



June 15, 2018

Michelle Carey, Esq.
Chief, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington DC 20554

Re: Reforming the Radio Ownership Rules

Dear Ms. Carey:

The Commission soon will initiate the 2018 quadrennial review to determine if its broadcast ownership rules remain “necessary in the public interest as the result of competition” and to “repeal or modify” any regulations that are not.¹ The National Association of Broadcasters (NAB) believes the existing radio ownership limits are not needed to promote competition in today’s audio marketplace and, in fact, impede terrestrial radio stations’ ability to compete and serve their local communities.

The FCC’s radio regulatory framework has not kept pace with the transformation of the marketplace. When the current local radio caps were adopted in 1996, streaming services like Pandora and Spotify did not exist. There was no satellite radio, no podcasts, no Facebook and no YouTube. Linear radio dominated the audio marketplace.

But in the digital audio world of 2018, local radio stations, especially AM, face intense competition for listeners and advertisers. For free over-the-air (OTA) radio to remain as a meaningful competitor to audio sources unencumbered by any comparable regulatory restrictions, radio broadcasters must be able to compete on a level playing field. This fact is particularly salient in smaller markets, with more limited available advertising revenue.

¹ Telecommunications Act of 1996, Pub. L. No. 104-104, §202(h); 110 Stat. 56, 111-12 (1996) (1996 Act).

After taking the statutorily required “fresh look” at the actual state of competition,² the Commission may well find that ownership restrictions on broadcast radio stations alone no longer promote competition in the audio marketplace or serve listeners who rely on free OTA radio services. If the Commission ultimately maintains radio-specific ownership restrictions, however, it must recognize that radio stations compete against an array of other outlets and reframe its approach to ownership regulation. NAB urges the Commission to consider the following approach:

- In the top 75 Nielsen Audio markets, allow a single entity to own or control up to eight commercial FM stations, with no limit on AM ownership;
 - To promote new entry into broadcasting, an owner in these top 75 markets should be permitted to own up to two additional FM stations (for a total of 10 FMs) by participating in the FCC’s incubator program; and
- In Nielsen markets outside of the top 75 and in unrated markets, there should be no restrictions on the number of FM or AM stations a single entity may own or control.

The Commission’s goal of fostering audio programming “tailored to the needs and interests of specific local markets”³ must account for today’s reality: tailoring now occurs on the basis of specific listeners, not just on the basis of local radio markets. The FCC’s approach to regulating free OTA radio must reflect today’s competitive audio market in which consumers have access to a virtually infinite number of “stations” tailored to their specific interests. Continuing to insist that the existing radio ownership limits are necessary because local stations only compete among themselves defies reality and is contrary to law.⁴

Indeed, the FCC’s current regulatory framework simply ignores a large portion of the listening and advertising equation. The notion of what constitutes a competitor to radio stations must include audio outlets that consumers in local markets are listening to and the outlets that advertisers use. Consumers may not know or care where Sirius XM, Spotify or Pandora are headquartered, but they know that they can listen to them in their cars, in their homes and in their offices – exactly where consumers can listen to AM/FM radio and where

² *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004); see also *Sinclair Broad. Group, Inc. v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002) (stating that § 202(h) was designed to continue the process of deregulation begun in the 1996 Act).

³ *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, 31 FCC Rcd 9864, 9989 (2016) (2016 Order).

⁴ See, e.g., *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 767 (6th Cir. 1995) (stating that “where the factual circumstances which support an agency rule are no longer valid, agencies ordinarily must reexamine their approach”); *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C. Cir. 1979) (finding under the Communications Act that the FCC was “statutorily bound to determine” whether certain previously adopted rules still served the public interest, given a change in relevant circumstances); see also § 202(h), 1996 Act.

advertisers can reach those consumers. Given that the FCC’s numerical radio ownership limits are “competition-based,”⁵ the Commission cannot continue to ignore multiple major sources of competition for both listeners and advertisers in the audio marketplace.

Outdated rules that apply only to radio have a real-world impact on stations’ ability to serve their local areas. The financial viability of radio stations’ informational programming, including emergency information and related local weather coverage, would be enhanced by permitting local stations to take greater advantage of economies of scale. Studies have shown that local news production “is subject to strong economies of both scale and scope.”⁶ Although these studies focused on the TV industry, there is no reason to believe that radio broadcasting differs in this regard, as earlier FCC studies indicated.⁷ “By definition, economies of scale and scope are associated with falling unit costs of production – that is, with the production of more output at lower average cost – and hence are *prima facie* welfare enhancing.”⁸ Such economies of scale are particularly important for smaller radio broadcasters earning limited revenues.⁹

In addition to allowing broadcasters to take advantage of vital economies of scale, increased common ownership should enhance radio programming diversity. Numerous empirical studies, including those commissioned by the FCC, have shown that common ownership leads to greater programming diversity and that the number of different program formats offered by local radio stations increased following relaxation of the radio ownership limits in 1996.¹⁰ Local listeners, particularly those more reliant on free OTA broadcasting and those

⁵ 2006 Quadrennial Review Order, 23 FCC Rcd 2010, 2077-78 (2008); 2016 Order, 31 FCC Rcd at 9899 (also expressly stating that the FCC is not relying on its diversity or localism goals for retaining local radio rules).

⁶ J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 2, attached to NAB Reply Comments, MB Docket No. 10-71 (June 27, 2011) (Economies of Scale Report); see also Decl. of Mark Israel and Allan Shampine, Compass Lexecon, NAB Comments, MB Docket No. 10-71, at Appendix B, ¶¶ 49-51 (June 26, 2014) (finding that scale and scope economies “lead[] to increased investment in news programming”).

⁷ See, e.g., FCC, 2007 Ownership Study No. 4, Craig Stroup, *Factors that Affect a Radio Station’s Propensity to Adopt a News Format*, at III-1 (2007) (common ownership with a newspaper, TV station “or another radio station in the same market significantly increases the likelihood that a radio station will be a news station”).

⁸ Economies of Scale Report, at 1.

⁹ See Reply Decl. of J.A. Eisenach and C.W. Caves, attached to NAB Reply Comments, MB Docket No. 10-71, at ¶ 26 (June 27, 2011) (allowing broadcasters to reduce their fixed costs by realizing economies of scale and scope will allow broadcasters, “especially in small markets,” to continue operating “where it would otherwise be uneconomic to do so”).

¹⁰ See FCC, 2007 Ownership Study No. 5, Tasneem Chipty, CRA International, Inc., *Station Ownership and Programming in Radio*, at 44-45 (June 24, 2007); see also NAB Comments, MB Docket No. 09-182, at 87-88 (July 12, 2010) (identifying eight additional studies finding

residing in small markets with fewer stations, will benefit from greater programming diversity if radio ownership limits are reformed.

As NAB has detailed elsewhere, the FCC's ownership rules have failed to promote diversity of ownership. The Commission has missed opportunities to create strong incentive-based programs to increase the access to capital potential new entrants need to successfully enter the broadcasting business. NAB, along with many small and aspiring broadcasters, accordingly have urged the Commission to establish an incubator program with sufficient market-based incentives to promote participation by established broadcasters.¹¹ NAB's instant proposal would fit well within the incubator construct. NAB's proposal seeks to provide important incentives for broadcasters to fill the access to capital gap, invest in new entrants and promote greater diversity in the radio industry.

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The Commission's rules should account for the increased competition in the audio space. For radio to remain a free, over-the-air option able to provide quality entertainment and informational programming to all consumers, broadcasters must be able to create ownership structures that better ensure their financial viability today and into the future. NAB looks forward to the forthcoming quadrennial review and encourages the Commission to finally adopt rules reflecting competitive reality in today's audio marketplace.

Respectfully submitted,



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that common ownership of radio stations resulted in the offering of more diverse and more targeted programming).

¹¹ See, e.g., Comments of the National Association of Broadcasters, MB Docket No. 17-289, *et al.* (Mar. 9, 2018); Letter of Trila Bumstead, Chief Executive Officer and President, 'Ohana Media Group, LLC to Marlene H. Dortch, Esq., MB Docket No. 17-289 (May 14, 2018); Letter of Carolyn Becker, President, Riverfront Broadcasting, LLC to Marlene H. Dortch, Esq., MB Docket No. 17-289 (May 15, 2018); Letter of Diane Sutter, President/CEO, ShootingStar Inc. to Marlene H. Dortch, Esq., MB Docket No. 17-289 (May 18, 2018).