmented marketplace for advertising dollars, viewers and listeners, and retransmission consent fees, which demonstrates why there is no evidence that broadcasters have market power in any purported relevant market.

#### **A. Broadcasters Face Intense Competition for Advertising Revenue**

Broadcast television and radio face significant competition for advertising revenue given the myriad options for advertisers in the media space.<sup>6</sup> In its 2025 annual report, Borrell Associates reported that, in 2024, more than half of broadcast TV advertisers also purchased ads on social media, events/sponsorships, website ads, search engine marketing, ads on AM/FM radio, newspapers, magazines, and direct mail, and 42 percent bought ads on streaming video, over the air (OTT), and Connected TV (CTV).<sup>7</sup> For broadcast radio, Borrell reported that, in 2024, more than half of radio advertisers purchased ads on social media, events/sponsorships, banner ads, and ads in newspapers,<sup>8</sup> and local radio advertisers are about five times more likely to purchase ads on streaming audio and video services in 2025 than advertisers who do not purchase radio ads.<sup>9</sup>

The decline in broadcast television and radio ad revenues over the last two decades reflects the increased competition for ad revenue among media entities. According to BIA Advisory Services, from 2007 to 2025, TV stations’ total ad revenue fell an estimated

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<sup>5</sup> *Id.*

<sup>6</sup> Borrell Associates, *2025 Annual Report Benchmarking Local Digital Media*, at 24, Figure 2.9 (May 15, 2025) (2025 Borrell Report) (identifying 20 different types of advertising purchased by local advertisers in 2024).

<sup>7</sup> *Id.* at 29, Figure 3.6.

<sup>8</sup> *Id.* at 34, Figure 3.12.

<sup>9</sup> *Id.* at 35, Figure 3.13.

19.4 percent, and radio stations' total ad revenue fell an estimated 30.1 percent from 2007 to 2025, without adjusting for inflation.<sup>10</sup> Meanwhile, other media competitors have only seen their ad revenues increase. The Interactive Advertising Bureau reported that digital video advertising reached \$78 billion in revenue in 2025 – which is more than four times greater than broadcast TV's total ad revenue for 2025 as projected by BIA – and grew at a rate of 25.4 percent YoY.<sup>11</sup> According to eMarketer, CTV alone is expected to add close to \$20 billion in U.S. ad spend before 2030.<sup>12</sup> And in the audio space, U.S. podcasting ad revenue reached \$2.9 billion in 2025 and grew 17.6 percent YoY.<sup>13</sup>

Digital platforms dominate local advertising, a key source of revenue for local TV and radio broadcasters. Borrell Associates reported that expenditures on local digital advertising reached around \$103 billion in 2024, “accounting for roughly 70 percent of all local ad spending.”<sup>14</sup> According to Borrell, the “lion’s share” of expenditures on digital advertising left local markets and went “to the pureplay digital companies such as Google, Facebook, and others.”<sup>15</sup> This is in stark contrast to close to 15 percent of “all locally spent digital advertising” attributed to local media outlets, such as radio, television stations, and newspapers.<sup>16</sup> As local digital advertising has grown over the last two decades, print, radio,

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<sup>10</sup> Comments of NAB, MB Docket No. 22-459, at 59-60, 94 (Dec. 17, 2025).

<sup>11</sup> PwC and IAB, *Internet Advertising Revenue Report: Full-year 2025 results*, at 11, 21 (Apr. 2026) (2025 IAB Report); see also Comments of NAB, MB Docket No. 22-459, at 96 (Dec. 17, 2025) (discussing BIA projection of only \$16.68 billion for total TV station ad revenues in 2025).

<sup>12</sup> Gadjó Sevilla, *CTV becomes TV's growth engine as linear collapses*, eMarketer (Sept. 5, 2025), <https://www.emarketer.com/content/ctv-becomes-tv-s-growth-engine-linear-collapses>.

<sup>13</sup> 2025 IAB Report at 24.

<sup>14</sup> 2025 Borrell Report at 5-7.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.*

and television advertising revenues have continued to decrease, demonstrating the increased competition between traditional media and digital platforms for key local advertising revenue.<sup>17</sup>

These digital competitors continue to develop or acquire technology that enable localized targeted advertisements, further accelerating competition for key local advertising revenue. Big Tech companies like Meta's and Google's ad platforms allow advertisers to target consumers through audio, video, search, and other formats.<sup>18</sup> Streaming services, a growing presence in ad markets despite traditionally being "ad-free," leverage first-party viewing data and third-party insights to provide personalized ads to viewers.<sup>19</sup> Podcast services use dynamic ad insertion, a tool that allows advertisers to select where and when their ads play in a particular podcast to target specific listener segments based on geographic area and other criteria.<sup>20</sup> Even legacy pay TV providers offer their advertisers the ability to target specific viewing audiences locally through addressable TV, geographic zoning, content targeting, and

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<sup>17</sup> *Id.* at 6.

<sup>18</sup> See Abhilasha Gulhane, *Ad Ecosystem in Big Tech*, Medium (Jan. 16, 2026), <https://medium.com/@abhilashagulhane111/ad-ecosystem-in-big-tech-7990d2c2d067> (explaining that Big Tech's "ad inventory" includes "display banners, search ads, video interstitials, or sponsored posts").

<sup>19</sup> See, e.g., George Winslow, *Prime Video Launches Location-Based Interactive Video Ads*, TV Tech (Nov. 10, 2025), <https://www.tvtechnology.com/news/prime-video-launches-location-based-interactive-video-ads> (discussing the roll-out of Prime Video's "location-based interactive ads," which "allow advertisers to tailor their national TV commercials with location-specific content, such as local pricing, nearest dealership information, or local agent details" and to "transform a single TV commercial into thousands of variants based on ZIP codes or tens of variations based on states without creating multiple creative assets").

<sup>20</sup> *Dynamic Ad Insertion on Podcasts: What It Is and How It Works*, Ad Results Media (Mar. 27, 2024), <https://www.adresultsmedia.com/news-insights/dynamic-ad-insertion-for-podcasts/> (noting that, with dynamic ad insertion, "advertisers have the flexibility to choose exactly where ads play in podcast content" and "the ability to target a specific audience, location, and time of day").

data-driven targeting.<sup>21</sup> Ultimately, broadcasters compete vigorously with other media players for ad revenue, local and otherwise.

### **B. Broadcasters Compete with a Multitude of Video and Audio Providers for Viewers and Listeners**

Broadcast TV and radio also face increasing competition from a variety of video and audio providers for audiences. Per the FCC, “[b]roadcasters are no longer competing against other broadcasters, but against competitors that deliver their offerings over the Internet, from satellites in orbit, over 5G networks, over fiber, and over cable plus other technologies or modes of distribution.”<sup>22</sup> Consumers have more options than ever as far as services, platforms, and devices for watching and listening to video and audio content in an increasingly fragmented media marketplace.

For example, streaming services – including subscription video on demand (SVOD), ad-supported subscription video on demand (AVOD), and free ad-supported streaming TV (FAST) – continue to dominate the media marketplace. Adtaxi recently concluded that “[s]treaming is now the default viewing method for American audiences, replacing linear TV as the primary way consumers watch video and engage with brands,” after finding that, as of early 2026, more than 70 percent of adults in the U.S. report streaming as their default way to consume TV and video.<sup>23</sup> Parks Associates projected that the number of AVOD users in the United

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<sup>21</sup> See, e.g., *Audience Addressable from Comcast Advertising*, Comcast Advertising, <https://comcastadvertising.com/advertising/addressable-advertising/> (accessed May 20, 2026) (explaining that Comcast’s addressable advertising product uses first-party customer data to create ad campaigns that target “only those households within [the advertiser’s] desired audience” and “deliver tailored versions of [an] ad to different audience segments”).

<sup>22</sup> FCC Order at ¶ 76.

<sup>23</sup> Jennifer Flanagan, *Survey: Streaming Officially Becomes the Most Prominent Form of Media Consumption*, Adtaxi (Feb. 25, 2026), <https://www.adtaxi.com/blog/streaming-officially-becomes-most-prominent-form-of-media/>.

States will increase from around 200 million in 2024 to over 278 million by 2029, and the number of FAST users will increase from nearly 150 million in 2024 to around 250 million by 2029.<sup>24</sup> And per Nielsen’s *The Gauge* for March 2026, streaming had 47.6 percent share of total TV usage in the United States for viewers ages 2 and up, exceeding TV usage for broadcast and cable combined (41.7 percent).<sup>25</sup>

Big Tech companies similarly continue to grow in popularity and expand their services. YouTube’s services have become “almost universal, with just under nine in ten viewers watching or subscribing” to YouTube in some capacity according to Hub Entertainment Research.<sup>26</sup> Per Nielsen’s *The Gauge*, on its own, YouTube accounted for 13.2 percent of total TV usage in March 2026, which excludes YouTube content viewed on mobile devices or YouTube TV.<sup>27</sup> According to Parks Associates, social video already accounts for 20 percent of all video consumed on TV weekly in North America, which is greater than the time consumers spent watching legacy pay TV or broadcast video.<sup>28</sup> YouTube, which started as a free online video platform, now operates YouTube Premium, which allows ad-free access to YouTube’s

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<sup>24</sup> Tom Butts, *Parks: U.S. Ad-Supported SVOD Subscriptions to Top 278M by 2029*, TV Tech (May 14, 2025), <https://www.tvtechnology.com/news/parks-u-s-ad-supported-svod-subscriptions-to-top-278m-by-2029>.

<sup>25</sup> Nielsen, *Nielsen’s The Gauge™: TV viewing trends in the U.S.*, Mar. 2026, <https://www.nielsen.com/data-center/the-gauge/#viewing-by-distributor> (accessed May 20, 2026) (Nielsen’s *The Gauge* Mar. 2026). Broadcast and cable garnered 20.3% and 21.4% of total TV usage for March 2026 respectively. *Id.*

<sup>26</sup> George Winslow, *Study: Consumers See ‘Strong Value’ in Streaming But Are ‘Very Concerned’ About Economy*, TV Tech (July 14, 2025), <https://www.tvtechnology.com/news/study-consumers-see-strong-value-in-streaming-but-very-concerned-about-the-economy>.

<sup>27</sup> Nielsen’s *The Gauge* Mar. 2026.

<sup>28</sup> Phil Kurz, *Parks: Social Video Now Accounts for 20% of TV Viewing*, TV Tech (Aug. 19, 2025), <https://www.tvtechnology.com/news/parks-social-video-now-accounts-for-20-percent-of-tv-viewing>.

online platform with a monthly subscription, and YouTube TV, a linear vMVPD service.<sup>29</sup> Following YouTube’s lead, TikTok and Instagram are reportedly developing applications for viewing their platforms on television.<sup>30</sup> These expanded services are accelerating Big Tech media platforms’ reach among consumers.

In the audio space, podcasts and online audio are increasingly popular among consumers. As of early 2026, 58 percent of the total U.S. population ages 12 and up (167 million people) reported that they are monthly podcast consumers, “an all time high” according to Edison Research, and 81 percent (233 million people) reported that they are monthly online audio listeners.<sup>31</sup> With the rise of podcasts and online audio, radio broadcasters have seen their audiences decline.

Given the adoption of digital and smart devices, not only has consumers’ access to video and audio content increased substantially but also the ways in which they consume content has shifted.<sup>32</sup> In a 2026 survey, Adtaxi found that “[c]onsumers now watch video across three or more devices on average, including TVs, smartphones, laptops, and tablets,” with mobile devices being the most popular “screen” for watching video.<sup>33</sup> According to Edison Research, as of Q4 2025, 61 percent of all audio listening time by the U.S. population

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<sup>29</sup> George Winslow, *Study: Consumers See ‘Strong Value’ in Streaming But Are ‘Very Concerned’ About Economy*.

<sup>30</sup> Peter Allen Clark, *Social platforms and streamers battle for the living room*, eMarketer (July 28, 2025), <https://www.emarketer.com/content/social-platforms-streamers-battle-living-room>.

<sup>31</sup> Edison Research, *The Infinite Dial 2026*, at 11, 35-36 (Mar. 12, 2026) (Infinite Dial 2026).

<sup>32</sup> See *id.* at 7-9 (finding that, as of early 2026, 91% of the U.S. population ages 12 and up (262 million) own smart phones, 39% (112 million) own smart speakers, and 81% (233 million) own smart TVs).

<sup>33</sup> Jennifer Flanagan, *Survey: Streaming Officially Becomes the Most Prominent Form of Media Consumption*, Adtaxi.

age 13 and up is spent on digital devices, such as mobile devices, computers, internet-connected TV devices, and smart speakers, while only 28 percent of audio listening time is spent on AM/FM radio receivers.<sup>34</sup> And because digital devices can switch between audio and video content, there is also competition between audio and video services for audiences. Today, consumers can access online audio services on internet-connected TVs, use social media and online video platforms to watch music videos and other video clips to listen to music, and seek out podcasts in video formats.<sup>35</sup> Accordingly, the competition for viewers and listeners among and between video and audio providers continues to be incredibly rigorous.

### **C. Retransmission Consent Fees and Negotiations Remain Competitive**

The competitive and fragmented media landscape is particularly apparent in the negotiation of retransmission consent between broadcast TV stations and legacy pay TV providers.<sup>36</sup> The presence of many other forms of alternative programming puts downward pressure on retransmission consent fees. The FCC recently noted that consumers already have a “readily available and free substitute” to accessing broadcast signals through a legacy pay TV provider because consumers can always watch broadcast signals over the air (OTA) for free through an antenna.<sup>37</sup> Consumers can easily switch to OTA viewing, which ultimately “disciplines both [broadcasters] and MVPDs” in setting and negotiating pricing on

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<sup>34</sup> Edison Research, *Share of Time Spent Listening to Audio Sources Q4 2025* (Jan. 10, 2026) Mobile devices account for 39% of total audio listening time. *Id.*

<sup>35</sup> See Edison Research, *America’s Surprising TV Habit*, Weekly Insights (July 9, 2025), <https://www.edisonresearch.com/americas-surprising-tv-habit/>; Infinite Dial 2026 at 40-41.

<sup>36</sup> Retransmission consent refers to the requirement under the Communications Act that broadcast TV stations consent to legacy pay TV providers carrying their broadcast signals, through a good-faith negotiation. See 47 U.S.C. § 325.

<sup>37</sup> FCC Order ¶ 72.

retransmission consent.<sup>38</sup> Additionally, because of the proliferation of streaming and other Big Tech video services, consumers “have many more options today for the type of programming that, in many cases, they could previously get only through a single MVPD or cable company” and consider these services as “competitive substitutes to traditional MVPDs.”<sup>39</sup> These services similarly place competitive pressures on the price of retransmission consent fees.<sup>40</sup> As DOJ Antitrust Division’s Deputy Assistant Attorney General Charlie Beller observed: “Broadcast companies are competing in a world with more distribution options than ever before, but they are also interacting with counterparties that may have significant scale or integration across the value chain.”<sup>41</sup>

While broadcasters face downward pricing pressure from media marketplace competitors and OTA, the cost of providing content continues to rise. Content is incredibly expensive – and only growing more expensive – given the substantial upfront capital investment needed to purchase syndicated content or produce high quality programming.<sup>42</sup>

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<sup>38</sup> FCC Order ¶ 72.

<sup>39</sup> *Id.* at ¶ 73.

<sup>40</sup> See Tom Rogers, *Local News Is Being Pushed Up a Creek as a Casualty of the Streaming Wars*, Newsweek (Apr. 4, 2024), <https://www.newsweek.com/local-news-being-pushed-creek-casualty-streaming-wars-opinion-1886671>.

<sup>41</sup> G. Charles Beller, Deputy Assistant Att’y Gen., Dep’t of Just., Remarks at NAB Show Las Vegas (Apr. 20, 2026), <https://www.justice.gov/opa/speech/deputy-assistant-attorney-general-g-charles-beller-delivers-remarks-nab-show-las-vegas>.

<sup>42</sup> See Julia Stebleva, *TV Production Budgets: Strategies for Effective Planning*, Filmstuge Blog (Aug. 22, 2024), <https://filmstuge.com/blog/tv-production-budgets-strategies-for-effective-planning/> (detailing the various costs associated with producing a TV show, including pre- and post-production costs to develop the script and edit a show respectively and day-to-day expenses incurred in filming the show itself such as cast and crew salaries); Andrew R. Chow, *How Seinfeld Became One of TV’s Great Money-makers*, Time.com (Oct. 1, 2021), <https://time.com/6103335/seinfeld-netflix-business/> (discussing how Netflix paid more than \$500 million for five years to host Seinfeld on its platform, and WarnerMedia paid \$425 million in 2019 to host Friends on HBO Max).

In addition, the cost of acquiring live sports programming, which is a significant driver of interest in major broadcast television channels, continues to rise.<sup>43</sup> Many of broadcasters' content-related expenditures are considered "sunk costs" because "programming investments that prove unpopular cannot be recovered, as cannot many administrative and marketing costs."<sup>44</sup> As a result, the pricing for retransmission consent has increased over time to account for these costs and the value of the programming that broadcasters produce or acquire.

Finally, in any retransmission consent negotiation with MVPDs, broadcasters face headwinds that significantly curb their ability to negotiate higher retransmission rates. When a broadcast channel is dropped by an MVPD, the broadcast TV station immediately loses access to those provider's subscribers everywhere it operates, while the MVPD forgoes access to the broadcaster's stations only in the markets where they are present.<sup>45</sup> Further, MVPD subscribers face high costs and frictions associated with switching providers when there are

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<sup>43</sup> See, e.g., Marisa Jones, *A 20% rise in global sports rights costs will reshape the ad landscape*, eMarketer (Dec. 1, 2025), <https://www.emarketer.com/content/20-rise-global-sports-rights-costs-will-reshape-ad-landscape>; Steve McCaskill, *NFL seeks 'US\$1bn' more from CBS as broadcast rights renegotiations begin*, SportsPro (Mar. 16, 2026), <https://www.sportspro.com/news/broadcast-ott/nfl-cbs-paramount-media-rights-price-march-2026/>.

<sup>44</sup> Gregory S. Crawford, *The Economics of Television and Online Video Markets*, at 309, *Handbook of Media Economics* (2015).

<sup>45</sup> See Adam Graham, *Scripps, Comcast reach agreement to end WXYZ-TV blackout*, *The Detroit News* (May 5, 2026), <https://www.detroitnews.com/story/entertainment/television/2026/05/05/wxyz-tv-parent-company-reaches-agreement-to-end-comcast-blackout/89948837007/> (detailing a 35-day "Comcast Xfinity blackout across 19 Scripps markets" due to retransmission consent fee dispute).

service disruptions.<sup>46</sup> All these dynamics make it challenging for broadcasters to negotiate against MVPDs with nationwide footprints in retransmission consent negotiations.

Given the fragmented, competitive marketplace in which television and radio broadcasters operate, broadcasters lack market power in any conceivable relevant market. As a result, any industrywide coordination is unlikely to result in competitive harm. We thus raise a few examples of areas where the Antitrust Agencies can clarify in proposed Collaboration Guidelines that coordination will not raise antitrust risk.

### **III. PROPOSED COLLABORATION GUIDELINES SHOULD CLARIFY THE AREAS OF PROCOMPETITIVE COLLABORATION IN HIGHLY COMPETITIVE INDUSTRIES**

As discussed, broadcast television and radio operate a heavily regulated, centuries-old technology that competes against a surge of new, well-capitalized media marketplace competitors that face virtually no regulatory barriers. In this environment, broadcasters possess little-to-no market power, which means the risk of harm flowing from any coordination is low. Nevertheless, Section 1 of the Sherman Act, with its treble damages and potential criminal liability, can have a chilling effect on industries where coordination is necessary to provide procompetitive advances to the marketplace. Here, we outline three areas – coordination to complete the transition to the ATSC 3.0 standard, joint licensing, and industry association activities – where broadcasters engage in beneficial coordination among industry participants. In all three areas, coordination is procompetitive or protected and therefore shouldn't warrant antitrust scrutiny. By providing these examples, we hope the Antitrust

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<sup>46</sup> *DIRECTV Residential Terms of Service*, DIRECTV (effective as of Jan. 31, 2026), <https://www.directv.com/legal/directv-residential-terms-of-service/#otnotice-section-2442fbe9-02c8-4a4c-8f62-ca6843663c25> (providing that DIRECTV customers “may be subject to an Early Termination Fee if [they] agreed to a Term Commitment or failed to maintain the required programming package” and requiring customers who cancel to return any “Leased equipment” to DIRECTV upon cancellation).

Agencies will consider them in formulating guidance of activities that should be considered procompetitive and therefore unlikely to merit antitrust scrutiny.

**A. A Coordinated Sunset of the ATSC 1.0 Standard to Complete the Transition to the ATSC 3.0 Standard is Procompetitive and Therefore Should be Exempt from Antitrust Scrutiny**

The FCC has initiated a proposed rulemaking to remove regulatory barriers and accelerate broadcasters' transition to a modernized broadcast TV standard, ATSC 3.0. The ATSC 3.0 standard promises to offer consumers upgraded sound and picture quality, apps that amplify the viewing experience, and other rich features that will enable broadcasters to more vigorously compete against Big Tech and streaming competitors. A number of rule changes are being considered to support the transition to the ATSC 3.0 standard, including removal of requirements to simulcast in both ATSC 1.0 and 3.0 and to provide substantially similar content on both ATSC 1.0 and 3.0 streams, modernization of the All-Channel Receiver Framework to support the upgraded ATSC 3.0 standard, as well as other rule changes.<sup>47</sup> A particularly meaningful change that would be required to effect a full transition to the ATSC 3.0 standard is to coordinate a date-certain sunset of the ATSC 1.0 standard.<sup>48</sup> A defined sunset date will prepare viewers for the new standard, inform consumers of the need to update equipment, enable broadcasters, MVPDs, and retailers to develop consistent messaging on the timeline for the transition, and afford confidence to MVPDs and device manufacturers that, if they invest in ATSC 3.0-compliant devices, the market will be there to support those investments. Without a sunset date, the timeline for implementing the standard will be open-ended, creating uncertainty and tentativeness that will slow the transition.

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<sup>47</sup> See, e.g., Comments of NAB, *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, GN Docket No. 16-142, at 3-14 (Jan. 20, 2026).

<sup>48</sup> *Id.* at 3-5.

The FCC currently is evaluating whether to set such a sunset date. But were the FCC to decide not to do so at the outset, broadcasters would be forced to coordinate an ATSC 1.0 standard sunset date on their own. As described above, such coordination is unquestionably procompetitive. Nevertheless, Section 1's prohibition against certain coordination may chill this kind of beneficial coordinated activity. Paradoxically, if broadcasters weren't so fragmented, one or two major players could set the tone by making the transition, which would impel the rest of the industry to follow suit. But where concentration may help some industries sidestep Section 1 concerns through leader-follower behavior, fragmentation breeds listlessness that may only be solved through coordination. As the Collaboration Guidelines project proceeds, we urge the Antitrust Agencies to provide a safe harbor or at least clear guidance to help companies operating in highly fragmented industries to undertake coordinated action clearly designed to facilitate more competition.

**B. Joint Licensing May Be Required Where Counterparties Do Not Want to Take Licenses from a Fragmented Industry**

AI platforms are rapidly disrupting the way most Americans access information. These platforms have scraped and continue to scrape wide swaths of information available in the public domain and have used that information to improve their ability to answer user queries without searching the Internet. Some major publishers have entered licensing agreements with these AI platforms to provide a feed to their information in exchange for compensation.<sup>49</sup>

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<sup>49</sup> See, e.g., Michael M. Grynbaum & Cade Metz, *The Times and Amazon Announce an A.I. Licensing Deal*, NYTimes.com (May 29, 2025), <https://www.nytimes.com/2025/05/29/business/media/new-york-times-amazon-ai-licensing.html>; The Associated Press, AP, *Open AI agree to share select news content and technology in new collaboration* (July 13, 2023), <https://www.ap.org/media-center/press-releases/2023/ap-open-ai-agree-to-share-select-news-content-and-technology-in-new-collaboration/>.

Without a licensing agreement in place, these AI platforms can take – without pay, referral traffic, or attribution – information from publishers’ sites. Or, if they are blocked by a publisher’s cybersecurity infrastructure, the AI platforms may miss out on trusted information sources necessary to provide the public with accurate answers. In the case of information provided by local broadcasters that are the best sources for local weather, crime, government activity, sports, and other local programming, the risk that the AI platform may distribute misinformation without access to local broadcasters’ content is particularly high. But as discussed earlier, TV and radio broadcasters operate on a relatively small scale and are highly fragmented. Entering into licensing agreements with various broadcasters can be time-consuming, complex, and expensive. Or as economists like to say – there are high transaction costs to entering such deals. Where the industry is fragmented and transaction costs and complexity are high, competitor coordination may facilitate deals that otherwise wouldn’t occur by reducing the number of parties that a counterparty has to negotiate with. As the Antitrust Agencies are considering Competitor Collaboration Guidelines, we encourage them to consider specifically providing a safe harbor for collaborations where the industry is fragmented, evidence of market power is weak, and coordination would result in procompetitive benefits (e.g., lowering transaction costs to output-enhancing deals).

**C. Competition Collaboration Guidelines Should Recognize that Trade Associations Engage in Protected and Procompetitive Activities**

NAB, like other trade associations, provides crucial services to television and radio broadcasters. Given the extraordinary regulatory burdens that broadcasters face, NAB plays an indispensable role in providing protected advocacy before Congress, the FCC, and other federal agencies and messaging that informs the broader public about the issues that affect television and radio broadcasters. It apprises its members of legal, regulatory, and legislative developments that are relevant to their operations. It organizes a trade show that brings

various members of the media and entertainment industry together to explore more about cutting edge technology, identify trends in an evolving media landscape, and explore new commercial opportunities. It also engages in research and development that provides new innovations to the broadcasting industry. Put simply, NAB provides significant legal, technical, and commercial support to television and radio broadcasters, which allows them to compete more vigorously in a ruthlessly competitive media marketplace. In any Collaboration Guidelines, the Antitrust Agencies should recognize the significant procompetitive benefits that trade associations, like NAB, offer to their membership, and they should explicitly recognize that the advocacy work of trade associations to support their membership are protected activities that are inappropriate for antitrust scrutiny.

#### **IV. CONCLUSION**

Television and radio broadcasters are highly fragmented. They face competition internally (from other broadcasters) and externally (from the broader media marketplace). And they are heavily regulated, which limits their ability to grow – particularly through acquisition. That is why coordination can be critical. Some competitive challenges require the whole industry to move in tandem so broadcasters can compete more effectively against better capitalized, unregulated competitors. Concentrated industries, paradoxically, have an easier time advancing procompetitive industrywide activities without expressly coordinating. It would be illogical if a competitive industry were placed at a disadvantage simply because it requires express coordination to accomplish what oligopolistic markets can do tacitly. In light of this asymmetry, the proposed Collaboration Guidelines should recognize the various ways that coordination can help resolve the significant problems that fragmentation can create for industrywide progress.

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'Rick Kaplan', with a long horizontal line extending to the right from the end of the signature.

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Rick Kaplan  
Nandu Machiraju  
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