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

In the Matter of)
)
The Status of Competition in the Marketplace for the Delivery of Audio Programming) MB Docket No. 18-227

18-349

To: The Chief, Mass Media Bureau

COMMENTS OF LOCAL COMMUNITY BROADCASTERS

Sun Broadcasting, Inc. ("Sun Broadcasting") and WBOC, Inc. ("WBOC") (collectively, the "Local Community Broadcasters")[1], by their attorneys, hereby respond to the Media Bureau's *Public Notice*[2] seeking information on the state of competition in the audio programming marketplace in preparation for its *Communications Marketplace Report* to Congress required by the Consolidated Appropriation Act of 2018.[3]

I. Introduction

Local Community Broadcasters urge the Bureau to use the *Communications Marketplace Report* as a vehicle to root out the increasingly dangerous myth that radio broadcasting constitutes a separate market for economic competition and should be subject to structural ownership regulations that the Commission does not impose on any of radio broadcasting's s

1 Sun Broadcasting owns four FM and two AM stations in the Fort Meyers, Florida Nielsen Metro Market, which is the 57th ranked market in the U.S. WBOC owns one AM and four FM stations in and around the 134th ranked Salisbury, Maryland Nielsen Metro Market.

2 *Public Notice*, MM Docket No 18-227, DA 18-761 (Media Bureau, released July 23, 2018); *see also Public Notice*, MM Docket No. 18-227, DA 18-887 (Media Bureau, released August 23, 2018)(setting dates for comments and reply comments in this proceeding).

3 Consolidated Appropriations Act, 2019, Pub. L. No. 1156-141, Div. P.—Ray Baum's Act of 2018, §§401-401, 132 Stat. 348, 1087-90 (2018).

direct competitors. The world has changed dramatically since the Commission adopted its current limitations on local radio ownership. Those rules now prevent local radio broadcasters from achieving the scale and scope necessary to compete with new audio service providers like Pandora, Sirius XM, and Spotify (just to name a few).

Local Community Broadcasters strongly urge the Commission to recognize these changes and report to Congress that the market for audio services is teeming with competition and now features a diversity of outlets that has been previously unseen. The Commission should then use those findings to relax its local radio ownership rules to provide radio broadcasters with the opportunity to meet these new competitive entrants head on, fostering free and fair competition that will ultimately benefit all consumers of audio services in every market.

II. Today's Audio Services Market Features Rampant Competition and Unfathomable Diversity.

Today, local over-the-air radio stations are just a small cluster of players in a vast and growing marketplace of audio service providers. Internet streaming services like Pandora and Spotify offer listeners customized listening experiences that are different from any audio services that have come before. Satellite radio – a service that the Commission has permitted a single nationwide provider to offer – offers listeners hundreds of choices of themed programming as an alternative to traditional over-the-air radio programming. Podcasts, Facebook, and YouTube offer endless listening options that necessarily erode the amount of time that listeners devote to local broadcast radio stations. Each of these outlets competes fiercely with local radio stations for listeners' time and attention.

The Sony *Walkman*, which once connected a generation to radio broadcast programming, has become a museum artifact, supplanted by the smart phone as the constant-companion device of the demographic groups most sought by advertisers.[4] Smart phones with Wi-Fi capabilities now provide ready portals to access a vast array of informational and entertainment audio programming, both live-streamed and recorded. They facilitate program time-shifting at will and subscribers' selection of specific content from extensive digital program libraries – capabilities vastly different from what broadcast radio can offer. Available technology, moreover, permits low-cost entry to the business of providing Internet-based audio programming services to address a local or national market. With the advances in the digital listening market, it has never been easier for today's radio broadcast listener to become tomorrow's Internet-based competing audio services provider.

As competition for listeners has intensified, competition for advertising dollars has followed. The giants of the Internet advertising world – Facebook, Google, Amazon, and others – now compete for advertising dollars, bolstered by their ability to offer narrowly targeted messages on a national or local basis. Local and regional Internet-based audio program service suppliers also compete with radio broadcasters for advertising dollars, leveraging their dramatically lower operating and market entry costs, having no need for transmitters, towers, antennas or real property to house them, no public interest service obligations, no ownership restrictions, no programming obligations, virtually no content regulation, and no periodic renewals of license to concern potential financial partners and lenders.

All these changes to the audio services market demand that the Commission change its approach so that local broadcasters can compete freely. The concept of over-the-air radio

4 Smart phone users cannot receive radio broadcast signals, however, because mobile providers almost universally block subscribers from using any broadcast reception capacity that manufacturers typically build into smartphones – a clear affirmation that mobile providers see radio broadcasters as competitors in the provision of audio services.

broadcasting as a distinct economic market cannot survive a realistic appraisal of the present highly competitive market for audio programming services. The clear trend, moreover, is toward an even broader, more competitive audio services market, as access to 4G and Wi-Fi expands and technological developments improve the reach of satellite and other platforms for audio programming services.

Since the last major revision of the Commission's local radio ownership rules, non-broadcast services, such as Wi-Fi-delivered music streaming services and SirusXM satellite-delivered audio services, have become major competitors to local radio broadcast stations. For example, Nielsen Metro Survey Area data for the Adult 25-51 target demographic of four Sun Broadcasting, Inc. FM stations in the Fort Myers market, included in Attachment A, illustrate the challenge that local broadcasters are facing today. Well over half of the target demographic for Sun Broadcasting's FM stations (55%) listened to an online music service during the thirty days prior to the survey period (January 17-18, 2018).[5] Another 18.4% of the stations' target audience subscribed to the SiriusXM satellite radio service, a paid service.[6] In contrast, each of Sun Broadcasting's four FM stations had a substantially smaller percentage of the target demographic even tune in during the week prior to the survey: respectively, 13.3%, 10.3%, 8.4%, and 2.9%.[7] This data shows that these new digital competitors have quickly matured into significant market participants and now provide direct competition to radio broadcasters.

The Commission cannot reconcile retaining restrictive radio ownership rules born in the last century with the current and projected competitive market for audio program services. The

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[5] The diversion of potential radio listeners to digital audio program services might have been even larger if survey data had included podcast listening.

[6] *See id.*

[7] *See id.*

Commission must recognize that traditional radio broadcasters amount to just a few competitors in rich and diverse mix of service providers and act decisively to let local broadcasters compete freely.

III. New Competition in the Audio Services Market Demands Reform of the Commission's Local Radio Ownership Rules.

The most important step the Commission can take to free radio broadcasters to compete in this changed marketplace is to eliminate outmoded ownership restrictions designed for the pre-digital age. The Commission should not hobble radio broadcasters with these antique rules because radio stations must be free to adapt their businesses to a constantly changing playing field. For that reason, this proceeding should lead to a *Communications Market Report* that calls for prompt removal of artificial restraints on local radio ownership. The public interest will best be served if the marketplace – rather than paternalistic regulations – determines how radio broadcasters can best organize, compete, survive, and thrive. Because the local radio ownership rules are no longer necessary to promote the public interest – and, in fact, directly impede local radio stations from continuing as robust competitors – the Commission cannot retain them consistent with Section 202(h) of the Telecommunications Act.[8]

The Local Community Broadcasters question whether any local radio ownership restrictions are appropriate given the current competitive landscape. Nonetheless, they strongly support NAB's recent proposal for incremental changes that would relax both the overall market ownership limits and the current AM and FM subcaps that artificially restrict radio broadcasters'

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[8] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act). In 2004, Congress revised the then-biennial review requirement to require such reviews quadrennially. *See* Appropriations Act § 629, 118 Stat. at 100.

ability to serve their markets.[9] Under NAB's proposal, in the top 75 Nielsen Audio markets, a single company could own up to eight FM stations and an unlimited number of AM stations. Participation in an FCC-sponsored incubator program could further raise these limits. In Nielsen Audio markets outside of the top 75 and in unrated markets, there would be no restrictions on the number of FM or AM stations a single entity may own or control. NAB's proposal outlines precisely the direction that Commission should head to bring its rules in line with the realities of local radio competition.

These changes would be a good first step in rationalizing regulation of the audio services market where yesterday's rules prohibit radio broadcasters—and only radio broadcasters —from reaching the optimal scale and scope necessary to serve their listeners. Allowing local broadcasters to grow will provide the resources necessary to fuel expansion of local services that are broadcast radio's forte. Local news, emergency, and other informational programming will improve, and the Commission can have confidence that it will have secured the benefits of local radio for future generations.

Time is of the essence to make these changes, however. Every day that the Commission yokes local broadcasters in obsolete ownership restrictions is another day that local broadcasters lose listeners to alternative audio providers. For the sake of radio listeners everywhere, the Commission must avoid repeating with the local radio ownership rules the mistake it made in retaining the newspaper-broadcast cross-ownership rule long past its useful life.[10] In that case,

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9 *See* Letter from Rick Kaplan, NAB, to Michelle Carey, Chief, Media Bureau, dated June 15, 2018.

10 As the Commission has acknowledged, those rules remained in effect for more than a decade after the Commission had ample evidence that they no longer served the public interest. *See* 2014 Quadrennial Review, *Order on Reconsideration and Notice of Proposed Rule Making*, 32 FCC Rec. 9802, 9808 (2017), *quoting* the statement of the U.S, Court of Appeals for the Third Circuit in a May 2016 opinion that the "costs of delay" in repealing the newspaper cross-

the Commission kept an overly restrictive rule until the newspaper industry suffered so much damage that its recovery now seems uncertain. In the interim, many cross-owners needlessly separated their broadcast and newspaper properties, passed up (or were passed up for) investment opportunities, or abandoned proposed transactions that could have strengthened the nation's information infrastructure—and some of the nation's oldest newspapers closed down or went into bankruptcy, never to return. The Commission should not similarly allow regulatory delay or confusion to forestall needed reform of radio broadcast ownership rules.

The Commission's local radio ownership rules perversely have become even more restrictive since changes from the Telecommunications Act of 1996, notwithstanding Congress's mandate to the Commission to rely on market forces and delete unnecessary broadcast ownership regulation. In the 2002 Biennial Review Order,[11] for example, the Commission decided to treat same-market radio joint sales agreements as attributable, effectively tightening its ownership caps on radio broadcasters as digital services with no ownership restrictions continued to grow as marketplace competitors. The time has come to relax local radio ownership rules. Determining in this proceeding that the local audio services market is robustly competitive and stocked with diverse and extensive consumer choices is the correct outcome for broadcasters, radio listeners, and all audio services consumers.

IV. Conclusion

Accordingly, the undersigned Local Community Broadcasters urge the Commission to use its *Communications Marketplace Report* (1) to abandon the traditional view that radio

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ownership rule included continuance of a blanket ban that "the FCC determined more than a decade ago . . . is no longer in the public interest." *Prometheus Radio Project v. FCC*, 824 F.3d 33, 51 (3d Cir. 2016).

11 *See Report and Order and Notice of Proposed Rule Making,* 2002 Biennial Review, 18 FCC Rcd 13620 (2003).

broadcasting constitutes a separate and discrete economic market for purposes of Commission policy-making, (2) to recognize that radio broadcasting operates in a multi-faceted, expanding, and highly competitive market with multiple audio service providers, and (3) to lay the groundwork for freeing radio broadcasting in the next *Quadrennial Review* from local ownership restrictions designed for an audio services world that has long passed away.

Respectfully submitted,

SUN BROADCASTING, INC. and

WBOC, INC.

By: /s/

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ATTACHMENT A

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Target Profile

FT. MYERS-NAPLES (Metro Survey Area)
SCARBOROUGH R1 2018: JAN17-JAN18
ADULTS 25-54

WHAT I Want to Know About Them	WHO I am Looking At Adults 25-54 Metro		
	Target Persons*	% of Target	Index
Ways used Internet/apps in past 30 days on any device: Listen to online music service (Last.fm,Pandora, Spotify,etc)	195,429	55.0%	100
Items/services household currently has (HHLD): Satellite radio (SiriusXM)	65,497	18.4%	100
Radio Stations: WARO-FM	47,307	13.3%	100
Radio Stations: WXNX-FM	36,743	10.3%	100
Radio Stations: WFSX-FM	29,846	8.4%	100
Radio Stations: WFFY-FM	10,240	2.9%	100

This report was created using the following information: FT. MYERS-NAPLES; Scarborough R1 2018: Jan17-Jan18; Metro; P 25-54;
See Detailed Sourcing Page for Complete Details.

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Target Profile Detailed Sourcing Summary

Market: FT. MYERS-NAPLES
Qualitative: Scarborough R1 2018: Jan17-Jan18
Geography: Metro

Base WHO - Qualitative Demo/Intab/Population:

Age/Gender	Qualitative	Population	Intab
Adults 25-54		355,023	391

Additional Notices:

The TAPSCAN Web software product is accredited by the Media Rating Council and reports both accredited and non-accredited data. For a list of the accredited and non-accredited Nielsen radio markets and data available through TAPSCAN, click here:

http://www.arbitron.com/downloads/MRC_Accredited_Services_Markets.pdf

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