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

In the Matter of	)	
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Delete, Delete, Delete	)	GN Docket No. 25-133
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REPLY COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters (NAB)[1] commends the Commission for undertaking the long-overdue task of eliminating outdated regulations that impose significant costs without delivering meaningful benefits and ignore today's dynamic media environment.[2] As the Commission looks for pages to jettison from the Code of Federal Regulations (CFR), it need look no further than the broadcast industry, which has a veritable library of pages worthy of excision.

The regulatory imbalance broadcasters face is starkly illustrated by the sheer volume of rules that have accumulated over time. **Part 73 of the CFR alone spans a whopping 423 pages – more than any other regulated service, and more than double the number in Part 76 covering multichannel video programming distributors (MVPDs).** The record in this proceeding is clear: The rules governing broadcasting are not only excessive, but they are also

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[1] 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.

[2] Public Notice, *In re: Delete, Delete, Delete*, GN Docket No. 25-133, DA 25-219 (Mar. 12, 2025) (Public Notice or Notice).

obsolete and counterproductive. They discourage investment, hinder innovation, and place broadcasters at a structural disadvantage. As it works to modernize and streamline its regulatory regime, the FCC should prioritize removing legacy rules that undermine broadcasters' ability to compete against much larger and less regulated competitors. It is time to delete, delete, delete down to the core regulatory framework that supports innovation, investment, and choice for broadcasters and, most importantly, the audiences they serve.

Of course, there are certain parties who support self-serving and anticompetitive proposals designed to keep broadcasters mired in the morass of existing regulations or even add to them to maintain their comparative advantage over TV and radio stations. The Commission should reject these tired, retrograde, rent-seeking proposals. In particular, NAB opposes the pay TV industry's proposals concerning retransmission consent and other carriage issues that are unlawful, harmful to consumers, seek to increase regulation in contravention of the goals of this proceeding, or brazenly ask the Commission to eliminate rules required by statute. NAB also rejects the musicFIRST Coalition and Future of Music Coalition's recycled advocacy that has no bearing on the FCC's aim to delete regulations – it's almost as if they didn't see the title of this proceeding – all so they can exhort the Commission to continue to hobble radio broadcasters.

As NAB and many other commenters emphasized, the most important step to correcting the regulatory imbalance is the deletion of antiquated radio and television station ownership restrictions. These legacy rules no longer reflect the realities of the modern media landscape, where broadcasters must compete with significantly larger, unregulated digital platforms for audiences and for the advertising revenues necessary to support the provision of valued programming on a free, over-the-air basis.

There is also broad support for deleting a range of other regulations identified in NAB's

initial comments – rules that no longer reflect current marketplace or technological realities and impose costs far outweighing any public benefit. These include, but are not limited to, ineffective Equal Employment Opportunity (EEO) requirements and audits, burdensome public file and reporting mandates, restrictions on broadcasters' ability to innovate and deploy ATSC 3.0, and content-based rules and policies that infringe on broadcasters' First Amendment rights.

NAB also comments on several proposals regarding technical rules. While NAB agrees that some of the rules should be eliminated to provide broadcasters with greater flexibility, others remain essential to ensuring quality service to the public and should be retained.

II. PAY TV PROPOSALS FOR CERTAIN RETRANSMISSION CONSENT AND OTHER CARRIAGE-RELATED "REFORMS" ARE UNLAWFUL, CONTRARY TO THE PURPOSE OF THIS PROCEEDING, OR BOTH

This proceeding offers commenters a unique opportunity to identify rules that require a fresh examination of their continued relevance and necessity. Many commenters proposed the elimination of rules that are outdated considering marketplace changes and technological developments, impose undue burdens and costs as compared to their benefits, or are otherwise unnecessary. A few pay TV commenters, however, attempted to recast their past proposals for *additional* rules as proposals to *delete* rules. When the pay TV industry and its supporters ran out of those proposals, they tried to refashion proposals for *statutory* changes previously made before Congress as *regulatory* changes, even though the Commission unequivocally lacks legal authority to adopt them. Virtually all these proposals have been advanced previously as part of pay TV providers' longstanding strategy of seeking to artificially depress the fees they pay broadcasters for repackaging and reselling broadcast content. Because their proposals would advance pay TV providers' efforts to stifle competition from

television stations, harm consumers, and contravene both the Communications Act of 1934 (Act) and the goals of this proceeding, the Commission should decline to adopt them.

A. Pay TV Industry Proposals Affecting Broadcast Signal Carriage and Next Gen TV Echo a Longstanding Regulatory Strategy That Harms Local Broadcasters and Consumers

To contextualize the pay TV industry's current proposals, NAB briefly explains the market-based system of retransmission consent adopted by Congress, and the pay TV industry's long opposition to compensating broadcasters for the signals pay TV providers package and sell to consumers. NAB has discussed the pay TV industry's opposition to retransmission consent and the industry's broader rent-seeking behavior[3] at length in previous filings.[4] NAB again urges the Commission to recognize this behavior for what it is – a deliberate anti-competitive strategy to use the Commission to advantage subscription video services in the marketplace by increasing burdens on, and reducing the competitiveness of, free over-the-air broadcasting. The Commission should refrain from indulging this strategy, which harms both local broadcast stations and consumers.

Section 325 of the Communications Act prohibits retransmission of broadcast signals without a broadcaster's consent, and the prices, terms, and conditions of retransmission consent agreements are intended by Congress to be established through arms-length,

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[3] In economics, rent-seeking behavior is typically defined as strategic efforts to profit by manipulating the legal or political arena, rather than by creating economic value. *See, e.g.*, Roger Congleton, Ayre Hillman, and Kai Konrad, *Forty Years of Research on Rent-seeking: An Overview*, researchgate.net, at 1-3 (June 16, 2008). Examples of rent-seeking include entities or industries getting a subsidy for a good they produce; obtaining a tariff on a good they produce to shield them from competition; or supporting a "regulation that hampers their competitors." David Henderson, *Rent-seeking*, https://www.econlib.org/library/Enc/RentSeeking.html.

[4] *See, e.g.,* Comments of NAB, GN Docket No. 24-119, at 43-50 (June 6, 2024) (2024 NAB Communications Marketplace Comments).

marketplace negotiations, subject only to a requirement that both broadcasters and MVPDs negotiate in good faith. As the Commission has repeatedly acknowledged, its role with respect to retransmission consent negotiations is extremely limited. The Commission has the authority to adopt rules governing good-faith negotiations and adjudicate complaints of violations of those rules,[5] but that is the extent of its involvement in the retransmission consent negotiation process. In directing the Commission 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."[6] 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.

Because the Commission lacks authority to involve itself in retransmission consent negotiating impasses beyond adjudicating any good-faith complaints that may be filed, it cannot require the parties to remain at the negotiating table, mandate arbitration, or take any other steps that would interfere with negotiations. Although MVPDs have repeatedly proposed that the Commission insert itself in retransmission consent negotiations in ways that contravene the statute, such as urging the Commission to mandate "interim" carriage

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[5] *See* 47 C.F.R. § 76.65.

[6] *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).

during negotiating impasses, the Commission has explained unequivocally that it has no authority to take such steps.[7]

Pay TV providers have waged war on the system of retransmission consent since its inception.[8] When Congress adopted retransmission consent as part of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Act), cable operators uniformly refused to pay cash compensation.[9] Cable operators were more willing to offer broadcasters "in-kind" compensation in the form of carriage of commonly owned non-broadcast networks or cross-promotion arrangements, and dozens of nonbroadcast networks were formed as a result.[10] Virtually all pay TV providers continued their refusal to pay cash retransmission consent compensation for over a decade.[11]

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[7] *See, e.g., Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2720 ¶ 3, n. 6 (2011) ("The Commission does not have the power to force broadcasters to consent to MVPD carriage of their signals nor can the Commission order binding arbitration."); *id.* at 2728, ¶ 18 ("[R]egarding interim carriage, examination of the Act and its legislative history has convinced us that the Commission lacks authority to order carriage in the absence of a broadcaster's consent due to a retransmission consent dispute. . . . We thus interpret section 325(b) to prevent the Commission from ordering carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement."); Good Faith Order, 15 FCC Rcd at 5471 ¶ 60 ("[W]e see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.").

[8] *See, e.g.*, Comments of NAB, MB Docket No. 23-405, at 2-5 (Feb. 5, 2024) (NAB Junk Fee Comments); Reply Comments of NAB, GN Docket No. 24-119, at 39-42 (July 8, 2024).

[9] *See* FCC, *Retransmission Consent and Exclusivity Rules: Report to Congress Pursuant to Section 208 of the Satellite Home Viewer Extension and Reauthorization Act of 2004*, at ¶ 10 and note 26 (Sept. 8, 2005) (2005 SHVERA Report). At least one large cable operator publicly stated that it would never provide monetary compensation for retransmission consent, signaling its competitors and effectively fixing the price of monetary retransmission consent compensation at zero. 2005 SHVERA Report at ¶ 10 and note 27.

[10] 2005 SHVERA Report at ¶ 10.

[11] *See, e.g.,* GAO, *Issues Related to Competition and Subscriber Rates in the Cable Television Industry*, GAO-04-8, at 43 (Oct. 2003); 2005 SHVERA Report at ¶ 10.

When tactics that artificially depressed the cash value of broadcast signals to zero became less effective, the pay TV industry added new tools to its toolkit. Pay TV providers sought to draw attention to their "plight" of having to pay for something they repackage and resell to consumers through petitions for rulemaking and appeals to Congress.[12] To attract policymakers' attention, MVPDs began to trumpet any time they reached an impasse in negotiations with a broadcaster, making impasses themselves an important arrow in their policy quiver.[13] The pay TV industry's reliance on retransmission consent disputes to bolster its regulatory and legislative strategy creates significant incentives for pay TV companies to manufacture impasses that harm consumers.[14]

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[12] *See, e.g.,* Establishment of a Digital Transition Quiet Period for Retransmission Consent, Petition for Expedited Rulemaking of Cequel Communications, LLC, *et al.*, MB Docket No. 98-120 (Apr. 24, 2008); Petition for Rulemaking to Amend the Commission's Rules Governing Retransmission Consent of Time Warner Cable, *et al.*, MB Docket No. 10-71 (Mar. 9, 2010); Amendments to the FCC's Good-Faith Bargaining Rules, Petition for Rulemaking of Block Communications, RM-11720 (May 6, 2014).

[13] Although such disruptions are incredibly rare when compared to the thousands of retransmission consent deals that are concluded without incident every year, pay TV providers regularly point to such disputes as evidence of a "broken" system in need of "reform." Multiple studies collectively examining the frequency of retransmission consent-related service interruptions over the course of a decade (2006-2015) found that interruptions in broadcast signal carriage affect a truly miniscule amount of total consumer viewing hours. *See* NAB Junk Fee Comments at 4.

[14] Because negotiations require both parties to be truly willing to reach agreement, pay TV provider cries of an "increasing" number of disputes can easily become reality of their own doing. During the decades of periodic renewals of the Satellite Home Viewer Act (SHVA) and its successors, for example, there was a cyclical increase in retransmission consent disputes in the months before the law expired. *See, e.g.,* Prepared Statement of Emily Barr, President and CEO, Graham Media Group, Before the U.S. Senate Committee on Commerce, Science & Transportation (Oct. 23, 2019) (disruptions involving AT&T increased from only a single disruption involving one station in 2018 to ten disruptions involving 179 stations during a five-month period in 2019 when Congress was debating the renewal of the Satellite Television Extension and Reauthorization Act (STELAR)). *See also* 2024 NAB Communications Marketplace Comments at 48-49. There were a record high number of disruptions in 2016 (54 disruptions), when the Commission, as directed by Congress, was evaluating whether to change the totality of the circumstances test in its retransmission consent good-faith rules

When efforts to persuade the FCC and Congress to further regulate retransmission consent failed, pay TV providers moved on to proposing adoption of new or expanded laws and regulations to further restrict broadcast operations, ranging from retention or expansion of broadcast ownership limits to opposing broadcast transactions, to restrictions on the deployment of ATSC 3.0. The American Television Alliance (ATVA) and NCTA – The Internet and Television Association have submitted almost innumerable filings across countless dockets seeking increased regulation or other restrictions on broadcasters. They have urged the Commission not only to retain its analog-era local TV ownership rule but also to make that rule more restrictive, including by expanding it to cover multicast programming streams and low power TV stations, despite the exponentially increased competition in the video marketplace.[15] They have urged the Commission to impose onerous conditions on proposed broadcast station transactions, even those that complied with FCC rules and required no waivers and even those involving only a single broadcast TV station.[16] Far from "supporting"

(and ultimately determined that it would not do so). *Id. See also Implementation of Section 103 of the STELA Reauthorization Act of 2014, Totality of the Circumstances Test*, Notice of Proposed Rulemaking, MB Docket No. 15-216 (Sept. 2, 2015); *An Update on Our Review of the Good Faith Retransmission Consent Negotiation Rules,* FCC Blog, Chairman Tom Wheeler (July 14, 2016) (concluding a statutorily mandated review of the FCC's retransmission consent rules by stating that: "[b]ased on the staff's careful review of the record, it is clear that more rules in this area are not what we need at this point . . . So, today I announce that we will not proceed at this time to adopt additional rules governing good faith negotiations for retransmission consent.").

[15] NCTA and ATVA alone submitted over 20 filings in the 2018 quadrennial review proceeding (MB Docket No. 18-349) in support of this position. *See* 2024 NAB Communications Marketplace Comments at 44-45, n. 118. And ATVA "partners" have called for effectively reducing the national TV ownership cap. *See*, *e.g.*, Comments of DISH Network, MB Docket No. 17-318 (Mar. 19, 2018); Reply Comments of DISH Network, MB Docket No. 17-318 (Apr. 18, 2018) (calling for repealing the UHF discount while retaining the 39 percent cap); https://americantelevisionalliance.org/about-us/ (identifying ATVA partners)

[16] *See, e.g.*, Letter from Radhika Bhat, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 22-162 (June 22, 2022) (urging FCC to impose conditions on proposed Standard General (SG)-

the transition to Next Gen TV, as ATVA now claims,[17] NCTA and ATVA have attempted to burden and impede the broadcast industry's transition to ATSC 3.0, despite the enhanced services this standard enables TV stations to offer to consumers.[18] NCTA is so conditioned to opposing broadcaster attempts to level the playing field that it has even reflexively objected to NAB's proposed reforms to the FCC's regulatory fee assessment methodologies, despite the fact the proposed chances helped NCTA's own members.[19]

Central to the pay TV industry's calls for additional regulation is the claim that their proposals will somehow benefit consumers. But the pay TV industry's opposition to virtually any consumer-oriented proposal demonstrates that even if retransmission consent or other

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TEGNA transaction); Comments of NCTA, MB Docket No. 22-162 (Jan. 13, 2023) (discussing six proposed conditions on SG-TEGNA transaction); Comments of ATVA, MB Docket No. 22-162 (June 22, 2022) (one of several ATVA filings urging FCC to request more information about and impose conditions on SG-TEGNA deal); Comments of NCTA, MB Docket No. 19-30 (Mar. 18, 2019) (urging FCC to impose conditions on proposed Nexstar-Tribune transaction); Comments of ATVA, MB Docket No. 19-30 (Mar. 18, 2019) (seeking to delay FCC consideration of Nexstar-Tribune transaction); Informal Objection of NCTA, File No. 0000214896 (June 20, 2023) (objecting to assignment of a single station in Michigan).

[17] ATVA Comments at 7.

[18] *See, e.g.*, Letter from Mary Beth Murphy to Marlene H. Dortch, FCC, GN Docket No. 16-142 (Feb. 23, 2023) (urging FCC to require that broadcasters make a showing of necessity before being permitted to engage in lateral hosting to continue to provide ATSC 1.0 service during the transition); Comments of NCTA, GN Docket No. 16-142 (Feb. 11, 2022) (urging FCC to adopt limits on the provision of multicast streams during the transition to Next Gen TV); Petition for Reconsideration of NCTA, GN Docket No. 16-142 (Mar. 5, 2018) (proposing requirements that would: (i) force broadcasters to provide high definition streams on their ATSC 1.0 signals throughout the transition to Next Gen TV, (ii) prohibit broadcasters from negotiating with cable companies to provide for voluntary carriage of ATSC 3.0 signals, and (iii) create new requirements regarding patent licensing by entities not participating in a standards development process or regulated by the FCC); Petition for Reconsideration of ATVA, GN Docket No. 16-142 (Mar. 5, 2018) (urging FCC to: (i) restrict negotiations for carriage of ATSC 3.0 signals, (ii) prohibit low-power and translator stations from flash-cutting to ATSC 3.0, and (iii) require stations to provide advance notice before changing the resolution or picture quality of programming).

[19] *See, e.g.*, Comments of NCTA, MD Docket Nos. 22-223 and 22-301 (Nov. 25, 2022); Comments of NCTA, MD Docket No. 21-90 (Nov. 5, 2021).

laws/rules were changed to give pay TV greater competitive advantages over broadcasters, no cost savings realized from such changes would ever be passed along to consumers.[20] Rather, as NAB has explained previously, these proposals will only enhance pay TV providers' competitive position vis-à-vis broadcasters.

B. Pay TV's Restyled Proposals for Additional Regulation Remain Unmeritorious

Because the pay TV industry is so accustomed to proposing *additional* regulation to further their anticompetitive, anti-consumer objectives, it has attempted (with varying degrees of success) to retool its usual "Add, Add, Add" proposals for this proceeding. But these proposals are no more lawful or justified in their current form and should not be adopted.

For example, ATVA attempts to recast a past proposal to adopt an *additional* rule as a rule elimination.[21] Previously, ATVA urged the FCC to adopt a rule making it a *per se* violation of the good-faith negotiation standard for a broadcaster to propose retransmission consent agreements for carriage of its primary signal that involve compensation in the form of carriage of other broadcast signals, programming streams, or affiliated nonbroadcast networks.[22]

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[20] *See e.g.*, Comments of NAB, MB Docket No. 24-20, at 2 (Mar. 8, 2024) (although NAB took no position on whether the Commission had the authority to mandate rebates, we observed that "the very existence of a proceeding evaluating whether to require pay TV providers *not to charge consumers for services they are not providing* belies pay TV claims that increased broadcast regulation will improve outcomes for consumers," and urged the Commission "not to rely on pay TV providers' hollow claims that any changes to broadcast regulation will reduce the likelihood of increases in the price of MVPD service, much less enable them to 'pass savings on' to consumers"). *See also* Reply Comments of NAB, MB Docket No. 24-20, at 2 (Apr. 8, 2024) (detailing pay TV opposition to consumer rebates for undelivered programming); Reply Comments of NAB, MB Docket No. 23-405 (Mar. 3, 2024) (discussing pay TV industry claims that early termination fees help consumers and the lack of any support for that contention by individuals or organizations outside the pay TV industry).

[21] Comments of ATVA, GN Docket No. 25-133, at 2 (Apr. 11, 2025) (ATVA Comments).

[22] Comments of ATVA, MB Docket No. 15-216, at 44-47 (Dec. 1, 2015) and Reply Comments of NAB, MB Docket No. 15-216, at 28-41 (Jan. 14, 2016). *See also* Comments of DISH Network LLC, MB Docket No. 24-20, at 22-23 (Mar. 8, 2024) and Reply Comments of NAB, MB Docket No. 24-20, at 7-8 (Apr. 8, 2024).

Here, ATVA urges the Commission to "eliminate" the agency's determination that such forms of retransmission consent compensation are presumptively consistent with the good-faith negotiation standard.[23] Regardless of how ATVA attempts to dress up this proposal, it is inherently regulatory because it seeks government intervention into the market-based system of retransmission consent that Congress established. It is requesting the *addition* of restrictions. For these reasons and those discussed in NAB's previous filings responding to ATVA's proposal nearly ten years ago, the Commission should not revisit this proposal.[24]

NTCA proposes that cable operators be permitted to list on consumer bills the per subscriber cost of every channel included in a consumer's pay TV subscription.[25] This proposal does not appear to eliminate any rules but would require governmental action to mandate that the prices, terms and conditions of private agreements be made public, a regulatory proposal NTCA has made previously in various contexts.[26] As NAB previously explained, the Commission has no authority to require the prices, terms, and conditions of retransmission consent proposals or agreements be made public, or to declare provisions of privately negotiated contracts invalid by regulatory fiat.[27] In adopting its good-faith rules, the

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[23] ATVA Comments at 2. *See also* Good Faith Order, 15 FCC Rcd at 5471-72; S. Rep. No. 102-92, at 35-36 (1991) (in enacting the retransmission consent statute, Congress recognized that broadcasters may seek a range of monetary or in-kind compensation, including specifically "the right to program an additional channel on a cable system").

[24] *See, e.g.*, Reply Comments of NAB, MB Docket No. 15-216, at 28-41 (Jan. 14, 2016).

[25] Comments of NTCA—The Rural Broadband Ass'n (NTCA), GN Docket No. 25-133, at 24-25 (Apr. 11, 2025) (NTCA Comments).

[26] *See, e.g.,* Comments of NTCA, MB Docket No. 24-20 (Mar. 8, 2024); Comments of NTCA, MB Docket No. 23-427, at 4-5 (Feb. 26, 2024).

[27] NAB Reply Comments, MB Docket No. 24-20, at 10-11 (Apr. 8, 2024); NAB Reply Comments, MB Docket No. 23-427, at 6-7 (Mar. 26, 2024). *See also* Reply Comments of NCTA, MB Docket No. 23-427, at 3 (Mar. 26, 2024) ("the Commission should reject the suggestion that MVPDs report on retransmission consent rates and the details of particular negotiations").

Commission explicitly held that parties need only provide reasons for rejecting any aspect of a retransmission consent proposal. It also expressly rejected the idea of parties supplying evidence or documentation, stating that "an information sharing or discovery mechanism" would be highly problematic because broadcasters and MVPDs "are competitors and the information involved would, in most instances, be competitively sensitive."[28] Requiring the disclosure of such competitively sensitive material also would raise serious questions under the Trade Secrets Act.[29] The Commission should reject this flawed proposal.

Echostar also attempts to recast a past proposal to *add* a new good-faith rule by calling it a proposal to "delete" the effective prohibition on importation of a distant network station during a retransmission consent dispute with a local station affiliated with the same network.[30] Specifically, Echostar wants the Commission to add to its consideration of a broadcasters' compliance with the good faith "totality of the circumstances" standard whether a local network station has granted a waiver to allow importation of a distant signal of another station affiliated with the same network during a retransmission consent dispute.[31] Even if the Commission wanted to adopt new regulations in its Delete, Delete, Delete proceeding, this proposal would be unlawful for the reasons NAB previously explained[32] when Echostar's affiliates raised the proposal in other contexts.[33] The adoption of any "penalties" for not granting retransmission consent or for exercising the lawful right to grant or deny distant

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[28] Good Faith Order, 15 FCC Rcd 5464 and n.100.

[29] *See* Comments of NAB, MB Docket No. 15-216, at 45-46 (Dec. 1, 2015) (citing 18 U.S.C. § 1905); *CBS Corp. v. FCC*, 785 F.3d 699 (D.C. Cir. 2015).

[30] *See* Echostar Comments at 10-12.

[31] *Id*.

[32] *See* Reply Comments of NAB, MB Docket No. 24-20, at 8 (Apr. 8, 2024).

[33] *See* Comments of DISH Network LLC, MB Docket No. 24-20, at 22-23 (Mar. 8, 2024).

signal waivers would be completely contrary to Section 325 and Congressional intent, among many other legal and policy issues. Congress established a system of market-based negotiations for retransmission consent, subject only to an obligation by both parties to negotiate in good faith. A rule that requires broadcasters to waive other rights if they do not "consent" to carriage of their signals would obviously coerce carriage and would be contrary to the core meaning of the statutory requirement that MVPDs obtain a broadcaster's consent to carriage. Just as a silk purse can't be made out of a sow's ear, the pay TV industry can't make its unsavory anti-competitive regulatory proposals into presentable deregulatory initiatives for this proceeding.

A few commenters also propose deletion of the network nonduplication and syndicated exclusivity rules.[34] As NAB has explained in the past, proposals to eliminate these rules are not deregulatory in nature and appear to confuse the source of the exclusive rights at issue.[35] *The rules do not create any exclusive rights*; they merely establish a simple and effective enforcement mechanism for efficiently effectuating rights already contracted for in arms-length marketplace negotiations between broadcast networks and affiliates.[36] The proposals would not advance the deregulatory goals of this proceeding and do not warrant further Commission consideration. Indeed, the FCC's exclusivity rules are one of the best examples of a low-cost yet highly effective approach to regulation. By the rule's mere existence, there are

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[34] NTCA Comments at 25-27; Comments of the Free State Foundation, GN Docket No. 25-133, at 13 (Apr. 11, 2025) (Free State Foundation Comments); Comments of ACA Connects, GN Docket No. 25-133, at 20-21 (Apr. 11, 2025).

[35] *See, e.g.*, Letter from R. Kaplan, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-71 (Sept. 15, 2015); Letter from R. Kaplan, NAB, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-71 (Sept. 9, 2015); Comments of NAB, MB Docket No. 10-71 (June 26, 2014).

[36] *Id*.

almost never issues – including costs – with enforcing freely bargained exclusivity rights. Without the rule, the Commission would force parties to routinely waste time and money litigating exclusivity in the courts, all while consumers are put in the crosshairs.

Finally, the Commission should disregard ATVA's feigned concern for consumer interests in its misfiled opposition to NAB's Next Gen TV Petition.[37] It is unsurprising that ATVA opposes a proposal that will reduce regulatory burdens on broadcasters,[38] allow them to compete more effectively in the video marketplace,[39] and ensure that consumers realize the benefits of broadcast industry innovations.[40] Let's face it, why else does ATVA exist? While governmental intervention is not required for deployment of innovative services in some other communications industry segments, Commission regulation of the broadcast industry

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[37] ATVA Comments at 7, *citing* Petition for Rulemaking of the National Association of Broadcasters, GN Docket No. 16-142 (Feb. 26, 2025) (Next Gen Petition).

[38] Today, before a broadcaster can add Next Gen television services to a market, it must negotiate with its local TV station competitors to arrange for hosting of its programming in ATSC 1.0 and submit the plan to FCC staff for approval. If the hosting plan does not meet the FCC's stringent standards for expedited processing, which is impossible in many markets, the launch of Next Gen service is subject to lengthy delays and uncertainty. A uniform transition date will avoid these burdens.

[39] NAB notes that at the time of the original petition to allow the voluntary deployment of the revolutionary Next Gen standard, 4K content was quite new and primarily consisted of cinematic content. In the intervening years, however, 4K content has become increasingly prevalent, including live sports, a staple of local broadcast television. While broadcasters can offer HDR content today, the extreme spectrum constraints broadcasters experience due to FCC-mandated dual transmission prevent 4K from becoming a reality. The Commission needs to act now to facilitate a faster ATSC 3.0 transition so that TV broadcasters can catch up to other marketplace competitors and offer enhanced services to consumers.

[40] *See, e.g.,* Next Gen Petition at 4-9 (discussing the extensive public interest benefits of accelerating the Next Gen TV transition such as an improved viewing experience featuring higher resolution formats with HDR video and immersive audio and 4K ultra high definition programming, interactive applications; the advent of the Broadcast Positioning System to ensure resilience of critical systems; datacasting; and advanced emergency information).

requires certain FCC interventions for an orderly transition to ATSC 3.0.[41] Given the public interest benefits of an accelerated transition to Next Gen TV and the urgent need for broadcasters to have fewer regulatory barriers to their ability to compete with their less regulated counterparts in the pay TV and Big Tech industries, NAB urges the Commission to disregard ATVA's anticompetitive request and act expeditiously on the Next Gen Petition.

C. Other Pay TV Proposals Require Changes to Commission Rules that are Mandated by the Communications Act

Although there is a great deal the Commission can do to reduce regulatory burdens without additional authority from Congress, at least for heavily regulated industries like broadcasting, several pay TV providers and their supporters propose legal changes that simply cannot be made by the Commission. NCTA urges the Commission to reexamine mandatory carriage of broadcast signals and basic tier requirements, both of which are Communications Act provisions that the Commission has no authority to change.[42] Pay TV providers and their supporters also urge the Commission to eliminate must-carry and basic tier rules, rules requiring carriage of the broadcast signal in its entirety, and carriage of program-related

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[41] *See, e.g.,* Next Gen Petition at 3 ("Due to the Commission's ownership restrictions which have fragmented the industry by design, no broadcaster is in a position to shut down ATSC 1.0 by themselves while other stations in the same market remain on the older standard."); 47 C.F.R. § 73.682 (setting forth broadcast television transmission standards).

[42] Comments of NCTA, GN Docket No. 25-133, at 14-17 and Appendix at 6 (Apr. 11, 2025) (*citing* 47 U.S.C. §§ 534(b)(7), 535(h) (commercial and noncommercial must carry); 47 U.S.C. §§ 543(b)(7), (8) (basic tier mandates)) (NCTA Comments); Comments of the Information Technology and Innovation Foundation, GN Docket No. 25-133, at 3 (Apr. 11, 2025) (urging the Commission to update MVPD regulations because IP-based video distributors are not subject to them, even while acknowledging that the obligations stem from the statutory "Title VI framework"). *See also* Comments of the United States Chamber of Commerce (USCC), GN Docket No. 25-133, at 6 (Apr. 11, 2025) (USCC Comments) (urging the FCC to recommend that Congress eliminate the rate regulation and basic tier provisions of the Act); Free State Foundation Comments at 13 (the Commission should delete or recommend that Congress repeal must carry).

material and carriage without material degradation.[43] All these rules were adopted pursuant to Congressional mandates (with several of them merely restating the relevant statutory provision), leaving the Commission without legal authority to eliminate them. Even if the Commission did eliminate its rules, the relevant statutory obligations would remain in place. Perhaps most notably, pushing for such "reforms" reveals MVPD interests' total lack of credibility when it comes to localism and consumer welfare.

Echostar's proposal that the Commission cease acting upon market modification requests[44] is likewise beyond the scope of the FCC's authority. Echostar is correct that the Commission has discretion to grant or deny requests to include or exclude communities within a station's local market to better effectuate Section 338.[45] The statute does not, however, give the Commission the authority to decline to even consider all such requests. To the contrary, the statute provides that the Commission "*shall*" take into account a variety of factors designed to promote localism in considering these requests.[46] The Commission lacks

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[43] ATVA Comments at 4-5; NCTA Comments at 14-17 and Appendix at 1 (both urging the FCC to eliminate rule Sections 76.55 (must carry definitions), 76.56 (signal carriage obligations), 76.57 (channel positioning), 76.59 (market modifications), 76.60 (prohibition on compensation for carriage), 76.61 (carriage disputes), 76.62 (manner of carriage, including carriage of entire signal; program-related material; material degradation standard); 76.1601, 76.607-08, 76,1614, 76.1617 (requirements for notice to broadcasters)); NCTA Comments at 14-17 and Appendix at 2 (urging the FCC to eliminate Sections 76.901-76.963, which include rules governing the basic tier); USCC Comments at 6 (urging the FCC to "eliminate all requirements pertaining to providing a basic tier service, including mandating that consumers purchase a basic tier to obtain other programming").

[44] Echostar Comments at 8-10 and Exhibit 1.

[45] 47 U.S.C. § 338(l)(1) ("Following a written request, the Commission may, with respect to a particular commercial television broadcast station, include additional communities within its local market or exclude communities from such station's local market to better effectuate the purposes of this section.").

[46] 47 U.S.C. § 338(l)(2)(B) (emphasis added).

the legal authority to adopt a blanket ban on its consideration of market modification proposals but must instead review them using the factors specified by statute.[47]

Echostar further urges the Commission to delete Sections 76.66(j) and (k) of its rules,[48] which require satellite carriers to carry broadcast signals in their entirety, including program related-material,[49] and to carry them without material degradation,[50] regardless of whether such signals are carried pursuant to must-carry or retransmission consent. Echostar also proposes elimination of DBS operators' obligation to carry HD broadcast signals on a carry-one, carry-all basis, which was phased in across local markets (also in Section 76.66(k) of the FCC's rules).[51] Again, Echostar is proposing the elimination of statutorily-mandated rules. When the Commission adopted the standards governing carriage of program-related material and material degradation, it did so as part of rulemaking required by the Satellite Home Viewer Improvement Act of 1999 (SHVIA), which directed the Commission to adopt DBS carriage mandates comparable to those for cable operators under the Communications Act.[52] The same statutory mandate was the basis for the FCC's later adoption of HD carriage

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[47] *Id.* Moreover, the statutory market modification process and related rules already account for potential compliance burdens on DBS providers by prohibiting market modifications that are not technically or economically feasible for them. 47 U.S.C. § 338(l)(3)(A).

[48] Echostar Comments at 14-15 and Exhibit 1.

[49] 47 C.F.R. § 76.66(j).

[50] *Id*. at § 76.66(k).

[51] Echostar Comments at 12-14 and Exhibit 1.

[52] *See Implementation of the Satellite Home Viewer Improvement Act of 1999*, 16 FCC Rcd 1918, 1961-70 ¶¶ 102-119 (2000). *See also* 47 U.S.C. 338(j) ("Within 1 year after November 29, 1999, the Commission shall issue regulations implementing this section following a rulemaking proceeding. The regulations prescribed under this section shall include requirements on satellite carriers that are comparable to the requirements on cable operators under sections 534(b)(3) and (4) and 535(g)(1) and (2) of this title.").

requirements for must-carry stations.[53] The Commission does not have the legal authority to eliminate these rules.[54]

Even if the Commission did have such authority, allowing MVPDs to take the actions proposed by Echostar would harm consumers. While allowing *consumers* to use technologies to decide to show more than one stream of programming on their screens at the same time might be a "value-added consumer feature[]," interpreting Section 614 of the Act to allow *MVPDs* to shrink four streams of broadcast content into four quadrants of a television screen and give consumers a choice of which audio to play is not.[55] As broadcasters continue to invest in programming and technological innovations, the FCC's interpretations of the Communications Act should ensure that consumers benefit from those investments and that anticompetitive MVPD actions do not preclude consumers from realizing the value of those investments.

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[53] *See Carriage of Digital Television Broadcast Signals: Amendment to Part 76 of the Commission's Rules; Implementation of the Satellite Home Viewer Improvement Act of 1999: Local Broadcast Signal Carriage Issues and Retransmission Consent Issues,* Second Report and Order, Memorandum Opinion and Order and Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 5351, 5354-60 ¶¶ 5-14 (2008).

[54] For the same reasons, the Commission lacks authority to eliminate the satellite syndicated exclusivity and network nonduplication rules applicable to nationally distributed superstations. *See* Echostar Comments at 3-6. As Echostar itself states, "*Congress directed the Commission* to 'apply network nonduplication protection (47 C.F.R. § 76.92) [and] syndicated exclusivity protection (47 C.F.R. § 76.151) . . . to the retransmission of the signals of nationally distributed superstations by satellite carriers to subscribers[.]'" Echostar Comments at 3 (emphasis added), *quoting* 47 U.S.C § 339(b)(1)(A).

[55] Echostar Comments at 15.

III. MUSIC INDUSTRY INTERESTS USE COPY-PASTE ADVOCACY TO PUSH FOR REGULATORY ASSISTANCE IN MAINTAINING DOMINANCE OVER RADIO STATIONS

As has become a common habit for them,[56] the musicFIRST Coalition and Future of Music Coalition submit comments here[57] that repurpose and repeat work from other proceedings – in particular, discussing and attaching their amicus brief filed in NAB's challenge to the FCC's woefully belated and fundamentally flawed 2018 quadrennial review order,[58] currently pending before the U.S. Court of Appeals for the Eighth Circuit. As an initial matter, NAB has already summarily dealt with relevant portions of the Coalitions' amicus brief in a footnote in our reply brief in the 8th Circuit litigation, pointing out that the Coalitions' legal arguments rested on an incorrect reading of cases addressing the quadrennial review statute, Section 202(h) of the 1996 Telecommunications Act.[59]

Putting aside the redundancy of the Coalitions' (erroneous) arguments, they also missed the basic point of the Notice in this proceeding, which is pellucidly entitled, *Delete, Delete, Delete*. Despite the FCC's call for proposals to . . . *surprise*. . . *delete* FCC regulations, the Coalitions volunteer rehashed arguments about *keeping* antiquated FCC regulations. Indeed, the Coalitions openly admit that they missed the boat on this

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[56] *See, e.g.*, Reply Comments of NAB, GN Docket No. 24-119, at 5-6 (July 8, 2024) (2024 NAB Communications Marketplace Reply Comments) (observing that the Coalitions' 2024 comments on competition in the communications marketplace were clearly cloned from their 2022 comments, with virtually identical tables of contents, and reflected their 2020 and 2018 comments, even using identical language to make some of their leading – and erroneous – arguments).

[57] Comments of musicFirst Coalition and Future of Music Coalition (collectively, the Coalitions), GN Docket No. 25-133, MB Docket No. 22-459 (Apr. 11, 2025) (Coalition Comments).

[58] *2018 Quadrennial Regulatory Review*, Report and Order, 38 FCC Rcd 12782 (2023).

[59] *See* Appendix A.

assignment.[60] Worse yet, by employing copy-paste advocacy, they churn out paper that adds zero substance to the FCC's inquiry. So why are they re-raising their tired old arguments that are wholly inapt to this Notice? The answer is simple: rent-seeking (and forum shopping).[61]

The recorded music industry will do whatever it can to preserve dominance over broadcast radio stations that face overwhelming and still growing competitive pressure from online audio and satellite radio providers. How else can one interpret an industry dominated by three massive players arguing with a straight face that broadcasters should be kept artificially small? Notwithstanding the highly fragmented nature of the audio marketplace, the Coalitions hope to co-opt the Commission at every chance – however irrelevant or inappropriate – to retain regulatory burdens on stations and preserve analogue-era local ownership regulations that keep radio broadcasters from increasing their scale by engaging in combinations that may place them on a closer-to-equal footing with the recording industry.

As NAB has shown many times, music industry interests have supported regulations, even repealed ones,[62] on local radio stations, for reasons that have nothing to do with the public's interest or the issue at hand. NAB again points out here the highly suspect motivations of the multi-billion-dollar music industry for participating in various FCC

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[60] Coalition Comments at 8-9 ("However, the Public Notice asks the public to provide comment and justifications for ***which*** regulations should be "delete[d]" rather than ***whether*** any given regulations should be repealed or modified. We believe that a more constructive Public Notice requesting comment would have stated that request to either keep, modify or repeal regulations are welcome.").

[61] *See* 2024 NAB Communications Marketplace Comments at 43-50 (explaining regulatory rent-seeking and discussing the rent-seeking strategies of the pay TV industry and the music industry).

[62] *See, e.g.,* Comments of the Coalitions, MB Docket No. 24-14 (Mar. 11, 2024) (taking issue with FCC's earlier repeal of the main studio rule); Petition for Reconsideration, REC Networks, musicFIRST Coalition, and Future of Music Coalition, MB Docket Nos. 19-310 and 17-105 (Nov. 20. 2020) (seeking reinstatement of the previously repealed FM radio duplication rule).

proceedings, including arguing in quadrennial reviews, in communications marketplace competition proceedings and in this proceeding, that radio broadcasters should remain confined to outdated and suboptimal ownership structures. As previously explained, the Coalitions have involved themselves in FCC proceedings affecting broadcasters due to frustration over their continued inability to convince Congress to establish a sound recording performance right for terrestrial radio.[63] But the Coalitions' dissatisfaction with copyright law does not translate to expertise or insight into FCC policies.

In any event, the music industry, dominated by just three major international labels earning billions more in revenue than all 11,000 full power commercial AM/FM stations combined, either has no concept of the competitive realities facing radio stations providing services free to the public across thousands of local communities, or simply does not care. The three major music companies, for example, jointly generated about $2.9 million *per hour* in 2023.[64] In remarkable contrast, in 2023 the vast majority of radio stations garnered ***less than $2.9 million per year*** in advertising revenues.[65] Needless to say, the Coalitions have

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[63] *See, e.g.*, 2024 NAB Communications Marketplace Reply Comments at 26-31; NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 13-16 (Feb. 16, 2022); NAB Reply Comments, GN Docket No. 22-203, at 19-25 (Aug. 1, 2022); NAB Written *Ex Parte* Communication, MB Docket No. 19-310, at 3-5 (Mar. 25, 2021). The Coalitions have for years erroneously and nonsensically argued that, because the broadcast radio industry does not pay sound recording performance fees for stations' OTA airing of music free to the public, then the FCC should refrain from updating its market definition to include competitors (*e.g.*, streaming, satellite radio) other than broadcasters and should refuse to reform its local radio ownership caps. *See, e.g.*, Comments of the Coalitions, MB Docket No. 18-227, at 22, 27-29 (Sept. 24, 2018); Joint Comments of the Coalitions, MB Docket No. 18-349, at 3-4 (Apr. 29, 2019).

[64] Tim Ingham, *The 3 Major Music Companies Are Now Jointly Generating Approximately $2.9M Per Hour*, musicbusinessworldwide.com (May 15, 2023).

[65] *See* 2024 NAB Communications Marketplace Comments at 20, Radio Station Advertising Revenues by Market Rank. In 2023, radio stations in all Nielsen Audio market size ranges, except markets 1-10, garnered on average less – and often much, much less – than $2.9 in

never explained how local radio stations earning such low levels of revenues are supposed to continue providing quality programming, including popular music, sports, and informational programming, such as weather updates and critical emergency information, without achieving increased local scale and economic efficiencies. NAB yet again urges the Commission to ignore the Coalitions' repetitive, evidence-free advocacy reflecting their grievances over the music industry's failure to persuade Congress to impose additional royalty payments on local radio stations' OTA broadcasts of music.

To the extent NAB needs to address the Coalitions' recycled and previously refuted arguments offered here, which – *by their own admission* – are unresponsive to the Notice, we do so below. The Coalitions claim past station combinations have harmed local competition.[66] Not so.

First, as NAB discussed in substantial detail in response to previous comments from the Coalitions,[67] the current audio marketplace boasts a vibrant ecosystem of broadcast radio, satellite radio, and online audio competitors. The recording industry should know this, as it makes countless billions from these exact sources. There are numerous streaming services available for free or by subscription boasting well over a hundred million tracks.[68]

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ad revenues *for the entire year*. Stations in markets 151-246 garnered on average less than half a million dollars in ad revenue, and those in markets 51-150 garnered on average less than one million dollars in ad revenue. *Id*. And keep in mind that these low amounts are only *revenues*, not *profits*.

[66] Coalition Comments at 3.

[67] *See, e.g.*, 2024 NAB Communications Marketplace Reply Comments at 10-25; Reply Comments of NAB, GN Docket No. 22-203, at 4-19 (Aug. 1, 2022).

[68] Tom Newman, *Top 10 streaming services with the most tracks in 2025*, RouteNote Blog (Jan. 15, 2025) (listing SoundCloud with 320 million+ tracks, Deezer with 120 million+ tracks, Napster with 110 million+ tracks, TIDAL with 110 million+ tracks, YouTube Music with 100 million+ tracks, Amazon Music with 100 million+ tracks, Qobuz with 100 million+ tracks, and Spotify with 100 million+ tracks).

Depending on the source, there are anywhere from 3.5 – 4.4 million podcasts today, and approximately 27 million new podcast episodes were released in 2024.[69] SiriusXM satellite radio offers over 240 channels,[70] and SiriusXM streaming offers over 425 channels, including ad-free music, podcasts, SiriusXM video, and more.[71] HD Radio™ technology enables radio stations to air multiple separate streams and provide a wider range of content, including niche formats.[72] Terrestrial radio stations alone offer a diverse menu of programming that serves the needs of many different communities.[73] The notion that the audio marketplace is starved for competition (or widely varied programming) is ridiculous. NAB has shown, moreover, that non-broadcast audio outlets compete with local radio stations for audiences and are earning ever-higher shares of the time consumers spend listening to audio sources.[74]

Second, contrary to the Coalitions' assertions, economists, the courts, and numerous studies have concluded that common ownership of broadcast stations diversifies programming formats. NAB has detailed in previous proceedings the various radio industry studies finding that increased common ownership following the 1996 Telecommunications

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[69] *Podcast Statistics & Trends in 2025*, Podcastpage (Jan. 5, 2025).

[70] SiriusXM, *SiriusXM Subscription for Connected Devices* (accessed Apr. 22, 2025), https://sxmbusiness.com/product/siriusxm-subscription-only-use-your-own-device/.

[71] SiriusXM, *Stream Everywhere* (accessed Apr. 22, 2025), https://www.siriusxm.ca/get-started/streaming/#:~:text=Stream%20Everywhere%20Tap%20into%20425+%20amazing%20channels%2C,video%2C%20and%20more%20%E2%80%94%20anywhere%20you%20are.

[72] HD Radio: Digital AM & FM (accessed Apr. 22, 2025), https://hdradio.com/. *See also* 2024 NAB Communications Marketplace Reply Comments at 19.

[73] *See, e.g.*, 2024 NAB Communications Marketplace Reply Comments at 18-19; Reply Comments of NAB, GN Docket No. 22-203, at 12-13 (Aug. 1, 2022).

[74] *See, e.g.,* 2024 NAB Communications Marketplace Comments at 10-13 (showing large decline in broadcast radio's share of listening over the past decade, as consumers spend increasing time with "pure play" streaming services (*e.g.*, Pandora and Spotify), YouTube music and music videos, and podcasts).

Act resulted in significantly increased variety of station formats and programming.[75] Broadcasters, including small ones and ones in small and mid-sized markets, have validated that empirical work demonstrating how common ownership leads to more diverse programming.[76] Indeed, radio broadcasters of all sizes call for local ownership rule reform in this proceeding because they recognize that it will enhance quality.[77] We're not sure why the music industry fails to grasp this obvious point.

Finally, the Coalitions continue their practice of providing zero empirical evidence to refute NAB's and radio broadcasters' provision and citation of voluminous studies and empirical evidence.

The Coalitions also claim that eliminating the AM/FM subcaps would devalue certain broadcasters' AM holdings.[78] The Coalitions have it backwards. NAB has previously refuted in detail erroneous claims about needing to maintain the AM/FM subcaps, particularly at the expense of the radio industry as a whole, and has shown that both AM and FM radio need ownership deregulation, due to the special challenges facing AM radio and the struggles of all

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[75] *See* 2024 NAB Communications Marketplace Reply Comments at 19; Reply Comments of NAB, GN Docket No. 22-203, at 13-14 (Aug. 1, 2022); Reply Comments of NAB, GN Docket No. 20-60, at 13-14 (May 28, 2020). *See also* Reply Comments of NAB, MB Docket No. 18-349, at 45-46 (May 29, 2019) (identifying nine studies, including one commissioned by the FCC, showing that increased common ownership starting in the 1990s resulted in greater programming diversity).

[76] *See, e.g.*, 2024 NAB Communications Marketplace Reply Comments at 19-20; Reply Comments of NAB, MB Docket No. 18-349, at 47-49 (May 29, 2019).

[77] *See, e.g.*, Comments of KTTR-KZNN, Inc., and Stillwater Broadcasting, LLC, GN Docket No. 25-133, at 6-7 (Apr. 10, 2025); Comments of Beasley Media Group Licenses, LLC, GN Docket No. 25-133, at 10 (Apr. 11, 2025) (Beasley Comments); Joint Comments of Radio Broadcasters, GN Docket No. 25-133, at 4 (Apr. 11, 2025) (Radio Broadcasters Joint Comments). Innumerable radio broadcasters, both small and large, similarly called for relaxation or elimination of the local radio rules in the last completed quadrennial ownership review. *See, e.g.*, 2024 NAB Communications Marketplace Reply Comments at 14-17.

[78] Coalition Comments at 3.

stations, including FM, to earn adequate advertising revenues to support quality local services provided free over-the-air, especially in mid-sized and small markets.[79]

It is unremarkable to say that AM stations are seriously struggling and need maximum regulatory relief. According to a study by BIA Advisory Services, only 4.5 percent of all commercial AM stations were ranked among the top-five stations in their local markets in 2018, and AM stations' combined audience share declined by half from 1996 to 2018.[80] BIA also found that AM radio stations' share of advertising revenue was collectively less than five percent of just *radio* advertising revenue in many Nielsen Audio markets – and thus a vanishingly miniscule portion of total advertising revenue in their local markets. BIA's study also modeled the cash flow benefits local radio station groups would derive from combinations banned by the existing local radio limits and showed that owners of larger local FM clusters are better at converting listenership into revenue compared to smaller clusters of FM stations. BIA therefore concluded that if stations could combine more freely, it would help stations increase their cash flow and revenue.[81]

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[79] *See, e.g.*, NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 46-51 (Feb. 16, 2022); Reply Comments of NAB, MB Docket No. 18-349, at 63-70 (Oct. 1, 2021) (showing declining ad revenues and listenership of FM radio specifically); Comments of NAB, MB Docket No. 18-349, at 68-84 (Sept. 2, 2021).

[80] Reply Brief for Petitioner at 25-26, *Zimmer Radio v. FCC*, Nos. 24-1380, 24-1480, 24-1493, 24-1516 (8th Cir. Oct. 15, 2024) (citing BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, Attachment A to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019)).

[81] Opening Brief for Petitioner at 59-61, *Zimmer Radio v. FCC*, Nos. 24-1380, 24-1480, 24-1493, 24-1516 (8th Cir. July 15, 2024). NAB discussed these important aspects of the BIA study in detail in various filings. *See, e.g.*, NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 32-36, 41-43 (Feb. 16, 2022).

NAB, along with numerous radio broadcasters,[82] have provided extensive evidence from recognized industry analysts, including BIA, Edison Research, and Borrell Associates, detailing the intense competition that local radio stations face for audiences and advertising revenues and showing how eliminating the current radio caps and subcaps would support station vitality – or even viability – and therefore enable broadcasters' future investment in their services. The Coalitions are reduced to contending that NAB's factually supported analysis is a "myth."[83] Never mind that the Coalitions provide no countervailing empirical evidence or even engage directly with the studies, empirical evidence, and broadcaster declarations previously submitted to the Commission, which all supported deregulation. The Coalitions apparently have not "observed" such reinvestment in broadcast services by station groups (for whatever that is worth)[84] and accordingly oppose all ownership deregulation, regardless of the necessity of reform for broadcasters to continue providing services to local communities of all sizes on a free OTA basis. NAB suggests that the Coalitions visit and engage with some local broadcasters, including those in mid-sized and small markets, to observe first-hand how they increasingly struggle to provide quality local services and invest in their programming, employees, and station plant in an era of unprecedented competition and declining ad revenues.[85]

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[82] *See, e.g.*, Joint Comments of Connoisseur Media, LLC, *et al.*, MB Docket No. 22-459 (Mar. 3, 2023).

[83] Coalition Comments at 4.

[84] *Id.*

[85] For suggestions of local broadcasters to engage with, NAB refers the Coalitions to those referenced in, *e.g.*, NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 44-46 (Feb. 16, 2022).

The remainder of the Coalitions' comments is a book report on the FCC's Eighth Circuit ownership brief and oral argument regarding the meaning of Section 202(h).[86] In all their verbatim citations, the Coalitions seem to miss the significant legal points (again). NAB had explained that the statute places the burden on *the Commission* to explain why analogue-era rules continue to be necessary in light of competition in an audio marketplace that includes satellite radio and online audio platforms offering every variation of radio programming imaginable.[87] It undeniably falls on the Commission to justify retaining the local radio (and TV) rules – if it can't, it must "repeal or modify" those rules.[88] The Commission failed to do so, and most significantly, it failed to understand that competition must be the main driver in its Section 202(h) analyses, given that provision's language. Finally, the Coalitions also ignore the fact that Chairman Carr agrees with NAB that Congress' mandate in Section 202(h) is "deregulatory" and that the FCC's 20th century local radio caps do not "promote competition, a diversity of viewpoints, and localism" as intended, but "prevent[] actual investment" in local stations, their live and local programming, and newsgathering.[89]

In short, the Coalitions' comments are inapt and uninformative and do nothing to disturb the important point that NAB and other broadcasters made in their initial comments:

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[86] Coalition Comments at 4-8. NAB previously refuted the Coalitions' blatant misreading of Section 202(h) and court cases interpreting it. *See* NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 2-5 (Feb. 16, 2022). Notably, in their initial comments in the last completed quadrennial review, the Coalitions selectively cited Section 202(h) by leaving out any mention of "competition." Joint Comments of the Coalitions, MB Docket No. 18-349, at 3 (Apr. 29, 2019) (describing the analysis required of the FCC under Section 202(h) as whether the broadcast ownership regulations are necessary in the public interest).

[87] Reply Brief for Petitioner at 3, *Zimmer Radio v. FCC*, Nos. 24-1380, 24-1480, 24-1493, 24-1516 (8th Cir. Oct. 15, 2024).

[88] *Id*.

[89] Dissenting Statement of Commissioner Brendan Carr, *2018 Quadrennial Regulatory Review*, Report and Order, 38 FCC Rcd 12782, 12873-74 (2023).

Now is the time for the Commission to relieve broadcast stations of their asymmetric and antiquated ownership restrictions.[90]

IV. NAB PROVIDES COMMENTS ON THE MYRIAD TECHNICAL PROPOSALS SUBMITTED IN THE RECORD

A. NAB Opposes Certain Proposals by LPFM Advocates that Could Change the Local Nature of the Service and Increase the Risk of Interference to FM Services

NAB opposes certain rule changes proposed by low power FM (LPFM) advocates and stations. First, some LPFM commenters ask the FCC to reconsider the noncommercial broadcasting underwriting policies in 47 C.F.R. § 73.503 to allow LPFM stations to broadcast commercial information.[91] These parties claim that LPFMs need to be able to generate independent revenue as federal support for public broadcasting faces heightened political scrutiny. Other commenters support maintaining LPFM's noncommercial status.[92]

NAB agrees with the latter. If LPFM stations started broadcasting commercials, it would change the fundamental nature of the service. The FCC proposed LPFM in 1999 with the explicit goal that LPFM stations would "address unmet needs for community-oriented radio broadcasting, foster opportunities for new radio broadcast ownership, and promote additional

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[90] *See, e.g.*, Comments of NAB, GN Docket No. 25-133, at 7-13 (Apr. 11, 2025) (explaining why the FCC needs to eliminate and reform its national and local broadcast TV and radio ownership rules).

[91] LPFM-AG filed several comments, referencing "full commercials" in some and "enhanced underwriting announcements" in others, and offering a ten-minute per hour cap on LPFM ads in some comments and not mentioning any such cap in others. Comments of LPFM-AG, GN Docket No. 25-133, at 3 (Apr. 12, 2025) (April 12 LPFM-AG Comments); Comments of LPFM-AG, GN Docket No. 25-133, at 1-2 (Mar. 16, 2024); Comments of LPFM-AG, GN Docket No. 25-133, at 1-2 (Apr. 8, 2025). *See also* Comments of Sam Brown, GN Docket No. 25-133, at 2 (Apr. 14, 2025).

[92] *See, e.g.*, Comments of Victoria Larsen, GN Docket No. 25-133, at 1 (Apr. 11, 2025); Comments of Charles Stebelton, GN Docket No. 25-133, at 1 (Apr. 9, 2025); Comments of Liyan Zhao, GN Docket No. 25-133, at 1 (Apr. 8, 2025); Comments of Becca Bisque, GN Docket No. 25-133, at 1 (Apr. 8, 2025).

diversity in radio voices and program services."[93] When the FCC approved LPFM as a noncommercial service in 2000, it distinguished LPFM from commercial stations, which "by their very nature, have commercial incentives to maximize audience size in order to improve their ratings and thereby increase their advertising revenues."[94] The FCC emphasized that, without such incentives, LPFMs would be more likely to serve "small, local groups with particular shared needs and interests, such as linguistic and cultural minorities or groups with shared civic or educational interests that may now be underserved by advertiser-supported commercial radio."[95] The FCC noted that this approach would also provide it with more flexibility to assign LPFM licenses to local community groups well-positioned to serve local community needs.[96]

Allowing LPFM stations to broadcast commercials would upend the FCC's purpose in creating LPFM as a noncommercial service. The airing of ads would change the incentives of LPFM operators, and in turn, potentially reduce the type of hyper-local programming that LPFM is intended to provide. We believe that LPFM stations can provide a valuable complementary service to commercial broadcasting that should be preserved.

Second, LPFM advocates *again* urge the FCC to allow LPFM stations to increase their maximum power from 100 watts to 250 watts.[97] Although we appreciate the advocates'

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[93] *Creation of a Low Power FM Radio Service*, Notice of Proposed Rulemaking, 14 FCC Rcd 2471 (1999).

[94] *Creation of a Low Power FM Radio Service*, Report and Order, 15 FCC Rcd 2205, 2213 (2000) (2000 LPFM Order).

[95] *Id*.

[96] *Id*.

[97] This is at least the sixth bid by LPFM advocates to increase maximum power. Motion for Reconsideration, The Amherst Alliance, MB Docket No. 99-25 (Feb. 25, 2000); Petition for Reconsideration, Let the Cities In!, MB Docket No. 99-25 (Dec. 28, 2012); Petition for

efforts to create earnest proposals,[98] NAB members remain opposed to allowing LPFM stations to more than double their maximum power. First, doing so would contradict Congressional intent. Congress adopted the Local Community Radio Act of 2010 (LCRA) with specific limits on the FCC's authority to modify the interference protection parameters in place at the time. The LCRA states that "FM translator stations, FM booster stations, and low power FM stations remain equal in status."[99] Allowing LPFM stations to dramatically increase power would undermine the careful balance that Congress struck between promoting opportunities for LPFM stations and protecting other FM services from interference, which was predicated on the 100-watt maximum power for LPFM in place at the time.

Creating a new LP250 class would also further crowd the already congested FM band.[100] REC states that its approach would allow 77.5 percent of existing LPFM stations to upgrade to 250 watts,[101] or approximately 1,531 stations.[102] Introducing so many new 250-

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Rulemaking, Don Schellhardt, *et al*. (Dec. 20, 2013); Petition for Rulemaking, REC Networks, RM-11749 (May 18, 2015); Petition for Rulemaking, REC Networks, RM-11810 (June 13, 2018); Petition for Reconsideration, Todd Urick, *et al*., MB Docket Nos. 19-193 and 17-105 (July 13, 2020); Petition for Rulemaking, REC Networks, RM11909 (May 28, 2020).

[98] REC Networks offers a process in which LPFM stations can apply for an upgrade if they meet certain distance separation requirements and fulfill certain criteria related to EAS participation, FCC rule compliance, and on-air availability. Comments of REC Networks, GN Docket No. 25-133, at ¶¶ 29-38 (Apr. 14, 2025). LPFM-AG argues that LPFM stations should be allowed to follow the same interference and contour standards as FM translators. April 12 LPFM-AG Comments at 2.

[99] Pub L. No. 111-371, 124 Stat. 4072 (2011).

[100] *See* Comments of Educational Media Foundation (EMF), RM-11909 (June 21, 2021) (describing how allowing LPFMs to increase power to 250 watts would aggravate the overlapping of LPFM service with other services in areas with raised terrain (the "foothills" effect) and offering an example of destructive interference that could result in certain areas).

[101] REC Comments at ¶ 28.

[102] FCC Public Notice, *Broadcast Station Totals as of March 31, 2025* (Apr. 4, 2025) (reporting 1,976 LPFM stations).

watt LPFM stations would inevitably increase the risk of interference to other FM services, particularly FM translators. For example, in some cases, an LPFM power increase could change the coverage of a nearby translator from half-obstructed by an LPFM signal to completely contained within the LPFM station's interference contour. Such an outcome would be intolerable because translators are critical broadcasting services, especially for AM broadcasters, helping them to improve fill-in service or launch first-time nighttime service. A translator is the difference between financial viability and turning out the lights for numerous AM stations. Moreover, there is a long history of LPFM failures to comply with the FCC's existing 100-watt limit (and other rules)[103] that reduces broadcasters' confidence that LPFM stations newly empowered to increase power to 250 watts would prevent unwanted interference to translators.

NAB appreciates that authorizing LP250 service would allow a slight coverage expansion for those LPFM stations that provide meaningful local content.[104] On balance, however, we believe it is much more important to preserve reliable access for listeners to the programming, including news, weather, and emergency information, provided by incumbent radio broadcasters. Thus, NAB respectfully asks the FCC to reject these latest repetitive calls to create a new LP250 class of radio service.

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[103] Opposition to Petition for Rulemaking of NAB, RM-11909, at 3-4 (June 21, 2021) (NAB Opposition).

[104] REC Networks states that more than over half of LPFM stations are operated by faith-based organizations. REC Networks Comments at ¶ 29. We presume that such stations are less likely to focus on hyper-local issues.

B. NAB Has Significant Concerns Regarding Proposed Rule Changes That Would Allow FM Radio Stations to Operate from Distributed Transmitters Instead of a Single Main Transmitter

NAB does not believe the Commission at this time should pursue GeoBroadcast Solutions LLC's (GBS) request for new rules that would permit FM radio stations to operate from a set of distributed "booster" transmitters rather than a single main transmitter, as currently required under 47 C.F.R. § 73.1665(a).[105]

While GBS states that the use of boosters in lieu of a main transmitter "could provide more robust and complete coverage inside [station] contours," its filing suggests an approach that would allow radio service to focus on "core audiences."[106] From an FCC perspective, adopting GBS's core-audience approach would represent a major policy shift, as it would facilitate stations' ability to selectively serve only preferred pockets of listeners within their contours while leaving some areas with spotty or no service.

In general, NAB believes that the capital and operating costs to support a network of boosters that provides coverage and reliability comparable to a single transmitter would be greater, and perhaps much greater, than the costs associated with supporting a single main transmitter. Although rent, power, insurance, maintenance, and other expenses to operate a main transmitter are almost certainly higher than those for a single booster, a radio broadcaster would have to bear such costs for multiple booster sites to cover the same area. In particular, Class B and Class C stations, which have large coverage areas, would require numerous boosters to cover an area comparable to that covered by a single main transmitter.

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[105] Comments of GeoBroadcast Solutions LLC, GN Docket No. 25-133 (Apr. 11, 2025) (GBS Comments). *See also* 47 C.F.R. § 73.1665(a).

[106] GBS Comments at 4.

The costs to operate multiple boosters would create incentives for stations to limit their number of boosters and cherry pick which parts of their service areas to serve. As a result, GBS's proposal would create the very real risk that less populous, rural communities could be abandoned in favor of more populated urban areas or more prosperous pockets. Such an outcome would undermine the very nature of local radio broadcast service, which by name and definition is designed to ensure service to a *broad* audience located throughout a station's contour.[107]

NAB also believes that a network of multiple boosters would be less reliable than a single main transmitter because the likelihood of one booster site failing is independent of the other sites. Each booster would have its own power, equipment, and other vulnerabilities, thereby creating multiple points of failure as opposed to one well-maintained transmitter that has redundancies in place.

Finally, although NAB appreciates GBS's acknowledgment that radio broadcasters serve as vital "first responders,"[108] its proposal would undermine public safety in at least two ways. First, as noted above, the proposal could cause certain listeners currently served by a station's main transmitter to lose access to important emergency information. Second, GBS's proposal overlooks the importance that radio broadcasters place on ensuring continuous operation of their transmission facilities when natural disasters – such as hurricanes, tornadoes, wildfires, or floods – occur, and the often-significant challenges to achieving that critical objective. Under GBS's proposal, to fulfill radio broadcasters' mission to serve all their

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[107] *See* 47 U.S.C. § 307(b) (stating "the Commission shall make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same").

[108] GBS Comments at 5.

listeners with emergency information during disasters, broadcasters would need to keep multiple, disparate boosters operational. For example, during an emergency like a flood or wildfire, it is much more likely that one or more boosters would be less accessible than a single main transmitter. Similarly, it would be more challenging for a broadcaster to obtain and deliver fuel to multiple boosters than to a single main transmitter, if needed to power a generator during a prolonged emergency. Accordingly, it appears that overall, GBS's proposal would undermine, rather than promote, radio broadcasters' critical "first informer" role, putting communities at greater risk and harming the public interest.

C. NAB Supports Allowing Greater Power and Flexibility to Ultra Wideband (UWB) Systems

NAB generally supports the proposal to allow greater power and greater flexibility by ultra wideband devices.[109] Broadcasters operate fixed and mobile systems in spectrum that is shared with UWB devices (6.425–6.525 GHz and 6.875–7.125 GHz) and have experienced no interference from those systems. NAB believes that the proposals to increase UWB power by 10 dB and to allow greater flexibility in deployments are unlikely to significantly increase the likelihood of interference to electronic newsgathering and other broadcast operations. At this time, NAB takes no position on the other proposals to modify UWB rules.

D. Very Low Power (VLP) Operations Cannot Avoid the Requirement to Include Antennas in 6 GHz VLP Devices

NAB does not support the proposal to remove the integrated antenna requirement from 6 GHz VLP devices.[110] As noted above, broadcasters use portions of the 6 GHz U-NII

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[109] Comments of the Alliance for Automotive Innovation, GN Docket No. 25-133, at 3-6 (April 11, 2025) (AAI Comments); Comments of the UWB Alliance, *et al*., GN Docket 24-133, at 5-6 (April 11, 2025).

[110] AAI Comments at 7-8. AAI does not specify the particular rule(s) or policy(ies) involved, but may be referring to: 47 C.F.R. § 15.407(a)(10) and FCC/OET KDB 987594 D01 (*U-NII 6GHz General Requirements v03*, October 10, 2024.

bands (specifically the sub-bands U-NII-6 and U-NII-8), which are shared with unlicensed Low Power Indoor (LPI) and VLP devices. Since those devices have commenced operation, broadcasters have begun experiencing intermittent interference to electronic newsgathering (ENG) systems. That interference appears to be from unlicensed U-NII devices operating in those sub-bands.

NAB believes that manufacturers of unlicensed equipment in the 6 GHz band have inconsistently implemented "listen before talk" (LBT) protocols. We continue to believe that the present LBT requirements are inadequate to prevent interference to licensed incumbent users, including broadcast ENG systems.[111] Allowing VLP devices to use external antennas would only exacerbate the risk of interference because the external antennas are likely to be placed in locations that maximize coverage and therefore maximize interference. While broadcasters continue to investigate the cause of recent interference problems, it is premature to change the U-NII rules in a way that would increase the potential for more interference.

True, certain U-NII VLP applications may present a minimal risk of increased interference. But there is a waiver process to permit such applications, and in any event, commenters' proposals are too broad and create too much risk of interference within the 6 GHz band. If commenters wish, they should identify a narrowly tailored carve-out for applications that are unlikely to cause interference. A blanket elimination of the rule, however, creates an extraordinary risk of interference to ongoing ENG operations.

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[111] Petition for Reconsideration of NAB, ET Docket No. 18-295, GN Docket 17-183 (Apr. 7, 2025).

E. NAB Supports Proposals Concerning Interference Protection of TV Channels 10 and 13 by PTC Operations

NAB supports the proposal to eliminate the interference study requirement for railroad operators in the 219.5–220 MHz band.[112] Broadcasters operating on TV Channels 10 and 13 have reported no instances of interference that can be positively traced to AMTS/PTC operations. The history of this requirement suggests that the interference mechanism is limited to heterodyne television receivers, which are becoming uncommon. NAB believes that modern receiver designs are unlikely to be affected by such interference. NAB emphasizes that the requirements of Section 80.475(a)(2), which requires AMTS/PTC applicants to give written notice of the intended operation to the television stations that may be affected, and Section 80.215(h)(4), which requires AMTS/PTC operators to eliminate such interference within 90 days, should continue to apply.

F. FM Allocation Requirements Should Not be Eliminated

NAB opposes a few commenters' calls to eliminate requirements specifying the minimum distance by which FM stations must be separated.[113] The "contour protection" rules of 47 C.F.R. § 73.215 for "short-spaced" assignments rely, by definition, on the calculated protected and interfering contours. But these contours are just abstractions of expected coverage and interference; they were created for administrative convenience.[114] These contours otherwise have limited practical application for determining *actual* coverage or

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[112] Comments of the Association of American Railroads, GN Docket No. 25-133, at 3-6 (April 11, 2025) (AAR Comments).

[113] Comments of Anthony Vincent Bono, GN Docket No. 25-133, at 2 (Apr. 9, 2025) (Bono Comments); Comments of SSR Communications, Inc., GN Docket No. 25-133, at 7-8 (Apr. 11, 2025) (SSR Comments); *see also* 47 C.F.R. § 73.215(e).

[114] *See, e.g.*, 47 C.F.R. § 73.311(b).

interference. The present "contour protection" rules therefore are intentionally limited in their application. Elimination of the minimum distance limitation on contour protection would unavoidably increase actual interference between stations.

While NAB agrees that some FM stations might be located closer together than permitted under the present rules, stations need to measure allocation and interference conditions empirically or, at the very least, use a deterministic propagation model to conduct a remotely acceptable evaluation. But if stations rely too much on calculated contours, without respecting their inherent limitations, it will inevitably lead to increased interference, and the FM broadcast service will be degraded. NAB, of course, is open to exploring whether relaxing the present minimum distance requirements may be appropriate. But it is unwise to seek an *across-the-board* 25% reduction[115] or, indeed, any other reduction without developing a technical record justifying such a reduction.

NAB also does not support eliminating the maximum-to-minimum limitation for FM directional antenna azimuth patterns.[116] The "max-to-min" limitation of 15 decibels reflects the fact that FM directional antennas cannot be reliably and consistently realized with greater suppression because of unavoidable interaction of the manufactured antenna with the structure on which it is mounted and nearby appurtenances (such other antennas and cables). While NAB agrees that it may be possible to obtain signal suppression of greater than 15 dB under controlled conditions, the appropriate means for authorizing such an antenna is a waiver of the existing rule, based on a rigorous engineering analysis. Eliminating the rule, however, is a bridge too far. Routine authorization of directional FM transmitting antennas

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[115] SSR Comments at 7.

[116] Bono Comments at 2 (Note: Bono incorrectly references the applicable rule as 73.216(b)(1) instead of 47 C.F.R. § 73.316(b)(1)).

with greater than 15 dB "max-to-min" will inevitably result in installations that fail to realize the required suppression, concomitant increases in interference, and degradation of the FM service.

G. Rules Concerning FM6 LPTV Stations Should be Retained

NAB does not support the expansion of the FM6 LPTV service.[117] The FM6 LPTV service was created only recently.[118] Following a lengthy proceeding, the Commission concluded that "*existing* FM6 services meet all of the[] requirements of the Act."[119] The Commission described "existing FM6 services" as those that have an active STA or a pending extension request on file as of December 28, 2023.[120] The Commission further concluded, that, with respect to new FM6 operations, "interference concerns outweigh any benefits from adopting rules allowing new FM6 operations to commence . . . ."[121] NAB does not know of any compatibility studies or other analysis that would change the FCC's recent conclusions and justify expanding the FM6 LPTV service.

H. Special Temporary Authority (STA) Filing Requirements in the Licensing and Management System (LMS) Should be Eliminated for Situations That Have Little Potential for Increasing Interference

NAB supports ending the requirement to file STA applications in LMS for situations that do not create any potential for increased interference.[122] These situations would include

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[117] Comments of One Ministries, Inc., GN Docket 25-133 (March 12, 2025).

[118] *In the Matter of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Report and Order, MB Docket No. 03-185, at ¶ 8ff (July 20, 2023) (FM6 Order).

[119] 88 Fed. Reg. 89610, FM6 Order, at ¶ 24 (emphasis added).

[120] 88 Fed. Reg. 59455; 88 Fed. Reg. 89610 (announcing effective date).

[121] FM6 Order at ¶ 15.

[122] Comments of Sinclair, Inc., GN Docket 25-133, at 22-23 (April 11, 2025) (Sinclair Comments).

reporting temporary silence, operation at reduced power, and operation from licensed auxiliary facilities. As NAB previously commented, the FCC's computer systems, including LMS, are often unavailable, unresponsive, and slow.[123] It would reduce the burden on licensees if the Commission substituted some kind of notification process for an LMS filing in situations where extensive engineering and Commission approval are not necessary and would not increase the risk of interference. NAB also supports increasing the default STA term to 12 months to reduce the need to file extensions.[124]

I. The Commission Should Reject Requests to Eliminate Protections for TV Channel 6, Which the Commission Has Repeatedly—and Recently—Determined to Retain

The Commission should reject requests to abandon the longstanding and repeatedly affirmed framework to ensure that Channel 6 TV (TV6) broadcast stations are protected against interference from LPFM and noncommercial educational (NCE) FM operations on reserved band channels.[125] The parties asking the Commission to upend this framework have had multiple, recent opportunities to prove that their requested rule changes would not result in interference to TV6 stations, but they present no new evidence.[126] Despite the FCC's

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[123] Comments of NAB, MB Docket 24-626, at 3 (April 23, 2025).

[124] Sinclair Comments at 23.

[125] *See* 47 C.F.R. §§ 73.525, 73.825, 73.1204.

[126] *See Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, Notice of Proposed Rulemaking, MB Docket No. 19-193, FCC 19-74, at ¶¶ 8-13 (2019) (seeking comment on proposal to eliminate TV6 protections); *Amendments of Parts 73 and 74 to Improve the Low Power FM Radio Service Technical Rules*, Report and Order, MB Docket No. 19-193, FCC 20-53, at ¶¶ 34-35 (2020) (declining to revise TV6 protections in light of insufficient evidence produced by proponents of changes); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*, Fifth Notice of Proposed Rulemaking, MB Docket No. 03-185, FCC 22-40, at ¶ 50 (2022) (again seeking comment and technical data as to proposals to eliminate or reduce TV6 protections); *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television and Television Translator Stations*,

repeated requests to "develop comprehensive technical studies to support their position,"[127] no new technical study has been submitted in this proceeding. Notwithstanding their arguments that the transition from analog to digital broadcasting *ipso facto* renders the TV6 protection framework unnecessary, the Commission has consistently rejected those claims – asserted without supporting technical studies or evidence -- as insufficient to justify the changes these commenters have long sought.[128]

Indeed, the only studies that have ever been proffered in support of weakening or eliminating the TV6 protections are nearly 20 years old and relied on incorrect assumptions that rendered them fatally flawed even then.[129] One commenter's claim that it has seen no interference from an NCE station to a TV6 station under the existing rules actually supports the argument that the protections are working as intended. Finally, any cost-benefit analyses counsels against taking up these proposals. Eliminating the TV6 protections would impose burdens on TV6 stations that are inconsistent with their primary status in the band and would require licensees in the primary service to constantly monitor for and object to secondary LPFM or NCE FM applications threatening interference to the primary station, at

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Fifth Report and Order, MB Docket No. 03-185, FCC 23-58, at ¶ 65 (2023) (2023 TV6 Order) (again finding proponents failed to produce "sufficient technical evidence and analysis on which to base any final decisions to revise our TV6 interference rules").

[127] 2023 TV6 Order at ¶ 65.

[128] REC Networks Comments at ¶¶ 184-88; EMF Comments at 15-16.

[129] *See* NPR Labs, Interference Rejection Thresholds of Consumer Digital Television Receivers on Channel 6 with FM Broadcast Signals (Dec. 17, 2007); NPR Labs, Comparison of FM Broadcast Signal Interference Areas with Current Digital Television Receiver on Channel 6 to Analog TV Receivers Assumed in 47 C.F.R. § 73.525 (Sept. 5, 2008) (rec. Sept. 15, 2008 in MM Docket No. 99-325, MB Docket No. 87-268). These studies used signal strength measurements that were much stronger than actual channel 6 digital signals to reach the conclusion that TV6 protections were no longer needed. Even under these flawed assumptions, the NPR studies demonstrated that an FM station operating on a reserved band channel could, in fact, cause substantial interference to TV6 digital receivers.

great potential cost to TV6 broadcasters and their viewers, with little-to-no corresponding benefit.[130] For these reasons, the FCC should follow its own precedent and reject these unsupported requests to upend the longstanding and successful TV6 protection framework.

J. The Commission Should Eliminate its White Space Devices Rules as This is a Failed Service That Does Not Warrant Continued Inclusion in the Rules

NAB urges the Commission to eliminate Subpart H of Part 15 of its Rules.[131] As NAB has repeatedly stated, Television White Spaces (TVWS) is a failed technology, and there is no reason to maintain rules authorizing a service that no one uses.[132] Various interest groups have asserted that the primary cause of this failure is uncertainty surrounding the availability of vacant television channels due to the incentive auction. Whatever the reason, despite projections of "Super Wi-Fi" enabling millions of long-distance data connections, the number of registered TVWS devices has dwindled to a handful every year for at least the past eight years. As of the date of this filing, there were only **75** devices authorized in the entire United States and its territories.[133] Just six states have at least one registered TVWS device, and inexplicably, Oregon has exactly one device despite that fact that at least two devices are required for a TVWS data link. To the extent that *any* of these registered devices are actually operating and providing a useful service (which is questionable), the Commission should allow for a reasonable period of grandfathered operation and sunset the now-defunct TVWS rules, as was done several years ago in the United Kingdom. Incredibly, the number of registered

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[130] Notice at 2-3.

[131] 47 C.F.R. §§ 15.701-15.707.

[132] *See, e.g.*, NAB *Ex Parte* Notice, ET Docket Nos. 20-36, 14-165, 04-186 and GN Docket No. 12-268 (Aug. 31, 2022).

[133] RED Technologies/Wave DB, "Fixed TVWS Device Registration," https://usa.wavedb.com/ (accessed Apr. 23, 2025).

TVWS devices in the United States is now equal to the number of words contained in this and the preceding sentence.

V. MANY COMMENTERS SUPPORT DELETING BROADCAST RULES IDENTIFIED IN NAB'S COMMENTS

Commenters widely support NAB's call to delete broadcast regulations that are well past their expiration date. Shaped by a dramatically different marketplace and technological environment, these rules now impose significant costs and burdens on broadcasters without delivering meaningful public benefits and hamstring broadcasters' ability to compete against their much larger and less regulated competitors for audiences, advertising dollars, and programming in the modern media marketplace. To that end, many commenters underscored that the FCC's priority in this proceeding must be deleting the antiquated structural ownership rules that threaten the competitiveness and viability of local broadcast stations and their service to local communities while reinforcing Big Tech's dominance.[134] Multiple commenters

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[134] *See, e.g.*, Sinclair Comments, at 7-13 (urging the FCC to eliminate the Local Television Ownership Rule and National Ownership Cap "to enable broadcasters to compete on a level playing field with Big Media and Big Tech"); Comments of Nexstar Media Inc., GN Docket No. 25-133, at 3-16 (Apr. 11, 2025) (urging the FCC to delete television ownership restrictions that "cripple television broadcasters' ability to compete in this environment"); Comments of Digital Liberty, GN Docket No. 25-133, at 1-2 (Apr. 12, 2025) (calling for elimination of ownership rules to "free up capital in the broadcast marketplace" and enable "stations to survive and thrive in the future while industry competes with newer media"); Letter from D. Coy (WYTV) to Chairman Carr, GN Docket No. 25-133 (Apr. 11, 2025) (explaining the role local broadcasters play and urging FCC to eliminate television ownership restrictions that hinder "the ability of local broadcasters to compete against 'Big Tech' in what has become an increasingly digital and highly competitive marketplace dominated by a few giant platforms that have no meaningful connection to our local community"); Comments of Int'l Center for Law and Economics, GN Docket No. 25-133, at 6-10 (Apr. 11, 2025) (explaining how "rather than protect competition, maintaining ownership restrictions in this environment actually harms it. Indeed, it serves to prevent traditional media from achieving the scale necessary to compete effectively with digital giants" and advocating in particular for elimination of the local radio ownership limits); Beasley Comments at iii (advocating for elimination of the local radio ownership rule and explaining that the current rules "are depriving radio of the investment it needs and hampering its ability to innovate and develop additional local content and digital

also emphasized the urgent need for the FCC to delete rules and requirements restricting television broadcasters' ability to deploy ATSC 3.0 to innovate and compete with other platforms.[135] Several commenters also expressed support for eliminating the FCC's expanded foreign sponsorship identification requirements and other content-based rules and informal policies that infringe upon broadcasters' First Amendment rights.[136]

Commenters, in particular, broadly called to eliminate the FCC's public file requirements.[137] Multiple broadcasters reported that they devote significant time and

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offerings"); Radio Broadcasters Joint Comments at 2-5 (explaining that local radio ownership restrictions prevent radio broadcasters from achieving economies of scale needed to compete against Big Tech rivals and attract the capital needed to invest in new technologies"); USCC Comments at 6 (urging reform of local radio ownership rules noting that "[t]he advent of audio streaming services and satellite radio negates the Commission's previous justification considering these most recent services have increased competition and led to novel and diverse content" and will allow radio station groups to increase investment in content).

[135] *See* Sinclair Comments at 13-16 (expressing support for NAB's petition to set a clear timeline for an industrywide transition, calling on the FCC to eliminate the simulcast and substantially similar requirement, and requesting that the FCC modify certain ATSC 3.0-related rules to further reduce regulatory burdens); Comments of Trinity Broadcasting Network, GN Docket No. 25-133, at 3-4 (Apr. 11, 2025) (requesting that the FCC eliminate the simulcast requirement) (Trinity Broadcasting Comments); Comments of Advanced Television Broadcasting Alliance, GN Docket No. 25-133, at 9-10 (Apr. 11, 2025) (requesting the Commission revisit rules that preclude stations from fully transitioning to ATSC 3.0 to "unshackle to broadcast ecosystem from a decades-old digital standard and empower stations to thrive in modern IP-based technology, which benefits full and low power stations alike").

[136] *See, e.g.*, Comments of Gray Media, Inc., GN Docket No. 25-133, at 12-13 (Apr. 11, 2025) (calling for elimination of the foreign sponsorship identification rules on the grounds that they are ineffective at addressing the problem, are arbitrary and capricious, and unconstitutional) (Gray Comments); Comments of Information Technology and Innovation Foundation, GN Docket No. 25-133, at 3-4 (Apr. 11. 2025) (calling on the FCC to "acknowledge the doctrinal and empirical collapse of the scarcity rationale" and eliminate content-based regulations, including the news distortion rule); Comments of The Foundation for Individual Rights and Expression, GN Docket No. 25-133, at 7-9 (Apr. 11. 2025) (calling for the news distortion policy to be eliminated to further align the Commission with the First Amendment).

[137] *See, e.g.*, Gray Comments at 19-20 ("[C]ompliance with the public file obligations is financially burdensome and serves practically no public purpose because there is no evidence

resources to maintaining their files and ensuring compliance with the public file rules, only for the public file to be used very rarely, if at all, by the public.[138] Commenters also highlighted the limited utility of the various materials that broadcasters must produce and keep in the public file -- notably, issues/programs lists.[139] As multiple commenters observed, the primary function of these requirements seems to be providing a technical basis for enforcement actions when stations fail to upload materials on time.[140] Given the minimal benefit and

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that members of the public actually use the online public file in significant numbers or in any meaningful way."); Joint Comments of the State Broadcasters Ass'ns, GN Docket No. 25-133, at 20-25 (Apr. 11, 2025) (advocating that the Commission eliminate all categories of documents that are not currently automatically uploaded by the Commission) (State Broadcasters Comments); Sinclair Comments at 18-20 (explaining burdens and noting that "public file requirements are unique to broadcasters, once again giving Big Tech competitors an unfair advantage as they are not similarly burdened by these compliance costs"); USCC Comments at 6 (noting that eliminating burdensome reporting requirements "will empower broadcasters to focus resources on upgrading station infrastructure and investing in content"); Comments of the Taxpayers Protection Alliance, GN Docket No. 25-133, at 2 (Apr. 11, 2025) (stating that public file reporting requirements are "overly onerous" and should be eliminated).

[138] *See* Gray Comments at 19-20; Sinclair Comments at 18-20; State Broadcasters Comments at 20-25.

[139] *See, e.g.*, Gray Comments at 10-11 (discussing the ineffectiveness of issues/programs lists at accomplishing any public interest goal and the First Amendment concerns raised by their use); State Broadcasters Comments at 21-25 (explaining how modern technology has made issues/programs lists antiquated); Sinclair Comments at 19-20 (explaining the limited utility of several documents that are required to be uploaded to the file, including contracts, issues/programs lists, and records concerning commercial limits).

[140] *See* Sinclair Comments at 19 ("Given the lack of public demand or need for these documents, many public file obligations serve only as enforcement action fodder at license renewal time if anything is missing or late"); State Broadcasters Comments at 24 (issues/programs list requirement is a "regulatory speed trap that triggers fines regularly, but all of which relate only to timely uploading and not to the stated purpose for the Lists' existence"); Comments of Block Communications, GN Docket No. 25-133, at 10-11 (Apr. 11, 2025) (stating that public file requirements such as issues/programs lists are only viewed at license renewal time when the Commission determines whether the report was filed and, if not, issues a fine and otherwise "serves absolutely no purpose today").

considerable burden the public file rules impose, 47 C.F.R. § 73.3526 should be deleted *in its entirety*, except for those political file requirements mandated by statute.

In addition, all parties that commented on the FCC's equal employment opportunity (EEO) rules agree that those rules should be eliminated or, at a minimum, substantially cutback.[141] Numerous commenters state that the rules would fail the cost-benefit analysis called for in the Notice[142] because they are unnecessarily burdensome and ineffective,[143] or should be struck as inconsistent with the constitutional prohibition against invidious discrimination.[144] Others note that the FCC's EEO regime is redundant of federal anti-discrimination oversight by the Equal Employment Opportunity Commission and other more expert federal, state, and local entities.[145]

In particular, commenters urge the Commission to eliminate the random EEO audit process, which is extremely time-consuming and expensive but has never yielded any findings of discriminatory actions by broadcasters or demonstrated positive EEO results,[146] and the requirement to send job vacancy announcements to requesting organizations that never refer

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[141] NAB Comments at 29-43.

[142] Notice at 2-3.

[143] *See* USCC Comments at 22; Trinity Broadcasting Comments at 6-7; Comments of Broadcast Communications, Inc., GN Docket No. 25-133, at 2-3 (Apr. 11, 2025); Radio Broadcasters Joint Comments at 6-7; State Broadcasters Comments at 16-17.

[144] Gray Comments at 17 citing *Students for Fair Admission, Inc. v. President and Fellows of Harvard College*, 600 U.S. 1818 (2023); Comments of Georgia College & State University, GN Docket No. 25-133, at 2 (Apr. 11, 2025); Comments of KTTR-KZNN, Inc. and Stillwater Broadcasting, Inc., GN Docket No. 25-133, at 2 (Apr. 10, 2025).

[145] Georgia College Comments at 2, citing Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000 *et seq*.; Trinity Broadcasting Comments at 6-7; KTTR, *et al*. Comments at 3; Joint Radio Broadcasters Comments at 6.

[146] State Broadcasters Comments at 13-14; NAB Comments at 37-38.

qualified job candidates.[147] NAB respectfully requests that the FCC substantially reduce the EEO rule to the core prohibition against discrimination and eliminate the EEO audit process, or in the alternative, consider substantial changes to reduce the compliance burdens on broadcasters.

VI. CONCLUSION

The broadcast industry is buried under pages after pages of rules in the Code of Federal Regulations. Some are highly complex and technical rules that lay out specific standards that broadcast TV and radio stations must meet to offer their services. NAB has suggested some areas where those technical rules can be eliminated to grant more flexibility to broadcasters, and we have weighed in on other proposed revisions as well. But a significant portion are regulatory obligations that create cumbersome performative burdens that redound in little-to-no benefit to the public. Indeed, to the extent those burdens prevent broadcasters from focusing on their core service offerings, the public loses. No set of regulations exemplify those harms better than the TV and radio ownership rules.

As discussed in NAB's comments, the national TV rule and the local radio and TV ownership rules unfairly restrain only TV and radio broadcasters from taking advantage of organizational structures that would better spread costs and enable investment in more and improved news and better, diversified entertainment. It is absolutely crucial to the future viability of broadcasters that these handicaps be eliminated. Tellingly, broadcast competitors or counterparties, such as the pay TV and recorded music industries, are participating in this proceeding in another desperate attempt to maintain a status quo that benefits them and harms broadcasters and their viewing and listening audiences.

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[147] NAB Comments at 37-39; Sinclair Comments at 21-22.

Looking more broadly, several commenters also independently echoed many of NAB's other proposed reforms, such as removing barriers to facilitating an expeditious transition to ATSC 3.0, eliminating public file requirements, reforming the EEO process, as well as other reforms. This independent chorus of voices answering the FCC's call to delete onerous regulations demonstrates what NAB has explained in various comments in this and other proceedings: Broadcast regulations are a ripe source for serious review and deletion.

Respectfully submitted,

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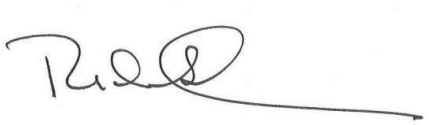

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APPENDIX A

"Amici incorrectly claim that the D.C. Circuit 'retracted' its conclusion in *Fox I* that Section 202(h) '"carries with it a presumption in favor of repealing or modifying the ownership rules."' Br. 29 (quoting *Fox I*, 280 F.3d at 1048). The court's later decisions examined the precise meaning of the word 'necessary' in Sections 202(h) and 11 of the 1996 Act, not whether there is a presumption in favor of deregulation. *Fox Television Stations, Inc. v. FCC*, 293 F.3d 537, 538-40 (D.C. Cir. 2002); *Cellco P'ship v. FCC*, 357 F.3d 88, 98-99 (D.C. Cir. 2004)." Reply Brief for Petitioner at 3, n.1, *Zimmer Radio v. FCC*, Nos. 24-1380, 24-1480, 24-1493, 24-1516 (8th Cir. Oct. 15, 2024).