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

In the Matter of	)	
	)	
2018 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	)	MB Docket No. 18-349
	)	
Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services	)	MB Docket No. 17-289

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

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I. INTRODUCTION AND SUMMARY

When the Commission first adopted broadcast ownership rules, consumers had few choices for accessing audio and video content: listen to broadcast radio, watch broadcast television, buy recordings or venture out to the movie theater. In the 21st century, however, audio and video content is delivered and consumed very differently. Digital technologies have dramatically improved providers' ability to create and distribute audio and video programming and have greatly expanded the number of participants in the media marketplace. Consumers now access content delivered via a range of devices and from multifarious sources, including over-the-air (OTA) radio and TV, satellite radio, pay-TV providers, podcasts and hundreds of online audio and video services. With so many options, audiences have fragmented, and consumers themselves have become "increasingly picky, impatient [and] distracted," demanding to watch or listen to their preferred programming at any time, on any device.[1]

[1] Sara Fischer, *Impatient, distracted consumers upend the media landscape*, Axios (May 22, 2018).

Just as the digital revolution disrupted the previously "mass" media market, it has fundamentally altered the advertising market. Advertisers have shifted ad expenditures toward online and mobile outlets, at the expense of traditional media, which to date have lacked an equivalent ability to target ads and track consumer response. While digital advertising flourishes, growth in the overall advertising market has declined since the Great Recession, relative to U.S. economic growth. This combination of greater competition for ad dollars with a depressed ad market places significant stress on advertising-dependent broadcasters.

In response to the notice initiating the 2018 quadrennial ownership review,[2] the National Association of Broadcasters[3] herein discusses the transformation of the media and advertising markets in the digital age, the pressures on broadcast stations in a radically altered competitive landscape and the resulting need to reform the FCC's rules. Even though 92 percent of U.S. adults still listen to broadcast radio in an average week,[4] and millions still watch national and local broadcast TV programming, stations increasingly struggle to attract audiences in today's hyper-competitive and online-oriented media marketplace. An estimated 169 million persons ages 12 and older listen at least weekly to online audio, which has reached a new record high in time spent listening, likely driven by podcasting and smart speakers.[5] Streaming music services have grown exponentially, with the number of

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[2] *2018 Quadrennial Regulatory Review*, Notice of Proposed Rulemaking, MB Docket No. 18-349, FCC 18-179 (Dec. 13, 2018) (Notice).

[3] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[4] *The Nielsen Total Audience Report Q3 2018*, at 13 (2019).

[5] Edison Research and Triton Digital, *The Infinite Dial 2019* (Mar. 2019) (Infinite Dial 2019).

listeners paying for music subscriptions nearly quintupling from 2015 to 2018 and on-demand music streaming volume surpassing 900 billion streams in 2018.[6]

Similarly, "video consumption has never been more fragmented."[7] Basic cable's viewing shares surpassed broadcast's share by the early 2000s, and now both broadcast TV stations and traditional pay-TV providers are losing viewers at an accelerating rate to online options.[8] As of last summer, over 200 OTT video services were available in the U.S., and about 70 percent of households subscribed to Netflix, Amazon Prime and/or Hulu.[9] Linear TV viewing (broadcast+cable, live or time-shifted) has declined "in near-perfect correlation to Netflix's rising penetration,"[10] and a record 495 original scripted series aired in 2018, with a smaller number airing on broadcast TV than on either online services or cable.[11]

The near ubiquity of digital devices, moreover, has increased competition between all these audio and video services. Given that most consumers own – and keep in their purses and pockets, backpacks and briefcases – devices capable of accessing all types of content 24/7, the assumed division between audio and video is more perception than reality.

Digital platforms have likewise transformed the advertising market. Online and mobile ad vehicles take a greater share of local ad revenues every year, rising from niche

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[6] RIAA, *2018 Year-End Music Industry Revenue Report* (Feb. 28, 2019); Nielsen, *Total Album Equivalent Consumption in the U.S. Increased 23% in 2018* (Jan. 8, 2019).

[7] PwC, *A new video world order*, at 2 (2019).

[8] *See, e.g.*, Gary Levin, *How much have younger viewers bailed on traditional TV? New stats are alarming*, USA Today (Nov. 12, 2018).

[9] Chris O'Dell, *Over 200 OTT services now available in U.S. market alone*, Parks Associates (Aug. 13, 2018); Leichtman Research Group, Press Release, *69% of U.S. Households Have an SVOD Service* (Aug. 27, 2018).

[10] GroupM, *The State of Video*, at 18 (Oct. 2018) (citing Morgan Stanley analysis).

[11] *See* Lesley Goldberg, *Peak TV Update: Scripted Originals Hit Yet Another High in 2108*, The Hollywood Reporter (Dec. 13, 2018).

players to dominance in a decade. Local businesses increasingly use a variety of digital ad options, and Facebook has become the most popular marketing channel for local advertisers.[12] Alphabet/Google – founded two years *after* the radio ownership caps were last changed – now earns local advertising revenue exceeding the total local ad revenue generated by all commercial radio stations in the U.S. (and rivals the amount generated by all TV stations).[13]

Given these profound changes in the media and advertising markets, the FCC cannot maintain its traditional view that broadcast radio stations compete only with other radio stations and that broadcast TV stations compete only against other TV stations. Such definitions of the relevant markets lack empirical foundation and common sense. Neither audiences nor advertisers believe that local broadcast stations are their only options for accessing audio and video content or for placing advertisements. In a media landscape marked not by scarcity but by unprecedented abundance of content, all outlets – whether traditional or digital, audio or video – fight for consumers' limited time and attention. For broadcasters and other participants in the modern digital marketplace, consumers' bandwidth is the truly scarce resource.

Section 202(h) of the 1996 Telecommunications Act, as well as basic tenets of administrative law, require the FCC's ownership rules to reflect the full range of media and advertising market participants and their competitive effect on broadcast outlets. As NAB demonstrates in our comments and attached studies, radio stations face declining listenership due to intense competition for audiences and meaningful revenue reductions in

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

[13] *See* BIA Advisory Services, Press Release, *Google to Dominate Local Digital Advertising in 2018* (May 7, 2018).

local ad markets dominated by digital platforms. Many stations now struggle to even cover their substantial fixed costs. Stations in smaller markets with limited advertising bases particularly struggle to generate revenue, and AM stations face special challenges in attracting listeners and advertisers in all markets. If the FCC ultimately retains broadcast-only ownership caps, it should allow radio broadcasters to achieve greater economies of scale by: (1) eliminating caps on AM ownership in all markets; (2) permitting a single entity to own up to eight commercial FM stations in Nielsen Audio markets 1-75 (with the opportunity to own up to ten FMs by successfully participating in the FCC's incubator program); and (3) imposing no restrictions on FM ownership in Nielsen markets 76 and lower and in unrated areas.

NAB's comments and studies similarly show that competition for eyeballs has led to substantial declines in TV stations' viewership and advertising revenue shares and that smaller market stations especially struggle to compete. Given the scale of stations' competitors in the media and advertising markets, the Commission should reform its rules to permit TV broadcasters to achieve vital economies of scale and enable competitively necessary investment in data-driven and automated ad sales operations, programming, including local news, and updated technology. Specifically, the FCC should eliminate the *per se* restrictions that ban any combinations among top four rated stations, regardless of their audience or advertising revenue shares, and that prevent ownership of more than two stations in all markets, regardless of local competitive conditions. A competition-based local TV rule cannot rationally ignore actual competitive conditions in local markets. Moreover, detailed analyses of the substantial revenue and ratings gaps between stations ranked in the top four in their local markets undermine the rationale for the top four rule.

To further promote diverse station ownership, NAB urges the FCC to expand its incubator program. Expanding a program that harnesses market-based incentives to increase access to capital will better promote diversity and new entry than adopting overly complicated ownership diversity formulas that cannot be rationally implemented. The FCC also lacks authority to extend to broadcasting the race- and gender-conscious cable procurement rules, which would be subject to heightened constitutional scrutiny in any event. Diversity will not be enhanced by measures unlikely to withstand judicial review.

II. THE FCC MUST REFORM ITS LOCAL RADIO OWNERSHIP RULE TO REFLECT MARKETPLACE REALITY

As required by Section 202(h) of the Telecommunications Act of 1996, the Notice (at ¶ 14) correctly asks whether the "current Local Radio Ownership Rule remains necessary in the public interest as the result of competition." Yet despite the FCC's statutory duty to periodically take a "fresh look" at the actual state of competition, and repeal or modify any ownership rule no longer in the public interest,[14] the local radio caps have remained unchanged since 1996. And while the FCC's regulatory framework has stood still for 23 years, technological changes have transformed the creation and distribution of media content and the advertising marketplace.

For broadcast radio to remain a meaningful provider of audio programming, and a viable competitor to non-broadcast outlets unencumbered by comparable regulatory restrictions, radio operators may need to achieve greater economies of scale. If the FCC

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

ultimately retains broadcast radio-specific ownership caps, it should adopt NAB's 2018 proposal for reforming those limits:[15]

- In Nielsen Audio markets 1-75, a single entity could own or control up to eight commercial FM stations, with no cap on AM ownership;
    - To promote new entry into broadcasting, an owner in these top 75 markets would be permitted to own up to two additional commercial 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 would be no restrictions on the number of commercial FM or AM stations a single entity could own.

NAB's proposal reflects the competitive changes in the marketplace that impact broadcast radio generally, and it appropriately accounts for the special challenges facing small-market stations and AM stations in particular.

III. CHANGES IN TECHNOLOGY HAVE VASTLY EXPANDED THE NUMBER AND TYPE OF MEDIA MARKETPLACE PARTICIPANTS, SPLINTERING THE BROADER RADIO AUDIENCES OF THE ANALOG ERA

Innovation in digital technologies and the exponential growth of the internet and online services make untenable any contention that radio broadcasters today compete for the public's attention and time only with other radio broadcasters. In contrast to the analog world where broadcast radio and recordings were the only ways to access audio content, today countless sources provide, and multiple devices deliver, both music and informational audio programming, as well as video content. The FCC must acknowledge, and its ownership rules must reflect, that local radio stations now compete for audiences in a market that includes, at the least, terrestrial radio broadcasters, satellite radio providers, and providers

[15] *See* Notice at ¶ 13 (citing Letter from Rick Kaplan, *et al*., Legal and Regulatory Affairs, NAB, to Michelle Carey, Chief, Media Bureau, FCC (June 15, 2018)).

of audio programming over the internet and to mobile devices.[16] In fact, radio stations also compete with innumerable providers of video content for consumers' notice in the crowded digital marketplace.

A. Millions of Consumers of All Ages Have Embraced Music and Other Content Delivered Via Satellite and Online from a Wide and Growing Array of Sources

Despite the continuing broad reach of broadcast radio,[17] local stations face rapidly increasing competition for audiences from an expanding universe of content providers. Two years ago, in fact, Nielsen recognized streaming as "a new norm."[18] Recent numbers reaffirm that statement.

As of early 2019, 60 percent of the U.S. population ages 12+ (or 169 million people) listened weekly to online audio, up from only two percent in 2000.[19] Weekly online listeners spend an average of 16 hours and 43 minutes per week listening to online audio – up nearly three hours per week in just the last year – and up from six hours and 13 minutes in 2008.[20] While the trend is most significant among younger listeners, with 91 percent of those ages 12-24 listening to online audio at least monthly,[21] nearly three-quarters (74 percent) of those ages 25-54 stream audio at least monthly.[22] The number of on-demand

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[16] *See* Notice at ¶ 22 (seeking comment on whether the FCC should revise its definition of the relevant market to include other sources beyond local radio stations).

[17] *The Nielsen Total Audience Report Q3 2018*, at 13 (2019) (reporting that 92 percent of adults listen to radio during an average week).

[18] *Nielsen Music 360 2017 U.S. Report*, at 13 (Sept. 2017) (2017 Nielsen 360).

[19] *See* Infinite Dial 2019. On a monthly basis, 67 percent of those ages 12+ (or 189 million people) listen to online audio. *Id*.

[20] *Id*. (noting that the substantial increase over the past year was potentially driven by smart speakers and podcasting). *Id*. at Observations.

[21] *Id*. *See also Nielsen Music 360 2018 U.S. Report*, at 18-19 (Sept. 2018) (2018 Nielsen 360) (reporting that 91 percent of teens and 92 percent of millennials stream music).

[22] Infinite Dial 2019. Edison Research's online audio listening numbers noted above combine the listening to streamed audio content available only on the internet and listening

streamed songs reached 611 billion in 2018, up 49 percent in just one year. Including music videos, overall on-demand music streaming surpassed 900 billion streams in 2018, an increase of 43 percent over the previous year.[23] Online streaming's popularity as a means to access music extends across demographic groups.[24]

While broadcast radio remains a very prominent source of music and other types of audio content, it now swims in a sea of competition, including myriad online audio and video music streaming services that vary based on content, price point and features.[25] In 2018, YouTube, Pandora and Spotify had the highest annual usage rates among streaming services.[26] Among those ages 12-34, 70 percent use YouTube weekly for music or music videos; over half (51 percent) of those ages 35-54 and nearly one-quarter (24 percent) of those ages 55+ also use YouTube weekly,[27] confirming Nielsen's characterization of

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to AM/FM stations online. Other sources confirm that most streaming time is spent listening to online-only sources. According to Nielsen, 33 percent of total weekly time spent listening to all sources of music went to purely online streaming sources and only five percent went to streaming live broadcast radio. An additional 20 percent of total time spent listening to music went to over-the-air AM/FM radio; 12 percent to listeners' digital music libraries; 12 percent to CDs/vinyl; seven percent to satellite radio; five percent to TV music channels; three percent to live streaming concerts/festivals; and three percent to still other sources. *See* 2018 Nielsen 360 at 13. Unsurprisingly, considerably higher proportions of teens' and millennials' weekly music listening time is spent streaming. *Id*. at 14.

[23] *See* Nielsen, *Total Album Equivalent Consumption in the U.S. Increased 23% in 2018* (Jan. 8, 2019) (attributing the increase in music consumption to increased access to music with smart speakers and connected devices).

[24] *See* 2018 Nielsen 360 at 32 (stating that 75 percent of the 13+ U.S. population as a whole reported streaming music during the past year and that 87 percent of Hispanics reported streaming music over the past year).

[25] *See, e.g.*, T. Germain, *Best Music Streaming Services*, Consumer Reports (Apr. 23, 2019); J. Wilson, *The Best Online Music Streaming Services for 2019*, PCMag.com (Nov. 7, 2018).

[26] *See* 2018 Nielsen 360 at 36.

[27] *See* Infinite Dial 2019.

YouTube as the "go-to source for music."[28] YouTube's prominence as a source of music illustrates how audio and video content have converged in the digital world where the same devices access both types of content.[29]

Radio broadcasters have worked hard to grow their streaming audiences, but the dominance of the pure-play streaming services (*e.g.*, Pandora, Spotify, *etc.*) has increased over time. Pure-play streaming providers accounted for 79.8 percent of total streaming usage in January 2014, and their share rose to 90.6 percent by December 2018.[30]

While many consumers still stream for free, the number of those willing to pay for music and other audio content from streaming or satellite services has grown rapidly. As of late 2018, 42 percent of Americans' audio time was spent with ad-free platforms.[31] According to RIAA, the total number of paid streaming music subscriptions in the U.S. (excluding limited tier options) rose from 10.8 million in 2015 to 50.2 million in 2018.[32] By 2025, paid streaming subscriptions have been projected to exceed 90 million.[33]

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[28] 2017 Nielsen 360 at 43.

[29] In 2017, 79 percent of YouTube users reported watching music videos on the platform, making this the top activity of YouTube users. *See* 2017 Nielsen 360 at 43.

[30] *See* Attachment A, BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, at 7-9 (Apr. 19, 2019) (BIA Radio Study) (citing Triton Digital Monthly Rankers). During this time period, the monthly average active streaming sessions of the pure-play companies increased 153.2 percent compared to a 3.7 percent increase for radio stations. The pure-play providers' monthly total listening levels increased 152 percent compared to 3.5 percent for radio broadcasters. *Id*.

[31] *See* Brittany Faison, *Share of Ear Q4 2018*, Westwood One (Mar. 4, 2019).

[32] RIAA, *2018 Year-End Music Industry Revenue Report*, at 2 (Feb. 28, 2019).

[33] *See* DiMA-Digital Media Ass'n, Annual Music Report, *Streaming Forward: More Choices Better Value*, at 27 (Mar. 2018) (citing MIDiA Research); *see also* 2018 Nielsen 360 at 39 (18 percent of survey respondents said they were likely to start paying for a music streaming subscription in the next six months).

Looking at satellite radio, fewer than 600,000 people subscribed in 2003; by year's end 2018, SiriusXM had over 34 million subscribers.[34] It competes with terrestrial radio stations by delivering via satellite 150+ channels of diverse audio programming into local markets across the U.S.,[35] in addition to its streaming service, which offers more channels of music, news/talk/sports and on-demand shows, performances and interviews. Satellite radio is an especially strong competitor to terrestrial radio in automobiles. While AM/FM radio remains the leading audio source in vehicles by a considerable margin, SiriusXM receives the second-highest share of time spent listening to audio sources in a car or truck.[36] And as consumers buy newer car models, satellite radio's share of listening time increases substantially.[37]

With the completion of its merger with Pandora in February 2019, the combined SiriusXM/Pandora, by its own account, is the "world's largest audio entertainment company."[38] It is also set to become a more formidable competitor across multiple platforms. On April 4, for example, SiriusXM and Pandora introduced Pandora NOW, which will feature the most listened to and fastest-trending new music on Pandora across all

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[34] *See* News Release, *SiriusXM Reports Fourth Quarter and Full-Year 2018 Results* (Jan. 30, 2019).

[35] *See, e.g.,* Comments of Local Community Broadcasters, MB Docket No. 18-227, at 4 (Sept. 24, 2018) (noting that 18.4 percent of the target demographic of a radio cluster in Fort Myers, FL were subscribers to SiriusXM at the beginning of 2018).

[36] *See* Edison Research, *Miles Different: In-Car Audio* (Sept. 2018).

[37] *Id*. In pre-2006 car models, AM/FM radio's share of time spent listening (among Americans 13+) is 78 percent and SiriusXM's share is only four percent. In contrast, in car models 2015-2018, AM/FM's share of time spent listening falls to 59 percent, while SiriusXM's share rises to 26 percent (with remaining listening going to owned music, streaming audio and other sources).

[38] Jem Aswad, *Sirius XM Completes Acquisition of Pandora*, Variety (Feb. 1, 2019).

genres. The new offering will be presented as both a SiriusXM channel and a Pandora interactive station and playlist for its combined audience of 100 million listeners.[39]

Online and satellite options have not only transformed music listening, but also have changed how consumers access informational programming. SiriusXM offers multiple news channels to listeners. As of early April 2019, there were more than 700,000 podcast shows and over 29 million podcast episodes available.[40] Each week about 62 million people (22 percent of the 12+ U.S. population) listen to podcasts, up from only seven percent in 2013.[41] Listening rates have increased quickly and will continue to do so, as younger audiences embrace podcasts at higher rates.[42] Edison Research's "Share of Ear" reveals that the daily reach of podcasts has grown significantly in just two years. From Q4 2016 to Q4 2018, podcasting's daily reach increased 55 percent (from 11.1 to 17.2 percent) among persons ages 18-34 and 117 percent (from 6.4 to 13.9 percent) among those ages 25-54.[43] The growth of podcasting reflects the trend toward offering niche content to the entire world through online distribution.[44]

The explosion of the number and variety of audio services described above has greatly benefited consumers, who now enjoy unprecedented choices of platforms and programming. It also has produced a vastly different and more competitive market, which

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[39] *SiriusXM and Pandora Launch Pandora NOW*, PRNewswire (Apr. 4, 2019).

[40] *See* Ross Winn, *2019 Podcast Stats & Facts*, podcastinginsights.com (Apr. 11, 2019).

[41] *See* Infinite Dial 2019. Ninety million people (32 percent of those ages 12+) listen to podcasts monthly, up from only 12 percent in 2013.

[42] *Id*. (reporting that 40 percent of people ages 12-24 listen to podcasts monthly and 39 percent of those ages 25-54 listen monthly).

[43] Podcast Business Journal, *Podcasts Surge. Pandora Plummets. Spotify Soars*. (Mar. 6, 2019).

[44] *See* Sara Fischer, *1 big thing: The future of media is niche*, Axios (Jan. 29, 2019).

directly impacts AM/FM radio stations. This competition will only become fiercer, given that broadcasters' digital competitors believe "a huge opportunity lies in converting" broadcast radio listeners into streaming listeners.[45]

B. Devices Affect Content Choices, and Consumers Today Use Multiple Devices to Access Content of All Types

In early 2019, 84 percent of the total U.S. population ages 12+, or 237 million people, owned smartphones.[46] Smartphone ownership is even higher among younger people: as of early 2018, 92 percent of millennials (those born 1981-96) reported owning a smartphone,[47] and 95 percent of teens (ages 13-17) reported having a smart phone or access to one.[48] Fifty-six percent of those ages 12+, or 158 million people, own tablets,[49] and smart speaker ownership is rapidly rising. As of early 2019, 23 percent of the 12+ U.S. population (65 million people) owned a smart speaker, up from only seven percent in 2017, and smart speaker owners now have an average of two smart speakers in their households.[50] As of December 2018, there were 118.5 million smart speakers in U.S. households, a 78 percent increase in just one year, and over the 2018 holidays alone, eight percent of Americans got a smart speaker.[51]

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[45] DiMA, *Streaming Forward* at 25.

[46] Infinite Dial 2019.

[47] Jingjing Jiang, *Millennials stand out for their technology use, but older generations also embrace digital life*, Pew Research Center (May 2, 2018).

[48] Monica Anderson and Jingjing Jiang, *Teens, Social Media & Technology 2018*, Pew Research Center (May 31, 2018) (reporting that 89 percent of teens use the internet at least several times a day, and 45 percent say they are online "almost constantly").

[49] Infinite Dial 2019.

[50] *Id*.

[51] *The Smart Audio Report*, NPR and Edison Research (Winter 2018) (Winter 2018 NPR/Edison Study).

In contrast to the growth in ownership of newer devices, AM/FM radio faces a "home hardware challenge, particularly among 18-34-year-olds."[52] From 2008-2018, the average number of radios in homes fell from 2.9 to 1.6, and the number of homes with no radios increased from four to 29 percent. Half of the homes of those ages 18-34 lack radios.[53]

These changes in technology and ownership of technology have altered the public's media consumption habits. In the third quarter of 2018, Nielsen estimated that adults 18+ spent an average of four hours and 32 minutes per day with digital media, compared to an average of one hour and 44 minutes with radio.[54] And adults under age 35 spent significantly more time (five hours and nine minutes per day) with digital media than older audiences.[55] Unlike in the analog past, the average music listener now uses 4.4 devices each week for music (up from 3.4 devices in 2017), with millennials using 5.2 devices.[56] The virtually ubiquitous smartphone tops the list of devices used for music listening.[57] Notably, digital devices are multi-purpose devices that permit consumers to access and easily switch between audio and video content, thereby expanding the range of media against which terrestrial broadcast stations must compete.

Although newer than smartphones and tablets, smart speakers are already significantly influencing media consumption. In a 2018 survey of smart speaker owners, 26 percent said they listened to audio most often using a smartphone or tablet, 22 percent

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[52] Edison Research and Triton Digital, *The Infinite Dial 2018* (Mar. 2018).

[53] *Id*.

[54] *See The Nielsen Total Audience Report Q3 2018*, at 6 (comparing daily usage of radio with the combined daily usage of apps/web on smartphones/tablets, internet on a computer and TV-connected devices, including internet-connected devices, game consoles and DVDs).

[55] *See id*.

[56] *See* 2018 Nielsen 360 at 22.

[57] *Id*. at 24.

using a smart speaker, 19 percent a smartphone-connected speaker and 17 percent AM/FM radio.[58] Smart speakers even influence consumers' choice of audio brands (*e.g.*, Pandora, Spotify, iHeartRadio, *etc.*). Owners of smart speakers use Amazon Music more frequently than those without smart speakers, which is perhaps unsurprising given that the Amazon Alexa is the leading brand of smart speaker.[59] Smart speaker ownership is also changing how consumers listen to AM/FM radio. In January 2019, 19 percent of total listening time for broadcast radio streams occurred on smart speakers,[60] and 47 percent of smart speaker owners in 2018 reported having asked their speaker to play an AM/FM radio station within the last week.[61]

Not only do "devices and music go hand-in-hand,"[62] Nielsen also declared last year that "smartphones drive podcast usage."[63] Consumers use a range of devices for accessing all types of information and news. As of October 2017, almost 60 percent of U.S. adults, and more than 70 percent of adults ages 18-29 and 67 percent of those ages 30-49, often got news via a mobile device.[64] Eighty-four percent of smart speaker owners report having

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[58] *See The Smart Audio Report*, NPR and Edison Research (Spring 2018) (Spring 2018 NPR/Edison Study) (based on a survey of "early mainstream" smart speaker owners; additional answers included computer/laptop (9 percent); iPod/mp3 player (3 percent); CD player (3 percent)).

[59] *See* Infinite Dial 2019.

[60] *Exclusive: New Data Shows Radio Listening On Smart Speakers Has Doubled*, Inside Radio (Mar. 4, 2019).

[61] Spring 2018 NPR/Edison Study. But 45 percent of respondents to this survey also reported that time spent with their smart speakers is replacing time they used to spend with AM/FM radio.

[62] 2017 Nielsen 360 at 21.

[63] Nielsen, *Audio Today 2018: How America Listens*, at 9 (Apr. 2018).

[64] Sophia Fedeli and Katerina Eva Matsa, *Use of mobile devices for news continues to grow, outpacing desktops and laptops*, Pew Research Center (July 17, 2018) (finding that those 65 and older are more likely to get news on a desktop).

listened to at least 30 minutes of news on their speakers in the last week,[65] and 22 percent listen to a podcast via their smart speakers on a monthly basis.[66] Smart speakers even influence the sources of news consumers receive by setting "default" news providers,[67] often major outlets such as NPR and CNN. Reuters surveyed smart speaker users and found that only 27 percent of U.S. consumers who use their smart speakers' "news briefing" feature had changed the default news provider, and only 32 percent had added additional news brands.[68] Thus, in competing against a vast array of other content providers, radio stations are, at times, at a default disadvantage.

The rapid adoption of digital devices allows consumers to access a wide array of audio and video content 24/7, 365 from virtually any location, greatly enhancing competition for audiences. The Commission must consider the significant competitive effects of technological change as part of its duty under Section 202(h) to ensure its ownership rules "keep pace with the competitive changes in the marketplace."[69]

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[65] Spring 2018 NPR/Edison Study.

[66] Nic Newman, *Digital News Project: The Future of Voice and the Implications for News*, Reuters Institute, at 27 (Nov. 2018) (Reuters Digital Study).

[67] *See* Rachel Withers, *Is Getting Our News From Smart Speakers a Threat to Media Diversity?*, Slate (Aug. 7, 2018).

[68] Reuters Digital Study at 24-25. CNN News and NPR are tied for the most popular news briefing brands in the survey, followed by ABC News, Fox News, BBC News and CBS News. "Local newspaper or TV" is tied for the 10th most popular source, with 13 percent of respondents selecting them as a brand they hear "when playing the news headlines from your smart speaker." Local radio was not provided as an available answer in this survey. *Id*.

[69] *Prometheus Radio Project v. FCC*, 373 F.3d 372, 391 (3d Cir. 2004).

C. Radio Stations Have Far More Competition for Listeners in a Fragmented Market

Despite extensive and growing competition for audiences, AM/FM radio still garnered 46 percent of total audio time spent in late 2018.[70] Usage of AM/FM radio also remains well ahead of other audio sources in vehicles, with 52 percent of survey respondents reporting in early 2019 that AM/FM radio was the audio source used most often in the car.[71] Total time listening to broadcast radio, however, has been declining. For adults ages 18+, average weekly time spent listening to AM/FM radio decreased by 6.6 percent from 2014-2018, with larger declines in listening among all age groups under 50 and much smaller declines among adults 50 and older.[72] Other data available over a longer time period show that radio stations' nationwide Average Quarter Hour (AQH) full day audiences fell by about 30 percent from 2003-2018.[73]

Not only is their usage of AM/FM radio declining, but consumers under the age of 35 also spend considerably less total time listening to AM/FM radio than older Americans. According to Nielsen, those ages 18-34 spent an average of nine hours and 34 minutes per week listening to AM/FM radio in the third quarter of 2018, compared to 12 hours and

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[70] *See* Brittany Faison, *Share of Ear Q4 2018*, Westwood One (Mar. 4, 2019) (reporting Edison Research's Share of Ear data). Some evidence suggests, moreover, that users under-report their time spent listening to radio, perhaps because much radio listening occurs passively, while at home, the office or in restaurants. An August 2018 survey conducted by Deloitte, for example, found that only 52 percent of 18-24-year-olds reported ever listening to the radio. Nielsen data, however, showed that radio reaches 95 percent of 18-24-year-olds each month. *See* Duncan Stewart, *Radio: Revenue, reach, and resilience*, Deloitte Insights (Dec. 11, 2018).

[71] Infinite Dial 2019 (based on U.S. population age 18+, driven/ridden in car in last month and used an audio source in car). Fifteen percent of respondents reported using SiriusXM most often, 15 percent owned music, 12 percent online audio, four percent podcasts and two percent other.

[72] *See* BIA Radio Study at 4-5 (citing Nielsen Total Audience Report Q2 2014-2018).

[73] *See* BIA Radio Study at 5 (citing Nielsen RADAR data). Radio station advertising is generally sold based on stations' AQH listening.

seven minutes per week by the average adult age 18+.[74] Teenagers spend even less time with traditional radio, averaging only six hours and 22 minutes per week in the third quarter of 2018.[75] Not coincidentally, these younger consumers are the ones most likely to own smartphones and the least likely to have AM/FM radios in their homes.

Audience fragmentation is also shown by data on music listening specifically. A 2018 survey on U.S. music listening found that AM/FM radio (over-the-air and online combined) received 36 percent of total music listening time, while on-demand streaming and other internet radio (*e.g.*, Pandora) received 39 percent of listening time (with the remainder of the listening time going to satellite radio, digital downloads and CDs/vinyl).[76] All these AM/FM listening trends show that local radio stations compete against other outlets and have lost audiences to them, especially as online services have rapidly grown and technological innovations put smartphones and other devices into consumers' hands.[77]

D. The FCC Must Recognize that Radio Stations in Local Markets Compete with the Myriad Sources of Content Accessible to Consumers Using Multiple Devices

The FCC must stop ignoring the intense competition radio stations face by dismissing the many non-broadcast participants in the media marketplace as insufficiently "local."[78]

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[74] *See The Nielsen Total Audience Report Q3 2018*, at 21 (2019).

[75] *Id*. at 25.

[76] *See* AudienceNet, *Audio Monitor U.S.: The Overall Music Landscape*, at 13 (2018). On-demand streaming and internet radio accounted for 71 percent of listening time for those ages 16-19; 66 percent for ages 20-24; and 49 percent for ages 25-34. Only those consumers 45 and older spent more time listening to music with AM/FM radio than with streaming and internet sources. *Id*.

[77] *See* Infinite Dial 2019 (showing significant growth in online listening, average time spent listening to online audio and smartphone ownership since the late 2000s); *see also* BIA Radio Study at 5 (showing declines in stations' listening, especially since the late 2000s).

[78] *See* Notice at ¶ 17 (noting that in previous quadrennial reviews, the FCC discounted these competing audio sources, including satellite radio and online audio services, because they were not locally oriented).

This position makes no sense. The local or non-local character of the content on other outlets is irrelevant to their competitive impact on local broadcast stations, which is factually indisputable. These myriad competing outlets, whether their content is local, regional, national or even international, impact radio (and TV) stations in the same way: they divert audiences and advertising revenues away from local stations, thereby making it more difficult for stations to continue competing effectively.[79] Ironically, while professing to value broadcasters' locally-oriented programming and services, the Commission has consistently refused to recognize the very competition that endangers local stations' ability to provide such services on the grounds that those competitors do not offer locally-based service. The logic of this position escapes NAB.

From a consumer's point of view, moreover, the most salient point about a provider of audio (or video) content is whether the consumer can access it while in his or her local community. Consumers may not know or care where SiriusXM/Pandora, Spotify, Apple Music or YouTube (or any digital video providers) are located, but they know that these sources are available in their homes, in their cars, at their desks and on-the-go via multiple devices. While the FCC has a stated goal of fostering broadcast programming tailored to the needs and interests of local markets,[80] this goal must account for the reality that tailoring now occurs on a consumer-specific, rather than a market, basis. Local audiences are no longer limited by technology to only geographically proximate radio (or TV) stations. Instead, they can access a virtually infinite number of "stations" and outlets offering content tailored to

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[79] The impact on local stations' ad revenues may be direct – in the case of competing ad-supported outlets – or indirect, in the case of competing subscription outlets that divert audiences and, thus, reduce the ability of local stations to generate ad revenues.

[80] *See 2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, 9899 (2016) (2016 Ownership Order).

their specific interests. Broadcasters' digital competitors know that: "Success used to come from being broad-based with a geographic monopoly. . . On the Internet, though, success comes from being narrow while reaching the whole world. It is the exact opposite."[81]

The FCC cannot continue to use the nature of the content provided by non-broadcast outlets as a reason to banish them from the marketplace relevant under its radio (and TV) ownership rules. In this environment, continuing to narrowly define the market and insisting that the existing radio ownership caps are necessary because only geographically-proximate radio stations provide programming "tailored" to local audiences blinks reality and undermines the FCC's own goals.

IV. RADIO STATIONS TODAY COMPETE IN A SLOWER GROWING ADVERTISING MARKET AND ARE LOSING AD MARKET SHARE TO OTHER OUTLETS

As media outlets and digital devices proliferate, advertisers' options for reaching consumers have similarly expanded. As a result, traditional media like radio stations must compete against an ever-increasing array of advertising platforms for vital revenues, while they struggle to retain the audiences that they "sell" to advertisers. These profound changes, moreover, are occurring during a period of slower growth in the U.S. advertising market as a whole.

A. The Advertising Market Has Fundamentally Changed, Placing Financial Stress on Free OTA Broadcast Services

Growth in the overall advertising market has notably declined relative to U.S. economic growth. Since the Great Recession, growth in the ad market has not maintained its historical trend of keeping pace with gross domestic product (GDP). Prior to the recession, the ad market equated to approximately two percent of GDP, but that fell to 1.6

[81] Sara Fischer, *1 big thing: The future of media is niche*, Axios (Jan. 29, 2019) (quoting Ben Thompson, The Stratechery).

percent in 2008, 1.4 percent in 2009, and then to 1.2 percent in 2017, with no sign of recovering to the 2.0 percent range.[82] Due to this slow growth, the U.S. advertising market as a whole did not match its pre-Great Recession total until 2018, and the growth that has occurred is mostly due to increases in advertising on digital outlets.[83]

Slower growth in the advertising market poses a particular challenge for broadcast radio because stations rely almost exclusively on ad dollars to support all their operations and services provided to the public. Radio broadcasters do not, and cannot, charge subscription fees to their OTA listeners. In addition, RTDNA research found that 97.9 percent of radio survey respondents report not having a paywall for their web content, and of that group, 97.6 percent said they were not even considering adding a paywall.[84]

Despite its challenges, the radio industry is not without a compelling story to tell advertisers. It continues to reach most Americans every week, and AM/FM listeners pay more attention to advertisements than do audiences to other audio platforms.[85] Still, increased competition for audiences and less favorable advertising market conditions have taken their toll. The BIA Radio Study shows that total radio station OTA advertising revenue has slowly declined in recent years and projects that trend to continue. Over the longer term, BIA's analysis shows that the radio industry has not, following the Great Recession, achieved

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[82] Derek Baine, *Advertising market growth unable to keep up with GDP*, Kagan Market Intelligence (2019) (Kagan 2019 Ad Market Report).

[83] *See* Derek Baine, *Digital to comprise 45% of $283B ad market by 2027, up from 32% in 2017*, Kagan (2018) (Kagan 2018 Ad Market Report); Kagan 2019 Ad Market Report.

[84] *See* Bob Papper, Radio Television Digital News Association (RTDNA), *2018 Business of News* (July 31, 2018).

[85] *See* Pierre Bouvard, *Share of Ear Q3 2018 Trends*, Westwood One (Dec. 3, 2018) (citing a study that found only 54 percent of Pandora and Spotify listeners pay attention to ads, compared to 84 percent of listeners to AM/FM radio ads).

the revenue levels it reached in the mid-2000s, pointing to a structural marketplace shift, rather than any temporary business cycle effects.[86]

B. Digital Platforms Are Commanding an Increasingly Large Percentage of the Advertising Market, at the Expense of Radio Stations and Other Traditional Media

The challenges presented by a more slowly growing advertising market have been compounded by the simultaneously occurring digital disruption of that market. Advertisers are increasingly shifting their dollars toward online and mobile outlets, and radio stations face growing competition from digital competitors, including in small markets. For example, Midwest Communications reported the loss of local ad accounts worth more than $100,000 each in several markets to digital services such as Pandora and Google AdWords.[87] Through interviews with advertisers and ad agencies, Townsquare Media found that most advertisers across a range of markets now have, on average, three times the number of companies calling them wanting to sell advertising time and space as they did a decade ago. And today, unlike a decade ago, many of these are selling digital advertising products.[88]

These radio stations' experiences illustrate the profound competitive changes in the ad market that have been well-documented in recent years.[89] Surveys of advertisers asking

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[86] *See* BIA Radio Study at 10-11 (discussing total OTA radio station ad revenues from 2003-2023 and showing declines in revenue levels over time).

[87] *See* Comments of Joint Commenters, MB Docket No. 18-227, at 10-11 (Sept. 24, 2018) (markets included Duluth, MN, Fargo, ND, Wausau-Stevens Point WI and Hibbing, MN). *See also* BIA Radio Study at 9-10 (explaining that Pandora employs local sales staffs in a number of markets targeting the same local advertisers as these markets' radio stations).

[88] *See* Comments of Joint Commenters, MB Docket No. 18-227, at 15 (Sept. 24, 2018).

[89] *See, e.g.*, Kagan 2018 Ad Market Report (observing that "2017 continued to be another year of disruption in the ad market as dollars increasingly flee traditional media for online and mobile"); Derek Baine, *Local ad revenue up 3.4% in 2015 to $74.97B; mobile, Internet ads rule*, Kagan (2015) (Kagan 2015 Ad Market Report) (discussing the shift of advertising away from traditional media to digital platforms, and concluding that mobile and internet ads "rule"); Kagan 2019 Ad Market Report (citing "remarkable progress" in digital

about their use of advertising and marketing tools confirms the expanding role of digital ad platforms. BIA's most recent annual survey of advertisers of all sizes found that those advertisers who report using broadcast radio also utilize a wide range of other ad platforms – a total of 30 different advertising and marketing platforms in 2018.[90] Digital platforms are among the most frequently utilized, as 79.1 percent of radio advertisers reported using targeted social ads, 63.9 percent reported using mobile location aware ads and 62.9 percent used email. Large numbers of radio advertisers utilized other traditional types of advertising too, including direct mail (used by 75.6 percent of radio advertisers), newspapers (used by 69 percent) and TV (used by 61.5 percent).[91] Other surveys have similarly shown that local businesses are increasingly utilizing digital ad platforms and that 90 percent of local advertisers buy both digital and non-digital advertising.[92]

BIA also analyzes the local advertising shares earned by 16 competing ad platforms. For 2019, BIA estimates that radio stations' OTA ad revenue will represent only 8.7 percent of total local advertising in all markets across the U.S., having fallen from a 10.7 percent share in 2012.[93] Another analysis estimates that in 2019, all traditional media advertising will contract, with the sole exception of out-of-home advertising.[94]

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advertising, with a compound annual growth rate of 16.8 percent from 2009-2018, and noting traditional media's loss of dominance).

[90] *See* BIA Radio Study at 12-13.

[91] *Id.* at 13; *see also* Vici Media, *Radio and Digital Advertising by the Numbers* (Feb. 16, 2018) (citing a Borrell report that 70 percent of radio advertisers said they were increasing their digital budgets and only 17 percent said they were increasing their radio budgets).

[92] Gordon Borrell, *What Radio Buyers Are Doing*, radiomatters.org (Feb. 18, 2019).

[93] *See* BIA Radio Study at 11-12. Radio stations' much more limited online ad revenues do not compensate for the decline in OTA ad revenues.

[94] Sara Fischer, *The only growing non-digital ad medium*, Axios (Dec. 4, 2018) (reporting on MAGNA ad forecast).

While radio broadcasters struggle to retain market share, digital advertising is flourishing, including at the local level. BIA estimates that while radio stations' OTA ad revenue will decline to 7.7 percent of total local ad revenues by 2023, the share of total local ad revenues earned by "pure play" digital platforms are projected to grow from 31.5 percent this year to 38.2 percent in 2023.[95] Other estimates as to the digital sector's share of local ad revenues are notably higher.[96] Mobile advertising is growing especially quickly due to its "ability to capture audiences of all ages based precisely on where they are and what they are doing, at any given moment."[97]

An annual study of automobile advertising confirms this trend. It also illustrates digital platforms' advantages in their ability to target audiences more precisely and track consumer response. Today, auto dealers spend "41 percent less to advertise a new car" than they did five years ago because, using digital ad products, it is "now easier to hit a specific target, which means dealers can be more efficient with their ad buys."[98] By 2023, radio advertising spend by dealers on new cars is predicted to be 26 percent lower, in contrast to digital, which is expected to be 42 percent higher.[99] And while automotive

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[95] *See* BIA Radio Study at 12; Attachment B, BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction,* at 13 (Mar. 15, 2019) (BIA TV Study) (counting pure-play online and mobile, email and internet yellow pages).

[96] Kagan estimates that the digital (online/mobile) sector's share of local ad revenues will be 51.9 percent in 2019, rising to 60 percent in 2023. *See* Kagan 2019 Ad Market Report.

[97] BIA Advisory Services, Press Release, *BIA/Kelsey Sees Significant Growth in Local Mobile Ad Spending in 2018 and Beyond, As Advertisers Embrace Location-Targeted, Social and Web Platforms* (Feb. 1, 2018).

[98] Borrell Associates, *Automotive Advertising Takes a Sharp Turn, 2018 Outlook*, at 4 (Borrell Car Ad Study). The economic literature has similarly emphasized that online targeting technology enables advertisers to target particular consumers, but that advertisers must rely on "noisy signals based on media demographics" to send messages to consumers "offline." A. Goldfarb and C. Tucker, *Digital Economics*, 57 J. Econ. Literature 3, 20 (2019).

[99] Borrell Car Ad Study at 11.

advertising spend is expected to increase slightly over the next several years, "virtually all" additional revenue will go to other media, especially digital, with "interactive" media predicted to increase its share from 63.8 percent of total spend in 2018 to 73.9 percent of all spend in 2023.[100] Radio's share of all auto dealer ad dollars, meanwhile, is expected to decline from 3.2 percent in 2018 to 2.2 percent in 2023.[101]

The advent and rapid adoption of digital technologies resulted in the creation of digital ad giants against whom radio (and TV) stations now must compete. BIA estimates that Google and Facebook combined will earn over 42 percent of all local digital advertising revenues across the U.S. in 2019, while broadcasters' online ad revenues will account for a small fraction of local digital revenues (and an even smaller fraction of total local ad revenues).[102] Facebook is now the most popular marketing channel for local advertisers, and Google's local ad revenues alone exceed the total ad revenues generated by all commercial radio stations in the U.S.[103] As shown, the market capitalizations of Google and Facebook – as well as SiriusXM/Pandora and Spotify – dwarf the market caps of the most valuable radio companies and even large TV station groups.

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[100] *Id*. at 13.

[101] *Id*.

[102] See BIA TV Study at 14; BIA Radio Study at 11.

[103] Borrell Associates, *2019 Benchmarking Local Media's Digital Revenues*, Executive Summary, at 4 (2019); BIA Advisory Services, Press Release, *Google to Dominate Local Digital Advertising in 2018* (May 7, 2018).

Source: Yahoo! Finance

C. NAB Disagrees with the Position that Other Advertising and Marketing Platforms Are Not Substitutes for Broadcast Radio

Similar to the FCC, the Department of Justice (DOJ) has long maintained that other advertising and marketing platforms are not "reasonable substitutes" for advertising on broadcast radio.[104] In light of the data and evidence presented above, NAB disagrees with this position. Economic studies, moreover, confirm that digital advertising specifically is substitutable for advertising on traditional media, including radio. For example, one study estimated that for every one percent increase in internet ad spend, radio ad spend contracts by 0.94 percent, and for every one percent increase in mobile ad spend, radio ad spend

[104] Notice at ¶ 21.

contracts by 2.61 percent.[105] Other studies have examined online and offline advertising and reached conclusions that undermine claims that offline advertising exists in a market separate from online advertising.[106]

Notably, in earlier radio ownership rulemakings, the FCC found that "non-radio outlets, such as cable . . . compete with radio broadcasters for audience and advertising" and justified relaxing its ownership limits on that basis.[107] In fact, in several past ownership proceedings, dating back to at least the 1980s, the FCC acknowledged a broader advertising market encompassing broadcast TV and radio, newspapers and cable.[108] Given that the advertising marketplace became vastly more competitive with the spread of digital

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[105] *See* Mercedes Esteban-Bravo, *et al*., *Historical impact of technological change on the US mass media advertising expenditure*, 100 Technological Forecasting & Social Change 306, 312 at Table 5 (2015).

[106] *See, e.g.*, A. Goldfarb and C. Tucker, *Advertising Bans and the Substitutability of Online and Offline Advertising*, 48 J. of Marketing Research 207 (2011) (finding that "online advertising could reduce the effectiveness of attempts to regulate offline advertising channels because online advertising substitutes for (rather than complements) offline advertising"); A. Goldfarb and C. Tucker, *Substitution Between Offline and Online Advertising Markets*, 7 J. Comp. L. & Econ. 37 (2011) (summarizing the results of two empirical studies that refute the hypothesis that online and offline advertising markets operate independently and suggesting a default position of substitution); D. Bergemann and A. Bonatti, *Targeting in advertising markets: implications for offline versus online media*, 42 RAND J. Econ. 417 (2011) (modeling competition between offline and online media and concluding that, as consumers' relative exposure to more highly targeted online media increases, the revenues of offline media decrease).

[107] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2756 (1992). *See also id*. at 2759 (referring to local cable and broadcast TV as "directly competitive" to radio in the local ad market).

[108] *See, e.g.*, *1998 Biennial Regulatory Review*, Notice of Inquiry, 13 FCC Rcd 11276, 11277-78 (1998); *In re Stockholders of Renaissance Communications Corp*., FCC 97-98, at ¶ 48 (1997); *In re Capital Cities/ABC, Inc*., FCC 96-48, at ¶ 94 (1996); *Further Notice of Proposed Rulemaking*, 10 FCC Rcd 3524, 3543-44 (1995); *First Report and Order*, 4 FCC Rcd 1723, 1727 (1989). *See also* F. Setzer and J. Levy, *Broadcast Television in a Multichannel Marketplace*, Office of Plans and Policy Working Paper, 6 FCC Rcd 3996, 4083 (1991) (stating that alternatives to TV and cable advertising include radio, newspapers, magazines, direct mail, yellow pages and outdoor advertising).

technologies, the Commission in the 2000s should have added to, rather than subtracted from, that list of participants in local ad markets. Instead, in its quadrennial review orders, the FCC has applied the narrowest possible market that excluded all competitors except broadcast radio stations when considering its radio ownership caps (or TV stations when addressing its local TV rule). In this 2018 review, the FCC must correct course and recognize a broad advertising market reflecting actual competitive conditions.

NAB also stresses that other platforms do not need to be perfect or complete substitutes for advertising on broadcast radio to have a significant economic impact on local stations. If, for example, advertisers shift "only" 10, 15, 20 or 25 percent of their radio ad spending to competing platforms, local stations nonetheless will experience serious financial stress due to the loss of revenue. As BIA explains, stations in mid-sized and smaller markets in particular earn limited levels of advertising revenue, have compressed profit margins and have little or no financial cushion. Any negative impact on their revenues, even a minor one, therefore can have serious negative implications on their financial viability.[109]

Even if advertisers do not divert existing ad dollars away from radio stations but merely decide to place any new or additional ad spending with other outlets, local stations will experience economic stagnation and slow decline, given the effects of inflation and the rising costs of quality programming, personnel and equipment.[110] In either case, local stations unable to compete effectively for advertising find it difficult or impossible to maintain their financial viability and provide quality service to their communities of license.

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[109] *See* BIA Radio Study at 14.

[110] In NAB's view, the declining ad revenues earned by stations indicate that existing radio advertising already has been diverted to competing outlets. *See* BIA Radio Study at 10-12.

V. THE FCC SHOULD ADOPT NAB'S PROPOSAL, AS IT REFLECTS THE RADIO INDUSTRY'S COMPETITIVE POSITION IN THE CURRENT MEDIA LANDSCAPE

The local radio ownership rule is "competition-based," and the FCC has not relied on its diversity or localism goals as the basis for retaining the rule unchanged in its various periodic reviews.[111] Given the vast competitive changes in the marketplace since 1996, Section 202(h) now requires the existing radio rule to be repealed or modified. If the FCC determines that some radio ownership limits remain necessary, it should: (1) eliminate all caps on AM ownership; (2) permit a single entity to own up to eight commercial FM stations in Nielsen markets 1-75 (with the opportunity to own up to ten FMs by participating in the FCC's incubator program); and (3) impose no restrictions on FM ownership in markets 76 and lower and in unrated areas.[112]

NAB's proposal reflects current levels of competition for audiences and ad dollars. Taking account of the significant downward pressure on the radio industry's revenues, our proposal provides needed flexibility in larger markets and recognizes the struggles of smaller market stations, and AM stations in all markets, to remain competitively and financially viable. Our approach is straightforward, understandable and easily applied by both the FCC and licensees.[113]

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[111] 2016 Ownership Order, 31 FCC Rcd at 9899; *see also* Notice at ¶ 9 & n. 45 (stating that promoting competition has been the FCC's "primary rationale" for maintaining its radio rule and citing its 2002, 2006 and 2010/2014 reviews).

[112] *See* Notice at ¶ 13.

[113] In contrast, other approaches would be more complicated and challenging to formulate. For example, the Notice (at ¶ 28) sought comment on weighing particular classes of stations differently for determining compliance with the ownership caps (*e.g.*, a Class A AM station could be worth two stations, while a Class D AM station could count as half a station). The FCC should not adopt that approach or any other that weighs stations. Such an approach would be unnecessarily complicated, given the difficulty of formulating rational, consistent standards for such comparisons, including between AM and FM stations.

A. The FCC Should Reform its Existing Rules Structure to Reflect the Economic Challenges Facing Radio Stations, Especially in Mid-Sized and Small Markets

1. The Local Radio Rule's Restriction on FM Ownership Should Be Modestly Relaxed in Markets 1-75

No radio stations – including those in Nielsen markets 1-75 – have escaped the competitive forces reshaping the media and advertising landscape. Over half of all stations in the top 75 markets experienced a decrease in advertising revenue from 2012-2018 in nominal terms. After accounting for inflation, nearly 76 percent of top 75 market stations experienced a decline in revenues during that period.[114] And even stations in the top 25 markets – the only markets in which the average station's annual revenue exceeds $2 million[115] – earn miniscule ad revenues compared to the digital giants against whom they compete. These revenue pressures will only continue to increase, as digital advertisers take an ever-expanding slice of the local ad pie.

Under the current structure of the FCC's rule, all but one of the top 75 Nielsen markets fall within the top three tiers, meaning that four or five FM stations may be commonly owned.[116] There are currently 115 clusters in these markets prohibited from owning additional FM stations because they are constrained by the FCC's FM subcap.[117] As BIA's Radio Study explains, these constrained station groups are unable to acquire "unconstrained" FM stations or clusters, many of which struggle to attract audiences and generate ad revenues.[118] NAB's proposal allowing broadcasters in the largest markets to

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[114] *See* BIA Radio Study at 15.

[115] *See* BIA Radio Study at 14.

[116] The only market that does not fall within the top three tiers is Middlesex-Somerset-Union, NJ (Market 42). This is an embedded market in the New York City market.

[117] *See* BIA Radio Study at 20.

[118] *See* BIA Radio Study at 20-25.

own up to eight FM stations would prohibit dramatic consolidation in the top 75 markets, while allowing constrained station groups to invest in underperforming, unconstrained stations. The Commission should permit – indeed, encourage – such investment.

2. Greater Regulatory Relief Is Needed in Smaller Markets to Preserve Broadcast Radio as a Viable Competitor

As demonstrated by station revenue data in BIA's Radio Study, stations located in Nielsen markets ranked 76 and below face the most serious financial challenges. In 2018, the average station in the smallest Nielsen radio markets (201-265) earned only 7.1 percent of the amount of revenue earned by the average radio station in the top-10 markets. Similarly, the average station in markets 76-100 earned only 13.4 percent of the average top-10 station; in markets 101-150, 11.7 percent; and in markets 151-200, 10.5 percent.[119] Significantly, the average station in all markets 76-265 earned well under $1 million in revenues in 2018.[120]

The lower advertising revenues earned per station in mid-sized and small markets is a direct consequence of the smaller populations and economic bases in those markets.[121] According to BIA, about 75-80 percent of total OTA radio ad revenue is attributable to local businesses, with these percentages often higher in small markets.[122] Many radio stations' local advertisers, moreover, are smaller businesses with limited resources to pay for

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[119] *See* BIA Radio Study at 14.

[120] *See id.*; see *also Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992) (finding that in 1992, "more than half of all [radio] stations, primarily those with less than $1 million in sales, lost money").

[121] *See* BIA Radio Study at 14. Given the direct relationship between a market's population and the ad revenues available to support non-subscription outlets like radio stations, NAB believes that Nielsen markets are appropriate for structuring a competition-based local radio rule. *See* Notice at ¶ 24 (asking about the appropriate basis for an ownership rule's tiers).

[122] *See* BIA Advisory Services, *Market Assessment and Opportunities for Local Radio: 2018-2022*, at 18 (Apr. 2018).

advertising. Unsurprisingly, radio stations serving sparsely populated rural areas or small communities with relatively few local businesses, and those located in economically struggling communities lacking a strong local business base, themselves struggle to attract advertising and earn adequate revenues.[123]

Due to limited available advertising revenues, many stations in mid-sized and small radio markets and in unrated areas experience problems generating revenues sufficient to cover their substantial fixed costs. These costs are basic ones that must be met to run a station, including engineering, programming, advertising and promotion, sales and general/administrative costs.[124] Broadcasters that cannot, or barely, cover their fixed costs are unable to invest in improving their stations' programming, staff or technical facilities. These stations necessarily play a limited competitive role in their local markets.[125]

To evaluate the impact of relaxing the ownership limits, BIA compared stations that are part of clusters "constrained" by the current caps, and those stations that are "unconstrained." BIA found that those stations not part of clusters constrained by the existing caps often earn revenues below the levels necessary to cover their fixed costs. These financially impaired, unconstrained stations are located in markets of all sizes but are found in much higher proportions in mid-sized and small markets.[126] In addition, 171 full-

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[123] Thus, the revenue picture is even bleaker for radio stations located outside of Nielsen audio markets, as they generally serve smaller populations in areas with smaller economic bases and available ad revenues. *See* BIA Radio Study at 14.

[124] *See* BIA Radio Study at 31.

[125] *See* BIA Radio Study at 31-33.

[126] *See* BIA Radio Study at 34. For example, while 23.4 percent of unconstrained FM stations in markets 1-10 earn less than $500,000 in annual revenues, 49.5 percent of unconstrained FM stations in markets 101-125 earn less than $500,000 and 73.3 percent of these FM stations in markets 201+ earn below that threshold. In market ranges 126-150, 151-200 and 201+, 40.4, 44.2 and 50.0 percent of unconstrained FM stations earn less than *$250,000* in annual revenues. For AM stations the numbers are even more dramatic.

power FM and AM stations are currently off the air entirely, with virtually all of them licensed to smaller communities.[127]

While these unconstrained and dark stations struggle to remain competitively viable, many other broadcasters are prevented by the existing ownership rules from acquiring or investing in them. In the Nielsen Audio markets, 404 different local combinations of radio stations are constrained from additional growth by their total number of stations locally owned and/or the number of FM or AM stations owned.[128] Nearly 70 percent of those constrained station groups are located in markets ranked 76 and below.[129] NAB's proposal would relax or remove the competitively unnecessary, and indeed harmful, restrictions on radio ownership. Doing so would promote increased investment in stations in markets of all sizes by entities most likely to be interested in investing in radio – other radio broadcasters.

NAB therefore urges the FCC to adopt its proposal, which would permit a reasonable increase in common ownership in larger markets and account for more challenging economic conditions in smaller markets and unrated areas by removing the ownership caps. All markets would benefit from reform of the outdated limits, and less populated markets with relatively few listeners and limited advertising bases simply cannot support many separate radio station owners unable to achieve reasonable economies of scale.

Nearly 60 percent of all unconstrained AM stations in markets 1-10 earn less than $500,000, and in markets 201+, 96.4 percent of these stations earn less than $500,000.

[127] *See* FCC, *Silent AM Broadcast Stations List* (as of Apr. 9, 2019); FCC, *Silent FM Broadcast Stations List* (as of Apr. 9, 2019).

[128] *See* BIA Radio Study at 19.

[129] *See id*.

B. AM Radio Faces Unique Competitive Challenges That Counsel Against AM Ownership Limits in Any Market

Six years ago, the Commission found that the "sustainability of the AM broadcast service has been threatened by the migration of AM listeners to newer media services," such as satellite radio, podcasts and audio streams provided over the internet.[130] Yet despite the FCC's ongoing AM revitalization efforts, AM stations continue to struggle.[131] To date, the FCC has refused to take into account the larger competitive landscape when evaluating its AM ownership restrictions. In today's marketplace, there is no rational competitive basis to maintain ownership caps on the AM service in any markets.

From 1996 to 2018, the average AM station's audience share decreased by 50 percent.[132] In 2006, there were 145 AM stations located in 130 different markets ranked among the top five in audience share in their local markets. By 2018, the number of these highly-rated AM stations had dropped to 115, located in 100 markets.[133] By contrast, 1,210 FM stations are in the top five in audience share across Nielsen's 265 markets.

Local AM radio stations' share of total radio OTA advertising revenue is also disproportionately small and falling. The median market's AM share declined from 14 percent in 2010 to 11.6 percent in 2018.[134] In 39 Nielsen markets, AM stations collectively earn five percent or less of their markets' entire radio OTA ad revenue. In another 68 markets, AM stations earn between 5-10 percent of their markets' total radio OTA ad

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[130] Notice of Proposed Rulemaking, *Revitalization of the AM Radio Service*, 28 FCC Rcd 15221, 15222 (2013).

[131] The "daunting technical and competitive challenges" facing AM broadcasters that the FCC recognized in 2013 have only intensified. *Id*. at 15228.

[132] *See* BIA Radio Study at 17-18.

[133] *Id*. at 18.

[134] *Id*. at 16.

revenue.[135] These AM stations earn truly miniscule shares (between 0.5-1.0 percent) of total advertising revenues in their respective markets.[136] Unsurprisingly, very high proportions of unconstrained AM stations across the range of market sizes, including large markets, earn revenues below the thresholds likely needed for those stations to cover their fixed costs.[137]

These ad revenue and listenership data demonstrate that allowing broadcasters to own larger numbers of AM stations will not lead to those owners dominating terrestrial radio, let alone the wider marketplace. To continue AM radio's revitalization, the FCC should encourage as much investment in the struggling AM band as possible and permit broadcasters the flexibility to form viable ownership structures, unencumbered by competitively unnecessary caps on AM ownership.[138]

C. The Current Local Radio Rule Does Not Promote True Competition in the Media Marketplace and Does Not Serve the Public Interest

Radio broadcasters are proud of the service they provide to local listeners. But stations struggling to cover their fixed costs cannot invest in higher-quality programming,

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[135] *Id*. at 17.

[136] *Id*.

[137] *Id*. at 34. Between 84.4 and 90.3 percent of unconstrained AM stations in each market range 76+ earn less than $250,000 annually. Most unconstrained AM stations in the top 75 markets also struggle financially. In markets 51-75, for example, 80.6 percent of those AMs earn revenues below $250,000, and 91.1 percent of AMs earn less than $500,000. Even in market ranges 1-10, 11-25 and 26-50, 49.4, 59.8 and 65.0 percent of unconstrained AMs earn below $250,000 annually, with the vast majority earning below $500,000.

[138] Some have claimed that removing or reforming FM subcaps would harm AM radio, apparently by permitting group owners to abandon AM stations in favor of purchasing additional FM stations. NAB disagrees. Under our proposal, owners in the top 75 markets that reach the eight station cap on FM ownership may find it attractive to add AMs, which, unlike under the FCC's current rules, would not count toward any group owners' market limits. And owners currently constrained by the existing AM subcap limit would very likely purchase additional AM stations. *See* BIA Radio Study at 19 (finding 14 AM-constrained radio clusters). In any event, it is not sound policy to maintain the current competitively unnecessary ownership caps to coerce broadcasters into acquiring or retaining one type of radio outlet over another.

hire additional staff or improve their physical plant. These stations are in a Catch-22: they lack the financial resources to invest in new or improved services that would attract larger audiences and generate more ad dollars. As a result, these stations have little hope of improving their competitive position, at least under the FCC's existing ownership rules.

1. Radio Stations Need to Achieve Greater Economies of Scale

Many radio stations, including those in mid-sized and large markets, struggle to make their local news and informational programming financially viable.[139] The ability to hire staff appears key to the amount of news programming radio stations air.[140] But stations experiencing declining ad revenues and thin (or non-existent) profit margins cannot hire additional staff or perhaps even continue supporting high-cost services, including emergency journalism.[141] And given the significant financial challenges facing smaller market radio stations, the FCC must ensure its policies permit continuation of stations' important services there.[142]

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[139] *See* Bob Papper, RTDNA, *2018 Business of News Report* (July 31, 2018) (according to responding news directors and general managers with knowledge of their stations' finances, only 13 percent reported their stations earned a profit on news, and this percentage has fallen over time).

[140] *See* Bob Papper, RTDNA, *2018 Local News by the Numbers* (June 13, 2018) (reporting that the "bigger the staff, the more news a station runs," and stations with three or more news staffers air about 50 percent more news than stations with only one or two staffers).

[141] NAB has previously documented the high costs of providing emergency journalism. *See, e.g.*, Comments of NAB, PS Docket No. 18-339 (Dec. 17, 2018); Comments of NAB, MB Docket No. 09-182, at 47-49 (July 12, 2010).

[142] *See, e.g.*, Inside Radio, *California Wildfires Leave One Familiar Lifeline: Radio* (Oct. 11, 2017) (during massive wildfires, residents in rural area depended on two radio stations for emergency information and briefings by public officials); Embedded Podcast, *After the Storm* (Feb. 21, 2019) (reporting that a Puerto Rican family credited a local radio station for saving their son's life after Hurricane Maria left them stranded without electricity to power his ventilator, and the station alerted emergency personnel to restore the family's electricity).

The viability of local radio stations would be enhanced by reforming the existing ownership caps and permitting stations to take greater advantage of economies of scale. The BIA Radio Study found that increased economies of scale from relaxation of the current caps would improve the financial wherewithal of broadcasters and thus their ability to invest in their stations and services.[143]

Specifically, BIA examined actual examples of radio station groups currently constrained by the FCC's numerical caps in four different markets and analyzed the financial impact of their acquisition of an actual unconstrained station group in their same markets. To err on the conservative side, BIA did not assume any increase in revenue by the stations following their combination. Instead, BIA estimated the combinations' financial benefit by analyzing the potential increased efficiencies and decreased expenses due to economies of scale, and modeled the financial position of the stations before and after their combination to determine the effect on cash flows. As summarized below, the station groups in these hypothetical transactions, which are not currently allowed but would be permitted under NAB's proposal, all benefitted from improved cash flow.[144]

Summary of Cash Flow Benefits from Four Transactions Under Relaxed Ownership Rules

Market Sizes	Improvement in Cash Flow (000)	Percentage Increase in Cash Flow
Top Market	$2,006	6.0%
Large Market	$1,184	9.6%
Small Market	$306	13.8%
Very Small Market	$170	16.8%

[143] *See* BIA Radio Study at 26-31. Other economic studies discussed in NAB's comments show the significant economies of scale associated with TV broadcasting and TV news production. These studies are similarly applicable to radio. *See* Section VIII.B., *infra*.

[144] See BIA Radio Study at 26-31 (describing in more detail the combinations of constrained and unconstrained station groups in four markets of differing size).

As BIA explained, these results are not surprising, as such combinations would permit radio stations to spread their significant fixed costs across more stations with greater combined revenues.[145] Notably, the benefits of permitting additional station combinations are greatest in small markets, where radio stations most struggle to cover their fixed costs.

It is likely, moreover, that BIA's analysis understates the financial benefits stemming from station acquisitions made possible by ownership reform. While the attached analysis did not assume any station revenue increases after the combinations, larger radio groups appear better able to turn populations reached (*i.e.*, potential audience) into revenues.[146] Thus, it appears likely that following their combination into a larger group, the stations would earn additional revenues, as well as benefit from increased efficiencies and decreased expenses.[147] For these reasons, permitting additional station combinations would directly address the financial challenges facing many stations and enable them to become stronger competitors in their local markets.

2. Common Ownership Also Leads to Greater Programming Diversity

Empirical evidence has shown for decades that common ownership of radio stations increases programming diversity to the benefit of listeners.[148] This conclusion makes sense: a group owner is not likely to program multiple stations to compete directly with each other by airing the same or similar types of programming. Rather, a rational owner would program its stations with different content to attract more listeners in total. This economic reality has

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[145] *See* BIA Radio Study at 30-31.

[146] *See* BIA Radio Study at 31 and Appendix A.

[147] *See* BIA Radio Study at 31.

[148] *See, e.g.*, Reply Comments of NAB, MB Docket No. 18-227, at 8-9 (Oct. 9, 2018); Comments of NAB, MB Docket No. 09-182, at 87-88 (July 12, 2010) (discussing multiple empirical studies concluding that increases in common ownership following the 1996 Act increased radio programming diversity).

been recognized since the 1950s.[149] Providing more diverse program content also would improve stations' competitiveness, given that consumers today expect (and receive from other sources) greater diversity and tailoring in their audio (and video) programming. And those local listeners more reliant on free OTA broadcasting would particularly benefit from additional programming diversity, if the radio ownership limits were reformed.

As the Commission has long recognized, the radio "industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability."[150] Adopting NAB's proposal will help ensure stations' viability – and their ability to serve listeners with important informational and varied entertainment programming – in an increasingly competitive marketplace.

D. To Further Promote Diversity Among Broadcast Owners, the FCC Should Revisit Its Incubator Rules to Encourage Greater Investment in New Entrants

As NAB and others have repeatedly argued, and the Commission has found, access to capital is crucial to fostering diversity and new entry in station ownership.[151] The FCC's 2018 incubator order was an important step forward. The FCC now should go a step further to encourage additional investment in new entrants by allowing radio broadcasters to receive up to two reward waivers of the applicable ownership cap in a market if they invest in two new entrants.[152]

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[149] *See* Peter Steiner, *Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting*, 66 Q. J. Econ. 194 (1952) (demonstrating that a consolidated owner of radio stations in a market may be more likely to program minority taste formats than if stations in the market were separately owned).

[150] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).

[151] *See Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, 33 FCC Rcd 7911, 7913, 7915 (2018).

[152] The Notice (at ¶ 29) asked whether NAB proposed that incubating one station could result in a waiver allowing ownership of two additional stations, or whether a station must incubate two stations to receive a waiver permitting ownership of two stations beyond any

Under NAB's proposal, radio owners in the top 75 markets could exceed the cap of eight FM stations by up to two additional FM stations if they invest in two successful new entrants under the FCC's incubator program. This enhanced incentive would strongly encourage station owners to invest in new entrants while still avoiding undue consolidation.

VI. THE COMMISSION SHOULD ADDRESS TWO RADIO MARKET DEFINITION ISSUES

A. The FCC Should Make Permanent Its Interim Contour-Overlap Methodology for Defining Markets in Unrated Areas

If the FCC ultimately retains ownership caps for areas outside of Nielsen-defined radio markets (which, as discussed above, it should not), then the Commission should make permanent its "interim" contour overlap methodology for defining radio markets in unrated areas. The Commission adopted that methodology in 2003, and it "has been employed successfully for years."[153] Moreover, when adopting that interim methodology, the Commission made certain changes to its prior contour overlap approach designed to address two specific inconsistencies that had been identified with its long-standing overlap approach.[154] Unsurprisingly, after 16 years of using the FCC's modified interim contour overlap methodology for defining radio markets in unrated areas, no evidence shows it is contrary to the public interest.

The Commission also should retain its interim approach because no party has ever suggested a rational, workable alternative to this modified contour overlap methodology, despite the FCC conducting an entire proceeding on defining radio markets in unrated

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applicable cap. NAB proposes that for each station an owner incubates, that owner can receive a waiver permitting ownership of one additional station, up to two stations per market.

[153] Notice at ¶ 25.

[154] *See 2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13730 (2003) (2003 Ownership Order).

areas.[155] For these reasons, NAB urges the Commission to make permanent its well-understood contour overlap methodology, in the event it determines to maintain caps on radio station ownership in areas unrated by Nielsen.

B. The FCC Should Revise Its Embedded Market Rules

The Notice (at ¶ 33) asks about the treatment of embedded radio markets going forward. Embedded markets are those close to major metropolitan "parent" markets. The FCC has historically treated stations in embedded markets as part of the parent market when determining station owners' compliance with local ownership limits. The Commission previously believed this approach reasonable because it aligned with the FCC's reliance since 2003 on Nielsen-defined audio markets for applying its radio ownership limits.[156]

In practice, however, the FCC's approach has meant that stations in embedded markets are double-counted for purposes of determining compliance with the local radio rules: they are counted in the embedded market and in the parent market. For the two metropolitan areas with multiple embedded markets, New York City and Washington, DC, local radio owners in embedded markets are particularly constrained. They must comply with the ownership limit in the parent market (currently set at eight stations in total) and also the ownership limit in each individual embedded market, making it far more difficult for station groups in these regions to invest in more than one embedded market.[157]

Materials submitted by BIA Kelsey and Nielsen Audio during the 2014 quadrennial review make clear, moreover, that the FCC's belief in the consistency of its approach with

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[155] *Id*. at 13870-71; Comments of NAB, *et al*., MB Docket No. 03-130 (Oct. 6, 2003).

[156] *See* 2016 Ownership Order, 31 FCC Rcd at 9903; 2003 Ownership Order, 18 FCC Rcd at 13725, 13727.

[157] *See, e.g.*, Letter from Rick Kaplan, General Counsel and Executive Vice President, NAB, to Marlene H. Dortch, Esq., MB Docket Nos. 14-50, 09-182, at 1-2 (Mar. 10, 2017).

Nielsen's designation of embedded markets was mistaken. As BIA explained: treating embedded market stations as part of the parent market "just reflects that their city of license is geographically located within the boundaries of the parent market. It is a reflection of geography, not an analysis of competition," and "[i]f embedded market stations really competed in the parent market, there would be no need to have embedded markets."[158] In other words, separate embedded markets were created because Nielsen determined that, despite their geographic proximity to the parent market, these markets do not compete in the parent market.

As shown by these letters and declarations, the FCC's stated rationale for its treatment of embedded markets is based on a misunderstanding of marketplace dynamics and Nielsen's market definitions. To maintain this approach despite that error would be contrary to undisputed record evidence and arbitrary and capricious.[159] The FCC must alter its approach. Stations in an embedded market should only count toward the local ownership limit in that embedded market. They should not count toward the group owner's compliance with the local ownership limit in the parent market.[160]

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[158] Letter from David Oxenford to Marlene H. Dortch, MB Docket Nos. 09-182, 14-50, at Exhibits 1 and 2 (Oct. 30, 2017) (Exhibit 1, Declaration of Mark R. Fratrik, Ph.D, at ¶¶ 9, 13; Exhibit 2, Letter from Bill Rose, Senior Vice President, Local Media Product Leadership, Nielsen, to Jeffrey Warshaw, CEO, Connoisseur Media, LLC (Oct. 30, 2017) (confirming the history of Nielsen's creation of embedded markets)).

[159] *See, e.g., Motor Vehicle Mfrs. Ass'n. v. State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983) (stating that an agency rule is arbitrary and capricious if it relies on "an explanation for its decision that runs counter to the evidence before the agency").

[160] The Notice (at ¶ 35) also asks whether the two parent markets containing multiple embedded markets should be treated differently than parent markets with only one embedded market. The FCC should treat all markets with embedded markets the same, as it has offered no sound rationale for treating New York City and Washington, DC differently. *See, e.g., Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 216 (D.C. Cir. 2013) (stating that "[a]gency action is arbitrary and capricious if the agency offers insufficient reasons for treating similar situations differently"); *Chadmoore Communs. v. FCC*, 113 F.3d 235, 242

VII. COMPETITION HAS ERODED THE RATIONALE FOR THE EXISTING LOCAL TV RULE

Given the rapidly evolving marketplace, the current version of the local TV ownership rule is no longer necessary in the public interest as the result of competition.[161] For TV stations to remain meaningful competitors in the digital marketplace, broadcasters must achieve greater economies of scale, thereby enabling necessary investments in data-driven and automated sales operations, programming and physical plant. NAB accordingly urges the Commission to reform its local TV rule by removing the *per se* restrictions that ban any combinations among top four ranked stations and that prevent ownership of more than two stations in all markets, regardless of local competitive conditions.

Due to digital technologies' transformation of the delivery of media content and the sale of advertising, the FCC must reevaluate how it defines the markets in which broadcast TV stations compete for audiences and advertisers.[162] Like radio stations, TV stations compete for audiences with innumerable other content sources that consumers in local markets may access over-the-air, through cable, satellite and fiber, and online via an array of devices. The local TV rule therefore must reflect that stations today compete for audiences in a market including, at the least, terrestrial broadcasters, pay-TV providers and providers of video programming over the internet and to mobile devices. The FCC also must recognize that TV stations compete with a broad range of media outlets and digital ad platforms for vital advertising revenues. Counting only broadcast TV stations as relevant competitors

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(D.C. Cir. 1997) (stating that the court had "long held that an agency must provide an adequate explanation before its treats similarly situated parties differently").

[161] See Notice at ¶ 43; Section 202(h).

[162] *See* Notice at ¶¶ 48-54.

would define the market as if it were still 1940, when the FCC prohibited common ownership of two TV stations in "substantially the same service area."[163]

Retaining the existing local TV rule based on an analog-era view of competition would impede broadcasters' ability to compete with nonbroadcast outlets. The FCC's ownership rules prevent TV stations – but not their competitors – from achieving needed economies of scale. As a result, broadcasters struggle in a competitively unequal marketplace against content providers and digital ad platforms that have realized significant scale economies and, as illustrated above, that dwarf even large broadcast TV groups in size.[164] Without regulatory relief, the FCC places at risk the news and other locally-oriented services offered by broadcast TV stations that it professes to value.

A. Broadcast TV Stations Compete for Audiences Against an Array of Other Outlets, Accessible Via a Range of Devices, in an Increasingly Fragmented Marketplace

Increasing audience fragmentation shows that consumers do not regard local broadcast stations as their only choices for video (or audio) content. NAB previously documented that basic cable's viewing shares surpassed broadcast TV's viewing shares in the early 2000s.[165] Today, online services not only have become strong competitors to all linear TV, they have transformed the entire media market. The number of outlets has exploded, and OTA broadcasters, cable and satellite TV operators, hundreds of online video (and audio) services and social media platforms all compete fiercely for audiences' scarce time and attention. In fact, "63% of internet users say there is too much choice online,"[166]

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[163] Notice of Proposed Rulemaking, 7 FCC Rcd 4111, 4114 n. 27 (1992).

[164] *See* Market Cap Comparison, Section IV.B., *supra*.

[165] *See* NAB Comments, MB Docket No. 17-318, at 14 and Attachment A (Mar. 19, 2018) (showing decline in broadcast TV's viewing share over time as cable's viewing share rose).

[166] Chase Buckle, *The State of Broadcast TV in 2019*, globalwebindex.com (Feb. 13, 2019).

demonstrating the need for local ownership rules accurately reflecting the extraordinary abundance of the digital marketplace and local stations' place in it.

Facing more competition than ever before, TV stations are experiencing continuing audience fragmentation, declining viewership and resulting pressure on advertising revenues. Like online audio services, over-the-top (OTT) video services have grown rapidly. Over 200 are now available in the U.S., with Amazon Prime Video, Netflix and Hulu enjoying extremely rapid growth and reporting over 100 million, 60.55 million and 25 million subscribers, respectively, at the end of 2018.[167] By August 2018, 69 percent of U.S. households subscribed to Netflix, Amazon Prime and/or Hulu, up from 52 percent in 2015,[168] and the average American subscriber watches 3.4 different streaming services.[169] The launch by additional deep-pocketed technology and media companies, including Apple and Disney, of their own streaming services will only increase competition and fragment audiences further. And virtual MVPD services such as Sling TV, DirecTV Now, Hulu + Live TV, PlayStation Vue and YouTube TV also are gaining subscribers.[170]

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[167] *See* C. O'Dell, *Over 200 OTT services now available in U.S. market alone*, Parks Associates (Aug. 13, 2018); Attachment C, U.S. Subscribers to OTT Video Services (documenting OTT subscriber increases over time).

[168] Leichtman Research Group, Press Release, *69% of U.S. Households Have an SVOD Service* (Aug. 27, 2018). Younger consumers subscribe to streaming video services at even higher rates. *See* Deloitte Insights, *Digital media trends survey*, at 3 (13th ed. 2019) (reporting that 80 percent of Gen Z, 88 percent of Millennials and 77 percent of Gen X subscribe to streaming video services).

[169] Toni Fitzgerald, *How Many Streaming Video Services Does The Average Person Subscribe To?*, Forbes (Mar. 29, 2019).

[170] *See* BIA TV Study at 4-5. Sling TV has 2.4 million subscribers, YouTube TV is now available in all 210 markets and has one million subscribers, and Hulu + Live TV has nearly two million subscribers. *See* Chaim Gartenberg, *YouTube TV is now available in every TV market in the US*, The Verge (Mar. 28, 2019); James Loke, *YouTube TV Crosses 1 Million Subscriber Mark, Hulu With Live TV Nears 2 Million*, Tubefilter (Mar. 1, 2019).

OTT providers are increasingly investing in original programming, fueling an explosion in the number of scripted series, which reached a record 495 in 2018. They now offer more original series than either broadcast or basic cable, and broadcast TV accounted for only 29.5 percent of total scripted series last year, compared to 74.2 percent in 2002.[171] Notably, OTT providers' economies of scale have permitted them to produce these vast quantities of content – and attract viewers away from TV stations – by spreading the costs of their programming investments over millions of subscribers.[172]

Given the array of available programming options financed by increasingly massive competitors, TV stations face growing challenges in attracting audiences. According to Nielsen, broadcast TV's total share of prime time viewing (counting cable, DBS and broadcast) among the audience most coveted by advertisers (those ages 18-49) fell from 46 percent in 2003 to 31 percent in 2018.[173] That is, among the average 30.5 million people ages 18-49 using TV[174] during any given minute of prime time in 2018, an estimated 9.56 million were viewing broadcast stations – and these 9.56 million people represent just 7.4 percent of the estimated total 128.9 million people ages 18-49 in U.S. TV households. Similarly, the average 31.79 million people ages two and older who viewed broadcast TV during any given minute of prime time in 2018 represent only 10.4 percent of the estimated total 304.5 million people ages two and older in U.S. TV households.[175] Audience

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[171] *See* Attachment D, FX Research, *Estimated Number of Original Scripted Series, 2018*.

[172] See BIA TV Study at 5; *accord* GroupM, *The State of Video*, at 13 (Oct. 2018).

[173] Nielsen, U.S. Live + Same Day 2003, 2018. Broadcast TV's share of total day viewing among those ages 18-49 was only 26 percent in 2018, down from 40 percent in 2003.

[174] Counting broadcast, cable and DBS, but not streaming or subscription video on demand (SVOD).

[175] These figures overstate TV stations' share of all video viewing, because if streaming video and SVOD were included in the total, then broadcast's share would be smaller still.

fragmentation also has eroded the ratings of the most popular TV programs. The top-rated TV program during the 1985-1986 season received more than three times the ratings of the top-rated program in the 2017- 2018 season.[176] While the most popular programming remains on broadcast TV, these programs' audiences have substantially declined over time.

Additional data show the splintering of the previously "mass" broadcast TV viewing audience. The BIA TV Study shows that total weekly time spent watching traditional TV (live or DVR time-shifted broadcast or cable/DBS) decreased 9.6 percent from 2014-2018 among all adults ages 18 and older.[177] For younger adults ages 25-34, traditional TV viewing declined 24.7 percent just from 2014 to 2017, and among those ages 18-24, it dropped 33.1 percent to only 12.7 hours per week.[178] Even among those ages 35-49 and 50-64, traditional TV viewing dropped by 14.8 and 2.3 percent, respectively, from 2014-2018.[179] There is no doubt that competition from online sources has caused this recent declining viewership of linear TV. A 2016 study found that Netflix alone had caused 50 percent of the overall decline in linear TV viewing reported by Nielsen for 2015.[180] Similarly, Morgan Stanley has shown that, once Netflix reached 20 percent penetration, linear TV viewing in the U.S. "then decayed in near-perfect correlation to Netflix's rising penetration."[181]

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[176] *See* Attachment E, Ratings of Top TV Programs.

[177] BIA TV Study at 5-6 and Figure 1 (comparing viewing from Q2 2014-2018).

[178] *Id*. Nielsen combined the 18-24 and 25-34 age groups in 2018, so a breakout of each group is no longer available. Teenagers watch even less traditional TV, under 10 hours a week. *See The Nielsen Total Audience Report Q3 2018*, at 25 (2019).

[179] BIA TV Study at 6 and Figure 1 (comparing Q2 2014-2018).

[180] Todd Spangler, *Netflix Caused 50% of U.S. TV Viewing Drop in 2015 (Study),* Variety (Mar. 3, 2016) (discussing study by MoffettNathanson).

[181] GroupM, *The State of Video*, at 18 (Oct. 2018) (discussing a Morgan Stanley report).

Other evidence confirms that consumption of video content is not dwindling but shifting to other platforms. For all adults 18+, weekly hours spent watching video on computers increased 63.4 percent from 2014 to 2017,[182] and watching on smartphones increased more than six-fold from 2014 to 2018.[183] In the third quarter of 2018, adults 18+ spent over 22.5 hours a week using non-voice applications on smartphones and tablets.[184] Looking at daily media usage across platforms in Q3 2018, consumers ages 18-34 spent only 22 percent of their daily media time using live/time-shifted TV (and 16 percent with radio), but spent 62 percent of their time using apps/websites on smartphones and tablets, accessing the internet on computers and using TV-connected devices (*e.g.*, internet-connected devices, game consoles and DVDs).[185] Even consumers ages 35-49 spent 50 percent of their daily media time with digital media and only 34 percent of their time on traditional TV.[186] The deployment of 5G technology likely will accelerate these trends.[187]

As the number of online options expands, consumers acquire more devices for accessing online content. In mid-2018, 74 percent of U.S. TV households had at least one TV set connected to the internet via a smart TV or other device (*e.g.*, Roku, Chromecast or Apple TV), up from 24 percent in 2010.[188] A recent study found that devices (*e.g.*,

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[182] BIA TV Study at 7-8 and Figure 2. Weekly viewing on computers was calculated differently in 2018, so comparisons across the entire 2014-2018 time period are not possible.

[183] BIA TV Study at 8 and Figure 3 (comparing Q2 2014-2018).

[184] *See The Nielsen Total Audience Report Q3 2018*, at 21.

[185] *See The Nielsen Total Audience Report Q3 2018*, at 7.

[186] *See The Nielsen Total Audience Report Q3 2018*, at 7.

[187] *See* Ooyala, *State of the Broadcast Industry 2019*, at 5 (Jan. 2019) (citing estimates that video could be 90 percent of all 5G traffic).

[188] Leichtman Research Group (LRG), Press Release, *74% of U.S. TV Households Have at Least one Connected TV Device* (June 8, 2018).

smartphones, computers, iPads, tablets or video-capable eReaders) that can be used for watching video (and listening to audio) are ubiquitous, with 98 percent of all households having at least one and with an average of about six per household.[189]

Like audio, the choice of device affects the video content consumed.[190] Just as, for example, owners of Amazon Alexa smart speakers listen more to Amazon Music, Apple can push its Apple TV+ content "to the world's 1.4bn iDevices."[191] Again, like radio broadcasters, TV stations lack such advantages.

The idea that broadcast TV stations are in a distinct product market with no other competitors cannot be squared with the explosion in non-broadcast media content, steep declines in broadcast TV viewing, significant increases in viewing via computers, smartphones and tablets, and the millions of consumers subscribing to online services. Analysts have concluded correctly that "[s]ubscription and ad-supported OTT services are steadily replacing traditional content delivery."[192] FCC regulation must catch up to the reality of audiences' media consumption habits and accurately reflect competition from non-broadcast outlets.

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[189] LRG, *Research Notes 3Q 2018* (citing LRG's *Emerging Video Services XII* study).

[190] *See* Section III.B., *supra* (describing consumers' adoption of digital devices and how that impacts media content).

[191] *Streamlined*, The Economist, at 65 (Mar. 30, 2019).

[192] Ooyala, *State of the Broadcast Industry 2019*, at 4 (Jan. 2019). *Accord* GroupM, *The State of Video*, at 18 (Oct. 2018) (stating that the U.S. has "witnessed pronounced, persistent replacement behavior with Netflix versus traditional TV").

B. TV Stations Compete for Vital Advertising Dollars Against Many Other Platforms in a Marketplace Increasingly Dominated by Digital Outlets

The digital revolution in production and distribution of content is mirrored by equally tumultuous changes in the advertising marketplace.[193] Like radio broadcasters, TV stations are facing vastly greater competition, especially from digital platforms, in an advertising market experiencing overall slower growth, resulting in increasing financial stress on local stations highly dependent on ad revenues.[194]

BIA's analysis of 16 competing local ad platforms estimates that in 2019 TV stations' OTA ad revenue will represent only 11.5 percent of total local advertising ($148.5 billion) in all 210 TV markets across the U.S.[195] TV stations' local ad share has fallen in recent years, and that decline is expected to continue, dropping from 14.2 percent in 2012 to a projected 10.8 percent by 2023.[196] In contrast, pure-play digital advertising platforms are making significant year-over-year gains, rising from a mere 8.1 percent of the total local ad market in 2010, to 31.5 percent in 2019, to a projected 38.2 percent in 2023.[197] Kagan's estimates of the market share and projected growth of the digital ad sector are even higher.[198]

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[193] *See, e.g.*, Kagan 2019 Ad Market Report (observing that the ad market reflects loss of dominance by broadcast and cable in the viewing world, as "more eyeballs migrate to online and mobile viewing"); Kagan 2018 Ad Market Report (documenting continued "disruption in the ad market as dollars increasingly flee traditional media for online and mobile"); Kagan 2015 Ad Market Report (concluding that mobile and internet ads "rule").

[194] *See* Section IV.A., *supra* (discussing broad trends in the ad market in more detail).

[195] *See* BIA TV Study at 10-11 and Figure 6. Even after adding ad revenues from their online operations, TV stations' share of the total local ad market will reach only 12.4 percent. *Id*.

[196] BIA TV Study at 12 and Figure 7.

[197] BIA TV Study at 12-13 and Figure 8 (counting pure-play online and mobile, email and internet yellow pages).

[198] Kagan places digital (online plus mobile) platforms' share of the local ad market at 51.9 percent for 2019, up from just 13 percent in 2009, and projects it to expand to 65.2 percent by 2028. *See* Kagan 2019 Ad Market Report.

The rapid growth of digital ad platforms is being driven, in part, by national online firms' increasing focus on selling advertising targeted to local markets. In 2019, TV stations' online platforms will earn approximately 2.4 percent of the estimated $55.1 billion in local digital ad revenues, which is dwarfed by the shares of Google (31.1 percent) and Facebook (11.1 percent).[199] Significantly, Google's total estimated local ad revenue this year is expected to be approximately $17 billion – about the same amount as the total OTA revenues for all local TV stations combined.[200] Given the growing local focus of the digital ad giants, the FCC can no longer ignore this significant competition to TV (and radio) stations in local advertising markets.

Surveys of advertisers confirm the increasing presence of digital advertising outlets in local markets. BIA's 2018 survey of advertisers of various sizes showed that those advertisers who report using television (broadcast and/or cable) also rely on many other advertising options, increasingly including digital ones. For instance, 77.7 percent of TV advertisers reported using targeted social media ads, 67.7 percent said they utilized mobile location aware ads and 57 percent reported using email.[201] In total, TV advertisers reported using 31 different advertising platforms in 2018.[202] The FCC can no longer rationally contend that local TV stations compete only against other TV stations for ad revenue.

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[199] BIA TV Study at 13-14 and Figure 9. TV stations' online ad revenues represent only 0.9 percent of total local ad revenues across all markets. *See id*. at 11, Figure 6.

[200] BIA TV Study at 14.

[201] BIA TV Study at 17-18 and Figure 12. Large numbers of TV advertisers also used other traditional ad vehicles, including direct mail (63 percent) and newspapers (56.8 percent).

[202] *Id.* at 18.

As referenced in Section IV.B, moreover, digital ad platforms offer advertisers greater ability to target consumers and track their responses than do traditional outlets, including broadcast TV and radio. As one TV analyst wrote last year:

> The beauty of digital advertising, at least to the brand managers who are ultimately tasked with determining ad budgets, is that it is all about numbers. They know exactly who saw the ad. Where they saw it. What they did next. Whether they eventually bought anything remotely like the product. On TV, they know the ad ran.[203]

Digital advertising's targeting and tracking capability also means that advertisers receive higher returns on their marketing spend.[204]

These advantages of digital ad platforms have significant real-world effects for traditional ad-supported media. For example, Borrell predicted in 2018 that auto dealer advertising for new cars on broadcast TV would decline 54 percent by 2023, but digital advertising would rise by 42 percent and cable by 14 percent.[205]

Interestingly, large cable operators, through their jointly-owned NCC Media, announced in 2018 the creation of a new NCC division to "design, deploy and sell unified advertising solutions" using "data and targeting capabilities to create advanced video advertising products."[206] Thus, broadcast TV stations subject to strict ownership limits now

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[203] Alan Wolk, *As Television Gets More Digital, TV Advertising Needs to Follow Suit*, forbes.com (Mar. 1, 2018). *See also, e.g.,* S. Maheshwari and J. Koblin, *Why Traditional TV Is in Trouble*, New York Times (May 13, 2018) ("Companies love digital advertising because it gives them the ability to target ads based on their own lists of customers" and "profiles like 'first-time car buyers' or 'people who like foreign travel.'").

[204] *See* Moody's Investors Service, *US broadcast television industry outlook is stable, but weak* (Apr. 30, 2018) (stating that "broadcasters are losing market share at an accelerating pace to Google and Facebook," which have "very advanced programmatic advertising systems that can more effectively target consumers to produce higher returns on marketing spend"); Borrell Car Ad Study at 4 (discussed in Section IV.B., *supra*).

[205] Borrell Car Ad Study at 11.

[206] Joan Engebretson, *Cable Companies' NCC Media to Sell Targeted Advertising*, telecompetitor.com (Apr. 5, 2018).

must compete against the collaborative targeted advertising products offered by the largest cable/broadband operators.[207] Data show, moreover, that the local advertising revenues earned by cable have steadily increased as a proportion of the advertising revenues of broadcast TV stations in local markets.[208]

Unsurprisingly, this increased competition in the advertising market has caused declines in TV stations' ad revenues over time. BIA found that, over the past 18 years, total OTA ad revenue generated by local TV stations decreased in nominal terms by 13.4 percent, from $20.9 billion in 2000 to $18.1 billion in 2018 (and fell by 17.6 percent from 2006-2018).[209] After accounting for inflation, the decrease in real terms since 2000 is much more significant, falling 40 percent to just $12.5 billion in 2018.[210] The drop in TV stations' ad revenues also can be shown as a percentage of the total U.S. economy over time. Local TV

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[207] *See id*. (observing that "[c]able companies generally avoid competing with each other so it's not surprising to see the major providers collaborating on targeted advertising").

[208] As shown in Attachment F, in the Top 10 DMAs, the advertising revenues of local cable grew from an amount that was approximately 11.3 percent of local broadcast TV station ad revenues in these markets in 2000, to an amount that was about 32.6 percent of local broadcast TV station revenues in 2017. In total, local cable ad revenues in the Top 10 markets reached approximately $1.86 billion in 2017. To put this figure into context, the average of $186 million in local cable ad revenues per each Top 10 market was the equivalent of having an additional 4.6 broadcast TV stations in each market, based on average TV station ad revenues in these markets in 2017. In DMAs 11-25, the ad revenues of local cable rose form an amount that was about 11.4 percent of local broadcast TV station ad revenues in 2000 to an amount that was approximately 31.7 percent of local broadcast TV ad revenues in 2017. The average advertising revenue earned by local cable was about $64 million per market in DMAs 11-25 in 2017, representing roughly the equivalent of three additional broadcast TV stations per market, based on average TV station ad revenues in those markets. Similarly, in market ranges 26-50 and 51-100, the proportion of local cable ad revenues to local broadcast TV station revenues more than doubled from 2000-2017, with cable's 2017 local ad revenues equating to approximately two additional broadcast TV stations in each of those markets. Local cable's ad revenues as a proportion of local broadcast TV station ad revenues also more than doubled in DMAs 101-150 from 2000-2017.

[209] BIA TV Study at 15-16 and Figure 10.

[210] BIA TV Study at 15-16 and Figure 10.

ad revenues represented 0.21 percent of U.S. GDP in 2000 and fell to less than half that figure (0.09 percent) in 2018.[211]

The local advertising market has been disrupted by the entry of new competitors with large market capitalizations, few artificial restrictions on their ownership and the ability to hyper-target and track consumer responses to ads. Digital ad platforms have already far surpassed TV stations' share of local ad revenues and that trend is forecast to continue. Section 202(h) requires the FCC to modernize its local TV rule to accurately reflect nonbroadcast competitors' increasingly dominant role in local advertising markets.

C. The FCC Has No Basis to Retain an Analog-Era View of How Consumers in Local Markets Access Media Content

The Commission can no longer casually dismiss the strong competition facing TV stations on the grounds that the content offered by non-broadcast outlets is not "local."[212] As NAB also discussed in connection with radio,[213] the FCC's conception of local reflects the analog era in which audiences in local markets, due to technological constraints, could access only limited numbers of geographically proximate TV and radio stations. But today's conception of local is consumer, not market, oriented. Individual consumers, using myriad devices, now curate their own assortment of video, audio, online and print content directly relevant to their own needs and interests. An ownership rule myopically focused only on local TV stations is totally at odds with how audiences consume media today.

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[211] BIA TV Study at 16-17 and Figure 11.

[212] *See* Notice at ¶ 49 (explaining that in earlier quadrennial reviews, the FCC declined to consider non-broadcast sources of video programming as competitors to TV stations because their content was generally uniform across markets and they did not make locally-based programming decisions).

[213] *See* Section III.D., *supra* (discussing in detail the altered conception of "local" in the digital marketplace).

Moreover, as NAB explained above and in previous submissions, the multifarious nonbroadcast outlets available to consumers in local markets – regardless of the type of content they provide – divert consumers and advertisers away from TV (and radio) stations, thereby reducing their economic viability and their ability to offer the locally-oriented services that the Commission says it values.[214] Maintaining ownership rules based on the erroneous view that local broadcast stations are the only relevant participants in local markets is therefore counterproductive to the FCC's own goals, as well as arbitrary and capricious and contrary to Section 202(h).

Similar to the FCC's traditional position, DOJ contends that the relevant market for evaluating broadcast TV mergers is limited to local TV stations.[215] Given the extensive evidence set forth above showing unprecedented levels of competition for both viewers and ad dollars from myriad nonbroadcast sources and platforms, NAB disagrees. Both Congress and previous economic studies, moreover, have concluded that cable TV competes with broadcast TV stations for advertising.[216] Additional studies have shown that TV competes

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[214] *See* Section III.D., *supra*; Comments of NAB, MB Docket Nos. 14-50, *et al*., at 15-16, 47 (Aug. 6, 2014) (NAB 2014 Ownership Comments).

[215] *See* Notice at ¶ 54. While DOJ's concern is limited to advertising competition, the FCC has looked more broadly at competition for audiences. *Id*. Given that broadcasters must first successfully compete for audiences as a pre-condition for generating any advertising revenues, the FCC must consider competition for audiences as part of a rational analysis of its ownership rules.

[216] *See* 47 U.S.C. § 521 nt (finding that cable TV systems and broadcast TV stations "increasingly compete for television advertising revenues"); NAB 2014 Ownership Comments at Attachment A, Kevin Caves and Hal Singer, *Competition in Local Broadcast Television Advertising Markets*, Economists Incorporated, at 4 (Aug. 6, 2014) (concluding that "DOJ's definition of the relevant antitrust product market as limited to local broadcast television advertising is not supported by the available evidence," and that a properly defined market would "include non-broadcast alternatives such as cable television"). Other studies examining the carriage decisions of cable operators confirmed that cable and broadcast TV "compete with each other." M.Z. Yan, *Market Structure and Local Signal Carriage Decisions in the Cable Television Industry*, 15 J. Med. Econ. 175, 188-89 (2002)

with other traditional media for advertising[217] and that online advertising platforms are substitutes for advertising on traditional media.[218] The technology sector believes that digital advertising competes against "offline" options.[219]

And even if nonbroadcast platforms are not complete substitutes for broadcast TV, or have not entirely replaced viewing of and advertising on local TV stations, neither the FCC nor DOJ can simply pretend that these outlets have no competitive effect on local stations.[220] Certainly Section 202(h) would require the Commission to reform its ownership rules "as the result of competition" before competitors have totally supplanted broadcast stations.[221] Indeed, Congress concluded over two decades ago that "[i]n a competitive

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(finding, *inter alia*, that larger cable MSOs more often dropped TV stations and that "cable's noncarriage behavior has anticompetitive motivations").

[217] *See, e.g.,* R.B. Ekelund, Jr., G.S. Ford and J.D. Jackson, *Are Local TV Markets Separate Markets?*, 7 Int'l J. Econ. Bus. 79, 91-92 (2000) (concluding that, at the local level, TV advertising is not a distinct market because "radio and newspaper advertising are substitutes for TV advertising"). This study is consistent with several past ownership proceedings where the FCC acknowledged a broader ad market including broadcast TV and radio, cable and newspapers. *See* Section IV.C., *supra*.

[218] *See* Section IV.C., *supra* (describing several studies).

[219] *See, e.g.*, Matt Schruers, *Infographic: How Ad Dollars Are Spent*, Disruptive Competition Project (Jan. 16, 2018) (stating that services "deliver[ing] ads digitally to an individual's mobile device . . . compete directly with television, print and outdoor options"; that "competition is fierce, as advertisers continually shift budgets among platforms to maximize the return on their ad spend"; and that an average advertiser spending its budget in a representative way would spend varying amounts on digital, TV, print, radio and outdoor).

[220] *See* Section IV.C., *supra* (explaining how the diversion of even a limited percentage of advertiser spending from radio stations to other ad platforms can place serious financial stress on local stations).

[221] *See* H.R. Rep. No. 104-204 at 48, 55 (1995) (stating that the 1996 Act's broadcast provisions were intended "to preserve and to promote the competitiveness of over-the-air broadcast stations," and that to ensure the broadcast "industry's ability to compete effectively in a multichannel media market," Congress and the FCC must "reform Federal policy and the current regulatory framework to reflect the new marketplace realities"); *Sinclair*, 284 F.3d at 164 (finding that the FCC's claims of "unresolved questions" about the extent to which nonbroadcast alternatives were meaningful substitutes for broadcast stations, and the "absence of definitive empirical studies" quantifying the extent of

environment, arbitrary limitations on broadcast ownership and blanket prohibitions on mergers or joint ventures between distribution outlets are no longer necessary."[222]

VIII. THE COMPETITION-BASED LOCAL TV RULE IS NOT DESIGNED TO PROMOTE OTHER FCC GOALS, AND ITS CURRENT RESTRICTIONS ON STATION OWNERSHIP HARM LOCALISM AND DO NOT FOSTER DIVERSITY

Perhaps tacitly acknowledging that the competitive transformation of the media marketplace has eroded the justification for the current local TV restrictions, the Notice exhibits confusion as to the fundamental purpose of the local TV rule and suggests it may be needed to serve goals other than competition. Given previous FCC decisions and the language of Section 202(h), the Commission should maintain its focus on competition when evaluating the existing local TV rule and should not shift its rationale to keep a rule no longer necessary in light of competition. In any event, the existing local TV rule harms localism and cannot be justified on diversity-related bases.

A. The FCC Has Previously Made Clear that the Local TV Rule Is Designed to Promote Competition

Responding to the court's decision in *Sinclair v. FCC*, 284 F.3d 148 (D.C. Cir. 2002) in its 2006 quadrennial review, the FCC concluded that the local TV rule is intended to promote competition for viewers and advertisers in local markets and specifically found that the rule was not needed to promote diversity.[223] In the order concluding the 2010 and 2014

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substitutability, were not sufficient to justify counting only broadcast TV stations under the "eight voices" portion of the local TV rule, as this "wait-and-see approach" did not comport with § 202(h)); *Prometheus Radio Project v. FCC*, 824 F.3d 33, 51-52 (3d Cir. 2016) (finding that the FCC's failure to timely complete the 2010 and 2014 quadrennial reviews violated § 202(h) and came at "significant expense" to parties that would have been able, under less restrictive rules being considered by the FCC, to "engage in profitable combinations").

[222] H.R. Rep. No. 104-204 at 55 (1995) (citing the "explosion of video distribution technologies and subscription-based programming sources").

[223] *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2064-2065 (2008) (2008 Ownership Order).

ownership reviews, the Commission again stated that the "primary purpose" of the local TV rule is to promote competition and not to foster viewpoint diversity.[224]

While referring to the local TV rule as "competition-based," the Notice, however, stresses that "[l]ocalism has been a cornerstone of the Commission's broadcast regulation for decades,"[225] and asks a series of questions that appear to reframe the local TV rule as one designed to promote goals other than competition.[226] The Notice (at ¶ 45) specifically seeks comment on whether the local TV rule "is necessary to promote localism or viewpoint diversity," even though the FCC concluded years ago in a less diverse marketplace that the local TV rule "is no longer necessary to foster diversity because there are other outlets for diversity of viewpoint in local markets, and a single-service ownership restriction is not necessary to foster diversity."[227] And while the FCC has in the past justified the *national* TV ownership cap on the basis of localism,[228] it has not justified the local TV rule on that basis.[229]

If the Commission believes it should change the rationale underlying its local TV rule, the Notice should have expressly acknowledged that it is seeking a change and asked specific questions about such a shift, including how changing its rationale comports with the

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[224] 2016 Ownership Order, 31 FCC Rcd at 9887.

[225] Notice at ¶ 46.

[226] *See, e.g.,* Notice at ¶¶ 45, 46, 52, 61.

[227] 2008 Ownership Order, 23 FCC Rcd at 2065-66 (explaining in response to the D.C. Circuit's decision in *Sinclair* that the cross-ownership rules "are designed to foster viewpoint diversity" and that the local TV rule's primary goal is to foster competition).

[228] *See* 2003 Ownership Order, 18 FCC Rcd at 13828.

[229] *See id*. at 13668 (concluding that "some limitations on local television ownership are necessary to promote competition" but that the current local TV rule "does not promote, and may even hinder, program diversity and localism").

FCC's previous decisions.[230] The Notice's inconsistency and lack of clarity as to the very purpose of the local TV rule could lead to the adoption (or retention) of a rule failing to reflect a radically changed marketplace. It would be arbitrary and capricious and contrary to Section 202(h) to now replace the local TV rule's rationale for the purpose of retaining, rather than modifying or repealing, the current rule if it can no longer be justified due to competition.

B. The Current Local TV Rule Impedes, Rather than Promotes, the FCC's Localism Goal

The Commission cannot maintain its current local TV rule as necessary to promote localism, given that the rule tends to hinder rather than foster local services, including news. As an initial matter, NAB stresses that broadcast TV stations have strong incentives to offer locally-oriented content, which helps them stand out in a crowded media landscape and thus maximize their audiences.[231] The economic necessity of attracting viewers – and advertisers – is a far stronger incentive for TV stations to offer programming, including local news, sports and weather, than the incentive any FCC structural ownership rule could provide.[232] In fact, ownership rules that reduce TV stations' ability to achieve economies of

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[230] *See, e.g., AT&T Corp. v. FCC*, 236 F.3d 729, 736-37 (D.C. Cir. 2001) (finding that FCC cannot silently depart from previous policies or ignore precedent, and that it therefore acted arbitrarily and capriciously by announcing a new policy for analyzing an entity's market power without providing a satisfactory explanation for embarking on a new course).

[231] The Notice (at ¶ 46) inquires whether competition from non-broadcast video sources, which have no local programming requirements, creates incentives for TV broadcasters to produce and improve local programming. The answer is yes, because that programming is broadcasting's major differentiating feature and a market niche that stations can fill in an extremely competitive marketplace.

[232] The FCC has repeatedly recognized that TV "broadcasters continue to derive revenues primarily by selling time to advertisers" and that the "amount of revenue generated depends largely on the size and demographic characteristics of the audiences that broadcasters reach." Broadcasters accordingly "seek to provide content that will attract viewers and maximize their audiences." *Communications Marketplace Report*, GN Docket Nos. 18-231, *et al*., FCC 18-181, at ¶ 91 (Dec. 26, 2018).

scale harm their ability to produce or acquire quality programming, especially expensive programming like local news.

Over the period 2002-2017, news costs, on average, have accounted for nearly 24 percent of TV stations' total expenses (and over 26 percent of the total expenses of ABC/CBS/NAB/Fox stations).[233] During the most recent five-year period for which data is available (2013-2017), stations nationwide spent an average of about $3.1 million per year producing local news.[234] Stations in larger markets and major network affiliates spent much greater amounts on news annually during this period.[235] Local stations also expend considerable sums to acquire the rights to programming, including syndicated programs.[236]

More freely permitting common ownership of TV stations in the same market would materially assist stations in bearing these substantial news production and other programming acquisition costs. This is the case because, as multiple economists have explained in previous FCC submissions, TV broadcasting generally, and local news production specifically, are "subject to strong economies of both scale and scope," which are, by definition, "associated with falling unit costs of production" and "hence are *prima facie* welfare enhancing."[237] Placing undue limitations on broadcasters' ability to achieve

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[233] *See* NAB Television Financial Reports 2003 to 2018.

[234] *See* NAB Television Financial Reports 2014 to 2018.

[235] From 2013-2017, the average news expenses of stations in the ten largest markets exceeded $9.6 million annually. ABC/CBS/NBC/Fox stations in the top ten markets spent an average of nearly $15.9 million on news each year in this period. *Id*.

[236] During the 2013-2017 period, stations nationwide spent an average of nearly $1.4 million per year to acquire programming, primarily syndicated. Again, stations in large markets spent much greater amounts, with those in the top ten markets spending nearly $6.2 million annually to obtain the rights for syndicated programs. *Id*.

[237] J.A. Eisenach & K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 1-2 (2011) (Economies of Scale Report), Attachment A to Reply Decl. of J.A. Eisenach and K.W. Caves (Reply Decl.), NAB Reply Comments at Appendix A, MB Docket No. 10-71 (June 27, 2011). *Accord* Decl. of Mark Israel and Allan Shampine, NAB

these economies "result[s] in higher costs, lower revenues, reduced returns on invested capital [and] lower output," including "significantly reduc[ed]" local news output.[238]

Unsurprisingly, multiple studies conducted by the FCC or submitted by parties in previous quadrennial reviews have shown that commonly owned or operated TV stations are more likely to air local news and public affairs programming, greater amounts of news programming and/or programming more valued by consumers (*i.e.*, that earns higher audience share).[239] The ability of broadcasters in local combinations to spread their fixed costs over multiple stations with greater combined revenues improves their financial position and permits them to increase news output, which empirical research has consistently found "is strongly and positively correlated with station revenues."[240] Enabling broadcasters to reduce their fixed costs by realizing economies of scale through local combinations is especially important in smaller markets.[241]

Comments, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014) (finding that economies of scale and scope exist in TV broadcasting and that both lead "to increased investment in news programming"). NAB hereby incorporates these economic analyses into the record in this proceeding.

[238] Economies of Scale Report at 2-3.

[239] *See, e.g.*, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming,* Section I, FCC Media Ownership Study #4, at 21 (2007); M. Baumann and K. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage: An Update*, Attachment A to NAB Reply Comments, MB Docket No. 06-121 (Nov. 1, 2007); BIA, *Economic Viability of Local Television Stations in Duopolies*, Attachment H to NAB Comments, MB Docket No. 06-121 (Oct. 23, 2006).

[240] Economies of Scale Report at 4. *See also id*. at 45-46 & Table 8 (citing multiple empirical studies finding a "positive and statistically significant relationship between revenue and local news production"). *See also Ex Parte* Submission of NAB, MB Docket Nos. 09-182, *et al*. at 7-8 (Mar. 21, 2014) (discussing studies showing importance of stations' financial standing to provision of news and public affairs programming).

[241] Reply Decl. at ¶ 26 (finding that "depriving stations, especially smaller ones, of the ability to engage" in local combinations and joint arrangements could significantly impact "both the production of local news" and "stations' ultimate financial viability").

The Commission, moreover, expressly recognized the validity of NAB's arguments in 2017, when it found that eliminating the eight voices component of the local TV rule would promote localism. The FCC stated that modifying the local TV rule would "help local television broadcasters achieve economies of scale and improve their ability to serve their local markets."[242] It noted that markets most affected by the eight voices requirement – "including many small and mid-sized markets that have less advertising revenue to fund local programming – are the places where the efficiencies of common ownership can often yield the greatest benefits."[243] The Commission also specifically found that the eight voices element of the rule "prevent[ed] combinations that would likely produce significant public interest benefits," such as greater investment in news and other public interest programming meeting the needs of a station's local community.[244] The FCC's own logic thus supports reform of the blanket ban on top four station combinations on the grounds that it harms, rather than fosters, localism.

Given the evidence described above and the FCC's 2017 conclusions about economies of scale fostering community-responsive service, the Notice's inquiries (at ¶ 52) about considering sources of local news and other local programming as a separate product market appear unnecessary at best, assuming the FCC's ultimate goal is to promote TV stations' provision of such programming. Attempting to define a "local programming" or "local news" product market also would involve the Commission in constitutionally sensitive questions about program content and/or lead to an arbitrary definition of "local."

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[242] 2017 Recon Order, 32 FCC Rcd at 9834.

[243] 2017 Recon Order, 32 FCC Rcd at 9836.

[244] 2017 Recon Order, 32 FCC Rcd at 9835-36.

Assume, for example, that the FCC wants to avoid constitutionally suspect evaluations of stations' program content.[245] For that reason, the Commission might decide to treat all locally-produced broadcast programming as "local," regardless of the "localness" of its content. But such a production-based definition of "local" would be contrary to long-standing FCC determinations, affirmed by the courts, that programming "address[ing] local concerns need not be produced or originated locally to qualify as 'issue-responsive' in connection with a licensee's program service obligations."[246] Nothing inherent in the local production or origination of broadcast programming means that such programming serves local needs and interests better than programming produced regionally or nationally.[247] Complications such as these would make it difficult to define rationally a "local news" or

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[245] If, for instance, the FCC attempted to define a local news market, how would it define "news"? Would a TV or radio station's magazine show be regarded as news? Or would only "hard" news (however defined) count? And if the FCC tried to define a local programming market, would it engage in determinations as to the "localness" of content, and how would it evaluate content for the sufficiency of its local character or focus? Commission involvement in this type of content evaluation implicates the First Amendment and raises questions about the FCC's statutory authority. *See, e.g., Turner Broadcasting System, Inc. v. FCC*, 512 U.S. 622, 650-52 (1994) (discussing the minimal extent to which the FCC is allowed "to intrude into matters affecting the content of broadcast programming"); *MPAA, Inc. v. FCC,* 309 F.3d 796, 802-803, 805-807 (D.C. Cir. 2002) (finding that the powers of the FCC in Sections 1, 4(i) and 303(r) of the Communications Act did not authorize the adoption of rules "significantly implicat[ing] program content").

[246] *Broadcast Localism*, Notice of Inquiry, 19 FCC Rcd 12425, 12431 (2004). In rejecting claims that the Communications Act requires licensees to provide locally-produced programming, the courts have agreed with the Commission. *Office of Commc'n of the United Church of Christ v. FCC,* 707 F.2d 1413, 1430 n. 54 (D.C. Cir. 1983) (stating that Section 307(b) of the Act is satisfied so "long as the Commission requires licensees to provide programming – whatever its source – that is responsive to their communities").

[247] Consider, for example, TV broadcast groups, including Hearst, Nexstar and Gray, that maintain their own news bureaus in Washington, DC, which provide coverage of events and issues that impact the markets where these groups own stations. Merely because these bureaus' news programming originates in Washington, DC does not mean that the programming fails to serve local audiences or that it should – or even logically could – be excluded from any local news product market.

"local programming" product market and, thus, would likely lead to an irrational local TV rule that would fail to effectively promote the FCC's actual localism goals.

As the Notice (at ¶ 52) indicates, moreover, any local news market would have to include the myriad non-broadcast sources of information accessible to consumers today, including newspapers, magazines, internet websites and social media, with all the attendant legal and practical complexities of determining whether they and/or their content qualify as "local." Recent evidence has only reconfirmed that consumers increasingly turn to non-traditional outlets for news of all types, accessed via a variety of devices.[248] Any attempt to define a local news market, or to retain the current local TV rule based on localism concerns, must take these developments into account.

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[248] Social media has surpassed print newspapers as a news source, with more Americans "often" using social media than newspapers for news. E. Shearer, Pew Research Center, *Social media outpaces print newspapers in the U.S. as a news source* (Dec. 10, 2018); *see also* K.E. Matsa, Pew Research Center, *News Use Across Social Media Platforms 2018* (Sept. 10, 2018) (reporting that 68 percent of Americans get at least some news from social media). Perhaps more importantly, social networking sites have become a "key venue for political debate and discussion" and a "place to engage in civic-related activities." M. Anderson, *et al*., Pew Research Center, *Activism in the Social Media Age*, at 5 (July 11, 2018). From 2016 to 2017, viewership of local news on network-affiliated stations declined 15 percent in the morning time slot, seven percent in both the late night and early evening time slots and four percent in the midday time slot. Pew Research Center, *Local TV News Fact Sheet* (July 12, 2018). In a survey conducted in August 2017, only 37 percent of U.S. adults reported often getting news from local TV, down from 46 percent in 2016. K.E. Matsa, Pew Research Center, *Fewer Americans rely on TV news* (Jan. 5, 2018). And even this smaller percentage masks much lower usage of local TV news among those under age 50. *Id*. (reporting that only 18 percent of adults ages 18-29, and 28 percent of those ages 30-49, often get news from local TV). Millennials are particularly heavy digital news consumers and are the most mobile media consumers. Nielsen, *Millennials on Millennials: TV and Digital News Consumption*, at 4-5 (2018) (reporting that, on a monthly basis, 36 percent of millennials ages 21-37 *only* use digital news and 45 percent *only* use mobile devices to access news). A recent report found that nearly as many U.S. adults overall prefer to get their local news online as through a TV set. A. Mitchell, *et al*., Pew Research Center, *For Local News, Americans Embrace Digital but Still Want Strong Community Connection,* at 3 (Mar. 26, 2019) (Pew Local News Report).

Finally, the FCC must be aware of the differences between traditional product markets and information markets. Economists have pointed out that information markets are broader and include larger numbers of relevant competitors, in part because "small firms that are insignificant as product-market competitors can play outsized roles in the information market."[249] As a result, traditional concentration measures that rely on the "relative *market shares* of firms are inappropriate as measures of information-market competition."[250] A recent survey asking Americans where they obtain local news illustrates this point. While traditional news sources, including TV and radio stations, topped the list, this survey found that 64 percent of adults get local news from local organizations (*e.g.*, school groups or churches), 64 percent from local government agencies, 61 percent from non-daily newspapers, 59 percent from online forums or discussion groups, and 59 percent from community newsletters or listservs.[251] To properly define a local news product market, the FCC must account for the breadth of the information marketplace and include multiple non-traditional news sources.

Given the constitutional implications of basing, even in part, the local TV ownership rule on the content provided by various competing outlets, the practical problems with rationally defining a product market based on local production or origination and the difficulties of appropriately defining a local news/information market, NAB urges the Commission not to head down this path. Instead, it should reaffirm its commitment to a competition-based local TV rule, firmly grounded in the real-world economics of TV stations

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[249] Matthew Gentzkow and Jesse Shapiro, *Competition and Truth in the Market for News*, 22 J. Econ. Perspectives 133, 150 (Spring 2008).

[250] *Id*. at 151 (emphasis in original).

[251] Pew Local News Report at 4.

and recognizing their need to attract audiences, generate advertising revenue and achieve economies of scale in a highly competitive marketplace.

C. Diversity-Related Concerns Provide No Basis for Retaining the Existing Local TV Rule

The Commission cannot retain the local TV rule – or, indeed, any ownership rule – based on the promotion of viewpoint diversity. In the internet age, consumers' access to diverse viewpoints seems virtually limitless. Over two decades ago, the Supreme Court recognized that the internet had transformed the landscape by allowing people anywhere access to "content" as "diverse as human thought."[252] The Court more recently identified "cyberspace," and "social media in particular," as the "most important places . . . for the exchange of views today."[253] The internet also has substantially reduced the ability of traditional media outlets to act as "gatekeepers" to information or to set the news agenda, thereby further undermining diversity-related rationales for maintaining the ownership rules.[254] Indeed, even as early as the 2006 quadrennial review, the Commission recognized that the "'gatekeeping' aspects of the traditional media's role are in turmoil," due to the "new and broader array of inputs from online sources."[255] As a general matter, the FCC now would need to clear a high bar to justify broadcast-only structural ownership rules as necessary to ensure the availability of diverse viewpoints.

More specifically, the Commission cannot justify retention of its ownership rules, including the local TV rule, on the grounds that those rules foster viewpoint diversity because it has been unable to demonstrate a connection, buttressed by evidence, between

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[252] *Reno v. ACLU*, 521 U.S. 844, 870 (1997).

[253] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017).

[254] *See, e.g.*, NAB 2014 Ownership Comments at 28-31.

[255] 2008 Ownership Order, 23 FCC Rcd at 2031-32.

ownership of media outlets and viewpoint diversity in the marketplace. In its order in the 2010 and 2014 ownership reviews, the FCC concluded that it lacked evidence demonstrating a connection between either minority ownership or female ownership and viewpoint diversity.[256] Neither the Commission nor commenters in these previous ownership proceedings were able "to identify such evidence" or even to "devise study designs that are likely to provide such evidence."[257] The FCC went on to identify significant problems impeding the study of the connection between diversity of viewpoint and ownership, including the "lack of a reliable measure of viewpoint."[258] Given that the Commission has been unable to design a reliable study to analyze the link between ownership and viewpoint diversity – let alone identify evidence actually establishing such a link – then the FCC cannot justify retention of the local TV or other ownership rules on the basis they affirmatively promote viewpoint diversity in the marketplace.[259]

The inability of the Commission and parties in previous proceedings to empirically demonstrate a link between the ownership rules and greater viewpoint diversity is unsurprising, given the extensive scholarship concluding that factors other than separate ownership primarily drive viewpoint diversity on media outlets. In the last quadrennial review, NAB provided a non-exhaustive list of 15 empirical and theoretical studies from

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[256] *See* 2016 Ownership Order, 31 FCC Rcd at 9987-92, 9994-95.

[257] *Id*. at 9995; *see also id*. at 9987-88.

[258] *Id*. at 9995 n. 944.

[259] The FCC similarly has been unable to establish a significant link between ownership and viewpoint diversity outside the context of minority and female ownership. For example, the FCC previously justified the (now eliminated) newspaper/broadcast cross-ownership rule on the grounds that the agency could not "conclude that ownership can never influence viewpoint." 2008 Ownership Order, 23 FCC Rcd at 2039. But the FCC failed – in fact did not even try – to make an evidentiary case that the newspaper/broadcast cross-ownership ban in effect for decades had actually fostered greater diversity of viewpoints in the marketplace.

economists, political scientists and other scholars showing that market forces, especially consumer preferences, drive media "slant" and diversity in coverage.[260] More recent studies have reconfirmed that media slant is "demand-driven," as news outlets in a competitive marketplace seek to attract audiences by adapting to their preferences.[261]

These studies strongly imply that rules limiting the ownership of media outlets will be largely ineffective in fostering viewpoint diversity because that diversity is substantially driven by consumers. And several other studies, including ones commissioned by the FCC, have concluded that increases in common ownership of TV stations encouraged diversity, the exact opposite of the theory behind structural ownership limits.[262] In light of the available evidence, retention of the existing rule on the grounds it is necessary to promote viewpoint diversity would be arbitrary and capricious.[263]

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[260] *See* NAB 2014 Ownership Comments, at 79-81 & Attachment C (identifying and describing the studies).

[261] *See, e.g.*, Cagdas Agirdas, *What Drives Media Bias? New Evidence From Recent Newspaper Closures*, 28 J. Med. Econ. 123, 141 (2015) (finding that newspapers changed their slant to increase revenues by attracting the former readers of a closed newspaper in the same market, and concluding that "newspaper editors or owners do not have as much influence on the agenda-setting behavior of newspapers as the readers").

[262] *See* A. Rennhoff and K. Wilbur, *Local Media Ownership and Viewpoint Diversity in Local Television News* (Dec. 2012 Update) (FCC-commissioned study finding that viewpoint diversity is positively associated with increases in the number of co-owned TV stations in a market); L. George and F. Oberholzer-Gee, *Diversity in Local Television News* (2011) (FCC-commissioned study finding that increases in ownership concentration often encourage diversity and that greater concentration increases the number of politicians covered in local news); M. Spitzer, *Television Mergers and Diversity in Small Market*s, 6 J. Comp. L. & Econ. 705 (2010) (concluding that allowing jointly owned TV stations in small markets will produce viewpoint diversity in local news and public affairs programming). These studies are consistent with extensive evidence showing that common ownership of radio stations promotes program diversity. *See* Section V.C., *supra*; *see also Schurz Commc'n, Inc. v. FCC*, 982 F.2d 1043, 1054 (7th Cir. 1992) (observing that, if a single firm owned all TV channels in a market, its optimal strategy would be to air in each time slot a varied menu of programs to appeal to every substantial group of potential viewers in the market).

[263] *See, e.g., Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 763-64 (6th Cir. 1995) (finding wireless ownership restrictions arbitrary, due to FCC's failure to "show[] that *it actually had*

Finally, no evidence indicates that reforming the local TV rule will harm minority or female ownership of TV stations.[264] According to the Commission, minority ownership of TV stations increased, not decreased, following the modest loosening of the local TV rule in 1999.[265] The FCC has similarly found that minority ownership of radio stations grew after the 1996 Act reformed the radio ownership rules.[266] And as NAB has previously explained, the maintenance of ownership limits does nothing to foster new entry into broadcasting because those rules do not address the primary obstacle facing small entities and new entrants, particularly minorities and women – a lack of access to capital.[267]

In contrast, the FCC's recently established incubator program promotes diversity in radio broadcasting by increasing new entrants' access to capital by incenting established broadcasters to provide substantial financial assistance (and other technical and managerial assistance) to prospective radio station licensees.[268] NAB now urges the

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some factual support for its conclusions") (emphasis in original); *Bechtel v. FCC*, 10 F.3d 875, 880-81 (D.C. Cir. 1993) (finding criterion for licensing broadcast applicants arbitrary and capricious because, despite years of experience with its policy, the FCC had accumulated no evidence that the policy achieved any of the benefits that the FCC attributed to it).

[264] *See* Notice at ¶ 72.

[265] *See* 2016 Ownership Order, 31 FCC Rcd at 9895 (examining data from NTIA, FCC and Free Press).

[266] *Id*. at 9911-12 (reviewing data from NTIA, FCC and Free Press). *See also* NTIA, *Changes, Challenges, and Charting New Courses: Minority Commercial Broadcast Ownership in the United States,* at 38 (Dec. 2000) (finding that minority groups increased their radio ownership after 1996); Kofi A. Ofori, *Radio Local Market Consolidation & Minority Ownership,* at 10-12, Appendix One to Comments of MMTC, MM Docket Nos. 01-317 and 00-244 (Mar. 27, 2002) (showing increase in the number of minority owned and controlled radio stations since 1997).

[267] *See* Reply Comments of NAB, MB Docket No. 17-318, at 23-24 (Apr. 18, 2018); Reply Comments of NAB, MB Docket No. 17-289, at 2-3 (Apr. 9, 2018).

[268] The FCC has identified the "lack of access to capital and the need for technical and operational experience" as the "primary barriers" to station ownership by new and diverse entities. *Rules and Policies to Promote New Entry and Ownership Diversity in the*

Commission to expand its current incubator program to apply to television. Given that new entrants into the TV industry need access to greater amounts of capital than prospective radio station licensees, any serious effort to increase diverse ownership in TV broadcasting must address the access to capital problem. The FCC's incubator program does so; retaining the current local TV rule without change would not. For all the reasons set forth above, the existing local TV restrictions are not needed to promote diversity and harms localism.

IX. SECTION 202(H) REQUIRES THE FCC TO MODERNIZE ITS LOCAL TV RULE

A. The FCC Should Remove the *Per Se* Ban on Top Four Station Combinations

Although the Commission slightly modified the top four prohibition in its 2017 Recon Order, the change adopted falls short of the reform needed.[269] Given the sweeping marketplace changes that have occurred in the 20 years since the top four ban was adopted, and the data demonstrating the lack of a justification for it, retaining the current *per se* rule would be arbitrary and capricious and contrary to Section 202(h).

Absent a waiver, the current rule effectively prohibits local TV combinations in many smaller markets where there are four or fewer full power TV stations, and very significantly impedes efficient station combinations in markets with only five or six stations. Yet these markets have disproportionately smaller advertising bases to support station operations. As shown in Attachment G, the average annual advertising revenue for a TV station in a top ten market is nearly 12 times greater than the revenue of a station in markets 151-210 (and

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Broadcasting Services, Report and Order, 33 FCC Rcd 7911, 7913, 7915 (2018) (stating that record showed that "access to capital is most often the barrier" to station ownership).

[269] *See* 2017 Recon Order, 32 FCC Rcd at 9838. The FCC appropriately recognized that facilitating certain local TV combinations would "allow broadcast stations to achieve economies of scale and better serve their local viewers," and took a positive step by announcing it would consider top four waiver requests. *Id.* Prospective combinations, however, have faced uncertainty in the case-by-case waiver process. Due to this uncertainty, few broadcasters have applied for a waiver, and the FCC has not yet granted any waivers.

about eight times larger than the average station in markets 101-150). And as the number of households goes down, so does the advertising value of each TV household in those markets. The average ad revenue per TV household in the top ten markets is $181, but only $113 in markets 151-210. Not only do smaller market stations face challenges because they serve smaller audiences, they also earn fewer advertising dollars for the households they do serve. And, they are the stations most penalized by the operation of the current top four restriction.

The BIA TV Study specifically analyzes the competitive position of top four stations in markets of all sizes, looking at both ratings and revenue shares, and dispels the myth that top four stations occupy a position of competitive power in most local markets. Instead, significant gaps in both audience and revenue share exist among the top four stations in many markets, with the third and fourth ranked stations – and some second ranked stations – operating as competitive "also rans" to a high-performing top ranked station. Without the ability to realize economies of scale through common ownership, these stations will struggle to generate the revenue needed to invest in programming, operations and equipment, impeding their ability to be vibrant competitors in their local markets.

1. Top Four Stations Have Widely Divergent Audience Shares, with the Leading Station Often Attracting More Viewers than Other Stations Combined

The BIA TV Study focuses on the 128 markets that have at least four full power commercial TV stations and in which the stations ranked among the top four in audience share are all full power commercial.[270] On average in these 128 markets, the top ranked

[270] While BIA regards the group of 128 markets as the most appropriate one for conducting its analyses, BIA's report duplicated several analyses using all 159 markets with at least four full power commercial TV stations, including the 31 markets with noncommercial, Class A or LPTV stations ranked among the top four in ratings. BIA TV Study at 19 & note 20.

station's audience share was 37.5 percent higher than the second ranked station's audience share. Looking at the median market, the top ranked station's audience share was still 25 percent higher than the second ranked station.[271] Similar or larger gaps persist throughout the top four grouping, with an average 34.5 percent gap in ratings between the second and third ranked stations (median 21.7 percent) and an average 54.8 percent gap in ratings between the third and fourth ranked stations (median 25 percent).[272]

In 56 of the 128 markets, even the combined audience share of the third and fourth ranked stations is smaller than that of the top ranked station, including one market where the audience share of the top ranked station is more than triple that of the combined third and fourth ranked stations.[273] In nine of the markets, the top ranked station's audience share is twice or more the size of the number two station, and in 32 additional markets, the top station's audience share is at least 50 percent greater than the second ranked station's share.[274] The Commission should regard these wide gaps in audience share among top four stations as significant.[275]

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[271] BIA TV Study at 20.

[272] BIA TV Study at 20.

[273] *See* BIA TV Study at 20-21, Table 1 (reporting a 15.72 share for the top ranked station and a combined 4.35 share for the third and fourth ranked stations in the Macon, GA market). Nearly 84 percent of these 56 markets are mid-sized or small.

[274] BIA TV Study at 20, note 21. When examining all the 159 markets with at least four full power commercial TV stations (including the 31 markets in which Class A, low power or noncommercial stations are ranked among the top four in audience share), the very large disparity between the top rated station and other stations occurs in even a greater proportion of markets. In 76 of the 159 markets, the combined audience share of the third and fourth ranked stations is less than the number one station's share. *Id* at 22.

[275] *See* 2003 Ownership Order, 18 FCC Rcd at 13695 (indicating that 25 percent was a significant difference in audience share).

The BIA TV Study also examined the 112 markets that have at least five full power commercial TV stations and in which the top four rated stations are all full power commercial stations, and compared the audience share gaps between those stations.[276] In two-thirds of these 112 markets, the largest audience share gaps were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations, not between the fourth and fifth ranked stations.[277] This evidence undermines the rationale of the top four rule by showing that in a clear majority of markets, the largest ratings gaps are among top four stations, not between the fourth and fifth ranked stations.[278]

2. Even Larger Gaps Exist Among Top Four Stations' Advertising Revenue Shares

Advertising revenue is an even more important metric of TV stations' performance. After all, revenues, not ratings points, pay for improved programming, local news operations and personnel. Given competition from digital ad platforms providing businesses the ability to target their ads precisely, TV stations today also must invest in data-driven and automated sales operations to offer potential advertisers more comparable advertising products.[279] And stations face looming investments in technology, including in ATSC 3.0, as their competitors race to 5G. BIA's review of advertising revenue data reveals large competitive gaps among

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[276] Again, while BIA regards the group of 112 markets as the most appropriate for this analysis, the report duplicated the analysis with all 129 markets with at least five full power commercial TV stations, including the 17 markets with noncommercial, Class A or LPTV stations ranked among the top four in ratings. *See* BIA TV Study at 31.

[277] BIA TV Study at 32-33 & n. 29. With respect to the 129 markets with at least five full power commercial TV stations (including the 17 markets in which Class A, LPTV or noncommercial stations are ranked among the top four in audience share), the largest gaps in ratings were between the first and second ranked, the second and third ranked or the third and fourth ranked stations in over 67 percent of the markets. The largest audience share gap was between the fourth and fifth ranked stations in a clear minority of markets.

[278] The FCC has consistently relied on a gap in audience share between the fourth and fifth ranked stations as its justification for the top four rule. *See* Notice at ¶ 56 (citing 2016 Ownership Order, 31 FCC Rcd at 9880).

[279] See, *e.g.,* BIA Study at 1-2.

top four stations and economic challenges to their competitive viability, making reform of the local TV rule urgent.

The differences in revenue shares among top four stations are even more pronounced than the audience share gaps. On average, the top ranked station's revenue share was 38 percent higher than the second ranked station's share (with a median difference of 23.7 percent). The percentage difference in revenue share then increases, with second ranked stations earning an average of 46.8 percent more revenue than the third (median 29 percent), and the third ranked station earning an average of 75.9 percent more revenue than the fourth (median 32.4 percent).[280] As the BIA TV Study points out, it is significant that the gaps in ad revenue share between the second and third, and third and fourth, ranked stations are much larger than the audience share gaps. This demonstrates that stations attracting fewer viewers are in an even worse competitive position than their audience shares suggest, and the revenue disadvantage makes it more difficult for these stations to make investments to improve their competitive position in the market.[281]

As with audience shares, the BIA TV Study compared the revenue shares of the top station with the combined revenue shares of lower ranked stations. In 61 of these 128 markets, the leading station earned a revenue share outstripping the combined revenue shares of the third and fourth ranked stations (and over 88 percent of those 61 markets are

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[280] BIA TV Study at 24-25 (examining the same 128 markets with four or more full power commercial TV stations and in which the top four rated stations are all full power commercial). In 15 of these markets, the number one station's revenue share is twice or more the size of the number two station's share, and in an additional 25 markets, the number one station's revenue share is at least 50 percent greater than the number two station's share). *Id.* at n. 24.

[281] *See* BIA TV Study at 25.

mid-sized or small).[282] In some markets, the revenue share gaps are enormous, including one market where the top station earned *five times* as much revenue as the third and fourth stations combined.[283] Focusing on fourth ranked stations specifically, BIA found 25 markets where the number four station received 10 percent or less of the local TV advertising revenue in its market. And in those markets, the number four station's share of total local ad revenue across all media outlets ranged from 0.1 to 1.5 percent.[284] BIA also found that third and fourth ranked stations' revenue shares have generally declined over time.[285]

Significantly, the disparities among top four stations' ad revenue tend to be the greatest in smaller markets, where the overall advertising pie is most limited. As a result, third and fourth ranked stations particularly struggle financially in mid-sized and small markets.[286] Even second-ranked stations earning 15-25 percent of local TV station ad revenues in smaller markets "may experience significant difficulties in making the necessary investments in programming and physical plant to remain viable competitors."[287] And it is in

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[282] BIA TV Study at 26-27 and Table 3. When examining all the 159 markets with at least four full power commercial stations (including those 31 markets in which Class A, low power or noncommercial stations are among the top four in ratings), the very large disparity between the top station and the third and fourth ranked stations occurs in an even higher proportion of markets. In 86 of the 159 markets, the combined revenue share of the third and fourth ranked stations is less than the top ranked stations' revenue share. *Id*. at n. 26.

[283] BIA TV Study at Table 3. In 34 of the 128 markets, the top station's revenue share also surpassed the combined share of the number two and number four stations, and in 19 markets the leading station's revenue share even exceeded the number two and three stations' combined share. *Id.* at 28-30, Tables 4-5.

[284] BIA TV Study at 22-24 and Table 2.

[285] *See* BIA TV Study at 33-35 and Figures 13-14 (examining the ad revenue shares of the number three and four stations from 2013-2017).

[286] *See* BIA TV Study at 26, 31.

[287] BIA TV Study at 31 and Tables 4-5 (also explaining that second ranked stations may earn only two to four percent of total ad revenues in local markets).

these smaller markets with fewer stations where the top four rule has the most onerous effect in restricting station combinations.

Finally, the BIA TV Study found that revenue share gaps among top four stations are greater than the revenue share gaps between fourth and fifth ranked stations in most markets. In nearly 70 percent of the 112 markets examined, the largest revenue share gaps were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest revenue share gap was between the fourth and fifth ranked stations in only about 31 percent of the markets.[288] Contrary to the premise of the top four rule, these revenue data show no unique point of demarcation between the fourth and fifth ranked stations. Just as with ratings, the largest competitive gaps in local markets are more likely to be found among top four stations.

The evidence in the BIA TV Study demonstrates the need to eliminate the blanket ban on top four station combinations. The restriction prevents combinations necessary for struggling third and fourth (and some second) ranked stations to take advantage of economies of scale and make vital investments to ensure their future viability. BIA's analysis also showed that continuing to regulate the top four stations in local markets as a defined, competitively more dominant group would be irrational. Retention of the *per se* top four rule therefore would violate Section 202(h) and be arbitrary and capricious.[289]

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[288] BIA TV Study at 31-32 (examining the 112 markets that have at least five full power commercial TV stations and in which the top four stations in terms of ratings are full power commercial stations). Considering all 129 markets with five or more full power commercial TV stations (including markets where Class A, LPTV or noncommercial stations are ranked among the top four in audience share), the results are even more pronounced, with nearly 73 percent of markets showing the largest gaps in revenue share to be among top four stations. The largest revenue share gap was between the fourth and fifth ranked stations in under 28 percent of the markets. *Id.* at n. 28.

[289] *See State Farm*, 463 U.S. at 43 (citations omitted); *Burlington Truck Lines v. U.S.,* 371 U.S. 156, 168 (1962) (setting aside order of federal agency where it failed to articulate a

B. The FCC Should Eliminate Its *Per Se* Ban on Combinations of More than Two TV Stations in All Local Markets

In response to the FCC's inquiry,[290] NAB urges the Commission to remove the *per se* prohibition on owning more than two stations in any local market. The current across-the-board rule is divorced from competitive reality in two important ways. First, the restriction is based on the premise that TV stations only compete for audiences and advertisers against other TV stations in the same market. As shown in detail in Section VII, this premise is false, and the FCC cannot base its local TV rule on an economically faulty premise.[291] The evidence also shows that combinations of more than two stations in a local market would not result in competitive harm, due to the small audience and advertising revenue shares that even a broadcaster with multiple stations would earn.[292]

Second, the *per se* two-station limit fails to take account of actual competitive conditions in any local market. This across-the-board restriction applies the same across all

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"rational connection between the facts found and the choice made"). Retaining the top four rule while failing to adequately consider the precarious financial position of many top four stations and wide variances in their ability to attract audiences and advertising dollars would violate this standard. *See, e.g., Comcast Corp. v. FCC*, 579 F.3d 1, 7-8 (D.C. Cir. 2009) (finding cable horizontal ownership rule arbitrary and capricious because the FCC failed to account for competitive impact of satellite and fiber optic companies, despite extensive record evidence of increasing competition among those video providers); *American Radio Relay League, Inc. v. FCC*, 524 F.3d 227, 241 (D.C. Cir. 2008) (faulting FCC for dismissing empirical data and failing to grapple with studies in the record).

[290] Notice at ¶ 55 (asking whether the FCC should change the numerical limit on how many TV stations may be owned in a DMA).

[291] *See, e.g., Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 969 (D.C. Cir. 1999).

[292] The BIA TV Study showed that even top four ranked TV stations earn very limited shares of total local ad revenues. For example, during the period 2013-2017, the third ranked station in the median market earned an average 2.42 percent of the total local ad revenues in its market. And over this five-year period, the fourth ranked station in the median market earned, on average, an even more miniscule 1.78 percent of the total local ad revenues in its market. *See* BIA TV Study at 33-35. BIA also documented the small audience shares earned by many top four rated stations. *See, e.g., id*. at 20-21 & Table 1.

markets, regardless of the number of TV stations in a market, the size of the market's advertising base or the competitive strength of the stations involved in the proposed combination. Assume, for example, that in a large market with a dozen full power commercial stations, a single entity proposed owning the three commercial stations lowest ranked in audience share and/or advertising revenues. Even if the relevant market were limited to only broadcast TV stations (which clearly it should not be), this proposed combination would not present competitive harms.[293] Rather than a dominant competitor, the result of this combination would be a more viable one.

Banning the ownership of more than two stations in all instances inevitably results in prohibitions on combinations that would serve the public interest by allowing competitively challenged stations to take advantage of "*prima facie* welfare enhancing" economies of scale.[294] Lower ranked stations struggling to earn audience share and generate ad revenue would particularly benefit from the increased cash flow that results from realizing scale economies. And increased cash flow helps stations afford improved programming services and technology upgrades that will enable them to better serve their viewers in the future.

A competition-based local TV rule cannot rationally ignore actual competitive conditions in local markets. The current *per se* rule prohibiting common ownership of more than two stations in all local markets, regardless of their size, their ability to support multiple separate owners, and the presence of competing nonbroadcast media outlets and ad

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[293] After all, if even the third and fourth ranked stations in local markets often earn very small audience and revenue shares, those ranked 10th, 11th and 12th (or even 6th, 7th and 8th) would earn commensurately lower levels of viewership and ad dollars. Many markets have large numbers of full power commercial TV stations. On average in 2017, the top ten markets had 15.2 full power commercial stations each, markets 11-25 had 10.6 stations and markets 26-50 had 8.3 stations. *See* BIA TV Study at 36.

[294] Economies of Scale Report at 1.

platforms – or, indeed, without considering any competitive "facts on the ground" – is arbitrary and capricious and contrary to the public interest.[295] The FCC therefore should eliminate its across-the-board ban on owning more than two stations in the same market.

C. The FCC Should Not Expand the Scope of the Local TV Ownership Rule

The Commission also seeks comment on whether there have been industry developments involving multicasting, satellite stations and LPTV stations that would warrant changes to the local TV rule and/or the treatment of these stations under the rule.[296] Given that the local TV rule should be modified to allow greater common ownership, not less, adopting a more restrictive rule would be contrary to Section 202(h). Treating multicast streams, satellites and LPTVs as stations subject to the local TV rule generally, or the top four stricture specifically, also would be arbitrary and capricious because they are not equivalent to the full service TV stations regulated under the FCC's ownership rules.

As the FCC previously held in declining to adopt more restrictive local TV ownership limits in light of multicasting, the ability to multicast is distinct from owning a separate station.[297] Multicast streams do not qualify for mandatory carriage on cable or DBS systems,

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[295] *See, e.g., Cincinnati Bell*, 69 F.3d at 764 (finding wireless ownership restrictions arbitrary because FCC had offered only "broadly stated fears" about market power and concentration to justify them, rather than a factually supported economic rationale); *MCI Telecomm. Corp. v. FCC*, 842 F.2d 1296, 1305-07 (D.C. Cir. 1988) (concluding that FCC acted arbitrarily and capriciously in its decision about discriminatory nature of special access tariffs charged by local exchange carriers because it reached its conclusions without gathering relevant data, collecting information or obtaining evidence sufficient to ground its assessments).

[296] *See* Notice at ¶¶ 66-69.

[297] *See* 2016 Ownership Order, 31 FCC Rcd at 9892 (observing that operating a multicast channel "does not typically produce the cost savings and additional revenue streams that can be achieved by owning a second in-market station").

and they generate only a tiny fraction of the revenue a full power station earns.[298] The FCC also has recognized multicasting as a means to ensure that smaller markets have a full complement of network affiliates.[299] Multicasting continues to serve this important purpose in many small markets. Currently, 88 "short markets" do not have stations affiliated with each of the four major networks.[300] Multicast channels fill the gap with regard to at least one missing network affiliate in 80 of these markets.[301] Changing the TV ownership rule to effectively restrict the ownership or content of multicast channels could cause consumers in these markets to lose their existing access to valued programming.

LPTV stations are not the equivalent of full service stations and should not be treated as such. Like multicast streams, LPTV stations generally lack mandatory carriage rights (with a few exceptions in the cable context). They operate on a secondary basis and have limited coverage areas and restricted power.[302] For these reasons, the FCC has never applied its ownership rules to LPTV stations,[303] and there is no reason to change course now.

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[298] See Attachment H, Multicast Revenue (including all multicast streams except those carrying major network affiliates, the revenue generated by stations' multicast streams are, on average, less than one percent of station revenue).

[299] *See* 2016 Ownership Order, 31 FCC Rcd at 9892 (stating that a "significant benefit" of multicasting is the "ability to bring more local network affiliates to smaller markets, thereby increasing access to popular network programming and local news and public interest programming tailored to the specific needs and interests of the local community").

[300] *See* Attachment I, Short Markets. All but three of the 88 short markets are mid-sized to very small (ranked 50-210), and 80 of them are small or very small (100-210). *Id*.

[301] *Id.* In 15 markets, two network affiliates are made available via multicast channels. *Id.*

[302] Because of their secondary status, LPTV stations must not cause interference to the reception of existing or future full service TV stations, must accept interference from full service stations, and must yield to new full service stations where interference occurs.

[303] *See, e.g., Memorandum Opinion and Order*, MM Docket No. 97-234, FCC 99-74, at ¶ 75 (Apr. 20, 1999).

While TV satellite stations are full power, they rebroadcast all or much of the programming aired on a commonly owned parent station, often in a rural area that cannot be reached by the parent's signal.[304] Subjecting satellites to the local TV rule would be contrary to long-standing precedent and harmful to the public interest. By definition, satellite stations serve "underserved" areas that cannot economically support an independently-owned, full service station.[305] NAB does not subscribe to the notion that no service in underserved areas is preferable to service by a commonly owned satellite station.[306]

For these reasons, the FCC must refrain from altering the status of multicast streams and LPTV and satellite stations under its ownership rules. It would be arbitrary and capricious to treat these outlets as the legal, technical, financial or competitive equivalent to those full service stations subject to the local TV rule.[307] Given vastly increased competition in the digital marketplace, Section 202(h) requires the FCC to relax the current rule, not make it stricter by expanding the types of entities covered by its restrictions.[308]

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[304] *Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations*, Report and Order, MB Docket No. 18-63, FCC 19-17, at ¶ 2 (Mar. 12, 2019).

[305] *See id*. at ¶¶ 2-3.

[306] Contrary to the Notice's suggestion (at ¶ 68), the fact that a satellite, by rebroadcasting a parent's signal, might carry one or two major network affiliates does not appear to be cause for concern. Bringing popular network programming to underserved areas unable to support full service stations is a benefit, not a detriment, to the public.

[307] *See, e.g., Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172-73 (D.C. Cir. 1994) (finding that the FCC did not justify its failure to take account of circumstances that warranted different treatment for different parties).

[308] Likewise, if the FCC retains the *per se* top four rule, which it should not, it must refrain from making that rule stricter or more burdensome. *See* Notice at ¶¶ 63-64. For example, the FCC should not require applicants to submit three years of ratings data to establish that a station is or is not among the top four stations in a DMA. Such a requirement would be needlessly burdensome, and ratings data from three years ago may not reflect the current competitive position of local stations. *See id*. at ¶ 64.

X. OTHER INDUSTRY DEVELOPMENTS DO NOT JUSTIFY RETAINING THE EXISTING LOCAL TV RULE

The Notice seeks comment on whether other factors, including retransmission consent negotiations, and industry developments, such as the advent of next generation TV and the incentive auction, should affect the FCC's analysis of the local TV rule.[309] These factors lack direct relevance to the FCC's considerations here and would in no event justify maintaining the existing rule.

The FCC approved the Next Gen TV standard as serving the public interest in late 2017,[310] and the decisions of TV broadcasters going forward to voluntarily adopt that new standard provide no basis for retention of the current or adoption of a stricter local TV rule. To decide otherwise would be a perverse disincentive against broadcasters' embrace of new technologies. After all, the FCC does not restrict the spectrum holdings of wireless carriers as they transition from 3G to 4G to 5G, but actively looks for ways to promote the carriers' technological transitions.[311] Consistent with this approach, reforming the local TV rule to allow broadcasters to achieve economies of scale would help promote investment in improved physical plant and new technologies, including Next Gen TV.

The spectrum incentive auction likewise provides no basis for retaining the current local TV rule, let alone for adopting a stricter one. The fact that some broadcasters relinquished their spectrum (or decided to channel share), thereby modestly decreasing the number of TV stations in some markets, was not only the expected outcome of the auction,

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[309] *See* Notice at ¶¶ 62, 70-71, 73.

[310] *Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard*, Report and Order, 32 FCC Rcd 9930, 9931 (2017).

[311] *See, e.g., Use of Spectrum Bands Above 24 GHz for Mobile Radio Services*, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 8014 (2016).

but Congress and the FCC also repeatedly found that outcome was in the public interest. From the conceptual development of the incentive auction to congressional action to the adoption of specific auction rules, the FCC and Congress made repeated determinations that reducing the number of broadcast TV stations would serve the public by reallocating spectrum to other uses.[312] Indeed, in its order setting the framework for conducting the auction, the FCC, citing congressional intent, determined that it would not even consider the potential loss of TV service or specific programming as a factor in accepting bids for stations to relinquish their licenses.[313] Given these clear congressional and FCC public interest determinations, the Commission could not now rely on the results of the incentive auction as a valid basis for retaining a competitively outdated local TV rule.

Finally, NAB reaffirms that pay TV providers' complaints about retransmission consent negotiations have no bearing on and do not usefully inform the FCC's analysis of its local TV rule or individual broadcaster requests for waiver of the top four restriction.[314] As demonstrated above, even large TV station groups are dwarfed in size by the pay TV/broadband giants with whom stations negotiate.[315] Competition in the programming

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[312] *See, e.g.,* FCC, *Connecting America: The National Broadband Plan*, at 90 (2010) (recognizing that an incentive auction could result in fewer TV stations but concluding that "the substantial benefits of more widespread and robust broadband services would outweigh any impact from reallocation of spectrum from broadcast TV"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12359 (2012) (describing incentive auctions as a "voluntary, market-based means of repurposing spectrum by encouraging licensees to voluntarily relinquish spectrum usage rights"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, 6753 (2015) (stating that Congress directed the FCC to conduct an incentive auction to repurpose UHF spectrum for new, flexible uses).

[313] *See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, 6724 (2014).

[314] *See* Notice at ¶¶ 44, 62.

[315] *See* Section IV.B., *supra*.

marketplace, with new entry and unprecedented viewing options, has fragmented audiences for stations trying to attract viewers and advertisers.[316] While some pay TV providers may support restrictive ownership rules that keep broadcasters smaller in size and competitively weaker, the commercial interests of the pay TV industry are not the public's interest and do not warrant retention of ownership rules contrary to Section 202(h).[317]

There is, moreover, no competitive issue relating to the joint negotiation of retransmission consent that should concern the FCC as it reviews the local TV rule. As the Notice observed,[318] Congress has specifically legislated in this area, and did not indicate any problem with commonly owned TV stations jointly negotiating retransmission consent. Because TV stations in the same market do not compete with each other for retransmission consent, others have concluded that agreements involving retransmission consent, even if between competing (*i.e.*, not commonly owned) TV stations are "unlikely" to cause "any demonstrable adverse competitive effects."[319] Accordingly, NAB urges the Commission to

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[316] *See* Section VII.A., *supra* and Attachment D.

[317] NAB has explained in previous ownership proceedings why the FCC should dismiss the various retransmission consent-related arguments of those pay-TV providers opposing reform of the ownership rules. *See, e.g.*, Comments of NAB, MB Docket No. 17-318, at 35-37(Mar. 19, 2018); Reply Comments of NAB, MB Docket No. 17-318, at 25-31 (Apr. 18, 2018); *Ex Parte* Letter from Rick Kaplan, NAB, MB Docket Nos. 14-50, *et al*. (Nov. 9, 2017).

[318] Notice at note 189 (citing the STELA Reauthorization Act of 2014, which prohibited joint retransmission negotiations only among *non-commonly owned* same-market stations).

[319] C. Reed, *Regulating Relationships Between Competing Broadcasters*, 33 Hastings Comm. & Ent. L.J. 1, 35 (2010) ("Thus, while television stations located within the same geographic market clearly compete in certain dimensions, when it comes to carriage by local cable operators it appears that stations are more appropriately viewed as complements, rather than substitutes, and cannot be said to compete in the market for carriage by multichannel video programming distributors. Accordingly, to the extent that an agreement between competing television stations involves retransmission consent arrangements of those two stations, there will unlikely be any demonstrable adverse competitive effects.").

resist pay TV providers' calls to place broadcasters at a competitive disadvantage by maintaining the existing or further restricting TV station ownership limits.

XI. THE FCC SHOULD DECLINE TO ADOPT THE NOTICE'S DIVERSITY-RELATED PROPOSALS

The Notice (at ¶¶ 93-121) seeks comment on additional measures proposed by the Multicultural Media, Telecom and Internet Council (MMTC) intended to foster broadcast diversity. MMTC's proposals, however, suffer from several fatal flaws and must be rejected. To enhance diversity, the FCC instead should focus on legally sustainable measures to increase access to capital by new entrants, including minorities and women.

A. The FCC Cannot Extend the Cable Procurement Rule to Broadcasting

The Commission lacks statutory authority to approve MMTC's request to extend the cable procurement rule to broadcasting.[320] Any attempt to extend the rule also would be subjected to heightened judicial scrutiny and likely fail court review under currently applicable constitutional standards.

1. The FCC Lacks Statutory Authority to Extend the Rule to Broadcasting

The Cable Communications Policy Act of 1984 requires a cable system to "encourage minority and female entrepreneurs to conduct business with all parts of its operation; and . . . analyze the results of its efforts to recruit, hire, promote, and use the services of minorities and women . . . ."[321] As the FCC noted, its resulting cable procurement rule, adopted in

[320] *See* Notice at ¶¶ 94-100.

[321] 47 U.S.C. § 554(d)(2)(E)-(F); Pub. L. 98-549, 98 Stat. 2779, 2798 (1984) (1984 Act).

1985,[322] "flows directly from the statutory mandate" in the 1984 Act.[323] Congress did not adopt a parallel mandate for broadcasting in the 1984 Act.[324]

The Commission, however, has administered a separate robust equal employment opportunity (EEO) regime for broadcasters since 1969.[325] The broadcast EEO rules impose outreach obligations, extensive reporting requirements and processing guidelines, with corresponding sanctions for violations of the rules.[326]

In 1992, Congress addressed the FCC's broadcast EEO rules specifically but did not then, and has not since, extended the cable procurement requirements to broadcasting. When enacting the 1992 Cable Television Consumer Protection and Competition Act (1992 Cable Act), Congress found that, despite the cable and broadcast EEO regulations in force at that time, "females and minorities are not employed in significant numbers in positions of

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[322] 47 C.F.R. § 76.75(e); *Amendment of Part 76 of the Commission's Rules to Implement the Equal Employment Opportunity Provisions of the Cable Communications Policy Act of 1984*, Report and Order, 102 FCC 2d 562, 570 (1985) (1985 Cable EEO Order).

[323] Notice at ¶ 96; 47 U.S.C. § 554(d)(1).

[324] The record reflects some confusion regarding the origin of the cable procurement rule. In multiple FCC filings, MMTC and and/or joint filers state that the obligation arose from the 1992 Cable Act and FCC proceedings implementing that Act. *See, e.g.*, Letter from Kim Keenan, President & CEO and David Honig, President Emeritus and Senior Advisor, MMTC, to Thomas Wheeler, Chairman, FCC, MB Docket Nos. 14-50, *et al.* (June 24, 2016) (MMTC June 2016 Ex Parte). The misunderstanding also has affected other parties. *See* Advisory Committee on Diversity for Communications in the Digital Age, *Recommendation on Procurement Issues* (June 10, 2008) (Diversity Committee Recommendation).

[325] *See Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices*, 18 FCC 2d 240 (1969).

[326] The FCC has amended its EEO rules over time, including in response to legal challenges to provisions requiring broadcasters to report the race and sex of job applicants. *See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Second Report and Order and Third Notice of Proposed Rulemaking, 17 FCC Rcd 24018 (2002); *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, Report and Order, 15 FCC Rcd 2329 (2000).

management authority in the cable and broadcast television industries."[327] Congress responded by further strengthening the EEO requirements for cable systems and by codifying the Commission's EEO program for broadcast licensees. The 1992 Act also *prohibited* the FCC from revising its broadcast EEO rules in place at the time, except to implement a midterm review of broadcasters' EEO practices and to make "nonsubstantive technical or clerical revisions" as necessary to reflect changing technology.[328]

Thus, Congress explicitly approved and codified the FCC's pre-existing EEO requirements for broadcasters but declined to extend the cable procurement rule to the broadcasting industry. Because Congress knows how to apply the same or a similar procurement requirement to broadcast licensees but has conspicuously chosen not to, "its silence is controlling," and the Commission lacks statutory authority to impose this requirement now.[329]

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[327] 1992 Cable Act, § 22(a)(1).

[328] 47 U.S.C. § 334(a)–(c).

[329] *Ela v. Destefano*, 869 F.3d 1198, 1202-3 (11th Cir. 2017) ("[W]here Congress knows how to say something but chooses not to, its silence is controlling.") (citation omitted); *Discover Bank v. Vaden*, 396 F.3d 366, 370 (4th Cir. 2005) (same). *See also Fish v. Kobach*, 840 F.3d 710, 740 (10th Cir. 2016) ("When Congress knows how to achieve a specific statutory effect, its failure to do so evinces an intent not to do so."); *NRDC, Inc. v. U.S. EPA*, 822 F.2d 104, 128-29 (1987) (finding that EPA lacked the authority it claimed under an environmental statute because, "although Congress full well knows how to confer the power" at issue, and did so in other instances, Congress "chose not to do so here"). While NAB recognizes that Title III of the Communications Act gives the FCC broad authority over initial licensing and license renewals, assignments and transfers, *see* 47 U.S.C. §§ 307-310, this authority does not stretch infinitely to include regulation of all the ordinary business activities of broadcasters, such as the purchase of goods and services. In particular, Section 309(j) does not provide such authority. That narrowly-focused section addresses the award of initial licenses via competitive bidding and directs the FCC to ensure its auction rules give opportunities for small businesses and minority- and female-owned businesses to obtain spectrum licenses. *See* 47 U.S.C. § 309(j)(4)(C) & (D); *see also* Diversity Committee Recommendation at 1 (suggesting § 309(j) as possible source of authority for applying cable procurement rules to other industries).

The FCC also should not attempt to rely on its ancillary authority here.[330] The courts previously have rejected FCC reliance on its ancillary authority in multiple contexts.[331] In light of these cases, it remains unclear how the FCC's authority in § 151 to expand radio transmissions to citizens across the U.S. authorizes the regulation of how and from whom broadcasters purchase goods and services.[332] Ancillary authority does not empower the Commission to unilaterally apply the procurement rule to broadcasting now, especially given that: (1) Congress endorsed and codified the FCC's comprehensive EEO rules for broadcasting; (2) Congress addressed EEO requirements on two separate occasions and declined to extend the procurement rule to broadcasting; and (3) for reasons discussed below, doing so would invoke, and very likely fail, heightened judicial scrutiny.

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[330] *See* Notice at ¶ 96 & n. 247.

[331] *See id*., citing *Comcast Corp. v. FCC*, 600 F.3d 642 (D.C. Cir. 2010). *See also Am. Library Ass'n v. FCC*, 406 F.3d 689, 700, 704-5 (D.C. Cir. 2005) (finding that the FCC acted in excess of its ancillary jurisdiction under Title I of the Communications Act in promulgating broadcast flag regulations); *MPAA v. FCC*, 309 F.3d 796, 804 (D.C. Cir. 2002) (stating that the FCC's authority under 47 U.S.C. § 151 was "broad, but not without limits," and concluding that its authority to expand radio and wire communication to ensure their geographic accessibility to all citizens did not authorize adoption of video description rules).

[332] See 47 U.S.C. § 151; *Am. Library*, 406 F.3d at 700, 704; *MPAA*, 309 F.3d at 804, 806. Similarly, the FCC cannot rely on § 257 of the Communications Act as a source of ancillary authority here. *See* Diversity Committee Recommendation at 1 (suggesting § 151 and § 257 as possible sources of authority for extending cable procurement rules). Section 257 directed the FCC to complete a proceeding and then report periodically on market entry barriers for entrepreneurs and other small businesses in the communications marketplace. (This reporting obligation now exists as part of the FCC's biennial communications marketplace report under 47 U.S.C. § 163.) The D.C. Circuit, however, rejected previous FCC attempts to stretch its authority under § 257 based "on nothing more than its obligation to issue a report." *Comcast*, 600 F.3d at 659-60. While the Court recognized that "certain assertions" of FCC authority, such as imposing disclosure requirements to gather data, "could be 'reasonably ancillary' to the Commission's statutory responsibility to issue a report to Congress," imposing requirements on broadcasters' buying of goods and services do not appear "reasonably ancillary" to writing a report. *Id*.

2. Extension of the Cable Procurement Rule Would Likely Fail Heightened Judicial Scrutiny

Extending the procurement rule would require broadcasters to identify, classify and treat minority and female entrepreneurs differently than others, thereby triggering significant constitutional questions and heightened judicial scrutiny.[333] While the FCC has adopted various measures to promote diversity in broadcasting, its discretion to adopt race- or gender-conscious measures was limited by the Supreme Court's *Adarand* decision in 1995. *Adarand* prohibits a government actor from implementing race-conscious measures unless it shows they are narrowly tailored to further a compelling governmental interest.[334] Satisfying such "strict scrutiny" would require the Commission to surpass a high evidentiary bar. Similarly, any FCC program based on gender would be subject to intermediate scrutiny and upheld only if its actions were deemed substantially related to the achievement of an important objective.[335] Notably, *Adarand* and *Virginia* were decided about a decade after the FCC adopted its cable procurement rules, pursuant to the 1984 Cable Act.

MMTC has not demonstrated that extending the procurement rule to broadcasting would satisfy the currently-applicable stringent constitutional standards. Moreover, the Commission recently declined to adopt race-based measures to promote diversity, concluding that it could not satisfy the demands of strict scrutiny. Following a thorough review of the record in the last quadrennial review, the Commission found a lack of evidence to establish a compelling interest in remedying past discrimination, or to demonstrate a

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[333] *See* Notice at ¶ 97.

[334] *Adarand Constructors v. Pena*, 515 U.S. 200, 227 (1995) (holding that "all racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed . . . under strict scrutiny" and that "such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests").

[335] *United States v. Virginia*, 518 U.S. 515, 531-33 (1996).

direct and substantial connection between minority ownership and viewpoint diversity, as required by current constitutional standards and relevant court precedent.[336] And while less evidence is required for gender-based measures, the courts still require an "exceedingly persuasive justification," and the FCC concluded that the record evidence failed to support gender-based measures.[337]

Absent empirical evidence, and without an explicit mandate from Congress, any attempt to impose the procurement rule on broadcasters would carry a high risk of failure under heightened judicial scrutiny. In fact, the D.C. Circuit Court in 2001 struck down an earlier iteration of the FCC's EEO requirements, holding that any FCC measures that pressure broadcasters to recruit or even reach out to job candidates based on racial classifications would trigger strict scrutiny.[338] Such pressure would be inescapable under a broadcast procurement rule. Even an audit or review of broadcasters' efforts would impermissibly pressure broadcasters to procure goods and services from providers based on their race or gender to avoid FCC scrutiny. The Commission lacks the requisite evidence and authority to amend its rules to apply the cable procurement rule to broadcasting.[339]

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[336] *See* 2016 Ownership Order, 31 FCC Rcd at 9987-10000.

[337] *Id*. at 9994-95 & note 947 (quoting *Virginia*, 518 U.S. at 530).

[338] *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13, 20-21 (D.C. Cir. 2001) (holding that EEO reporting requirements were subject to strict scrutiny because they would pressure broadcasters to focus their recruitment efforts on minorities and women to avoid FCC investigation, and invalidating the requirements as not narrowly tailored to further a compelling government interest).

[339] The Commission also seeks comment on MMTC's claim that the cable procurement rule has successfully launched minority and women entrepreneurs into operating and ownership positions in the cable and satellite industries. *See* Notice at ¶ 99, citing MMTC June 2016 Ex Parte at 5. MMTC offers these assertions without any supporting evidence, except for references to equally bald assertions in comments by the Diversity and Competition Supporters (a coalition led by MMTC). NAB is unable to confirm MMTC's assertions.

B. The FCC Should Reject MMTC's Undefined and Convoluted Diversity Formulas

Diversity Credits. MMTC proposes a system of so-called "diversity credits" that could somehow be traded among station buyers in a market-based system to offset increased ownership concentration resulting from a proposed transaction.[340] While it first introduced this concept in 2003,[341] MMTC has done nothing over the past 16 years to flesh out the details of its proposal. Instead, MMTC has suggested that unnamed economists may be able to figure out how such a system might work.[342]

Even if MMTC's proposal was clear and still relevant, the system would reward diversity credits based on the degree to which a licensee is a socially and economically disadvantaged business (SDB).[343] The Commission in 2016 rejected the SDB standard as race-conscious and therefore subject to heightened constitutional review.[344] There is nothing in the record or the framework of the diversity credits proposal that warrants a different conclusion today.[345]

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[340] *See* Notice at ¶ 101.

[341] Reply Comments of Diversity and Competition Supporters, MB Docket Nos. 02-277, *et al.,* at 34 (Feb. 3, 2003).

[342] Notice at ¶ 101 (noting that the proposal is not well defined). MMTC offered its proposal as an alternative to "voice tests," which were once elements of certain ownership rules *Id.* The radio/TV cross-ownership rule and the requirement under the local TV rule to maintain a minimum of eight independent TV voices in a local market after a transaction have been eliminated. *See* 2017 Recon Order, 32 FCC Rcd at 9824-31, 9834-36. Thus, a proposal to replace voice tests with diversity credits seems moot, as the former no longer exists.

[343] Notice at ¶ 102.

[344] The FCC concluded that the record evidence was not sufficient to satisfy the constitutional standards needed to adopt an SDB-based ownership rule or other race- or gender-conscious ownership limits. *See* 2016 Ownership Order, 31 FCC Rcd at 9987-88; 9999-10000.

[345] *Id*. at 9864; Notice at ¶ 106. A diversity credit system based on an Overcoming Disadvantages Preference may also be subject to heightened scrutiny, and in any event, is unduly resource-intensive, given the complexity of making a subjective determination whether an applicant would be likely to contribute to viewpoint diversity.

Moreover, as the Notice correctly observes, the proposal's supporters have never clarified key terms and concepts,[346] making it virtually impossible for commenters to respond to the proposal and for the FCC to adopt it. For instance, is the proposal designed to address the diversity of station ownership or viewpoints? How would the diversity impact of a proposed transaction be quantified or equated to tradeable credits? Is the system intended to replace or supplement the existing ownership rules? MMTC's failure to provide any further information after so many years evinces the infeasibility of its proposal.

Tipping Point and Source Diversity Formulas. MMTC also proposed two formulas intended to create alternative media ownership limits: the "Tipping Point Formula" and the "Source Diversity Formula."[347] As the Commission notes, both proposals are ill-defined and raise a multitude of questions.[348]

The Tipping Point Formula is presented as an alternative to an approach (*i.e.*, the "flagging" of certain proposed radio transactions for further review) used briefly by the Commission and abandoned nearly 16 years ago.[349] As with the Diversity Credits proposal, MMTC fails to define key terms and concepts,[350] such as: what "revenues" will be included; how those confidential revenues will be obtained from broadcasters; who would qualify as a "well run independent"; whether the "Variability Factor for Survival Operations" (whatever that means) would differ depending on the market; and how "meaningful local service" could be determined consistent with First Amendment concerns. These are all critical

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[346] *See* Notice at ¶¶ 107-108.

[347] *Id*. at ¶¶ 111-121.

[348] *Id*. at ¶ 112.

[349] *See* 2003 Ownership Order, 18 FCC Rcd at 13736-37.

[350] *See* Notice at ¶¶ 115-16.

components of the proposed Tipping Point Formula that lack anything close to specificity in the record, rendering it virtually impossible to further consider.

The Tipping Point Formula, moreover, is a paragon of clarity compared to the proposed Source Diversity Formula. Again, despite the FCC previously characterizing the formula as "insufficiently defined,"[351] MMTC has never refined the formula since proposing it 15 years ago. Like the proposed Diversity Credits system, the Source Diversity Formula purports to replace the use of voice tests, which no longer exist,[352] and like the other MMTC proposals, it factors a wide range of undefined variables into a byzantine formula.[353] For example, what is meant by nebulous concepts like "consumer welfare derived from viewpoint diversity" and "consumers' mean attentiveness to a particular program"? Unless and until MMTC fully defines these half-baked formulas, interested parties cannot begin to understand them, let alone deduce their costs and benefits.

Increasing diversity in the broadcast industry is a laudable goal, and one that broadcasters take seriously.[354] The Commission, however, cannot promote diversity by adopting MMTC's proposals. As discussed in Sections V.D. and VIII.C., the FCC, to better promote broadcast ownership diversity, should extend its incubator program to television and increase the incentives for radio broadcasters to participate in the program. NAB urges

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[351] 2016 Ownership Order, 31 FCC Rcd at 10006.

[352] Notice at ¶ 118.

[353] *See id*. at ¶¶ 119-20.

[354] For instance, NAB's Leadership Foundation administers several successful programs designed to attract diverse talent to the broadcast industry, foster the promotion of diverse candidates into senior leadership roles, and train senior level broadcast executives to advance as group executives and ultimately station owners. *See* http://www.nabef.org. In addition, many broadcast companies have initiatives designed to foster diversity and inclusion in their workforce and the creation of diverse program content.

the Commission to focus its diversity-enhancement efforts on legally sustainable means of addressing the access to capital problems that prevent new entry today.

XII. CONCLUSION

Competition for audiences and advertisers in the digital marketplace is fierce and flourishing. Rather than being limited to a few geographically proximate broadcast stations, consumers now enjoy an over-abundance of choice, accessible from virtually anywhere, at any time, via any device. Yet the FCC still maintains ownership rules premised on the view that local TV and radio stations exist in markets hermetically sealed against the vast array of choices available to consumers and advertisers. For the reasons and evidence discussed in our comments and studies, NAB urges the FCC to adopt ownership rules accurately reflecting competitive realities in the modern media and advertising markets.

Respectfully submitted,

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April 29, 2019

Attachment A

LOCAL RADIO STATION VIABILITY

IN THE NEW MEDIA MARKETPLACE

Mark R. Fratrik, Ph.D., SVP/Chief Economist

April 19, 2019

BIA ADVISORY SERVICES

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Executive Summary

The local radio station industry continues to be confronted with strong and growing competition for both its listeners and its advertising clients. While the industry is still an important player in the local media marketplace, its position has noticeably weakened in recent years. Local AM radio stations and stations in smaller markets particularly struggle to attract audiences and advertising revenue. This report highlights the industry's weakening competitive position, including:

- The overall weekly listening levels to local radio stations by adults ages 18+ has decreased 6.6% in the past five years, with listening by younger demographic groups decreasing even more. Radio stations' average quarter hour audiences have significantly declined over the past decade.
- Online listening has soared, with most of that listening going to pure play online services (e.g., Pandora, Spotify).
- Total over-the-air (OTA) advertising revenue for local radio stations has been decreasing, resulting in a lower share of the local advertising marketplace. That slow decline in radio's local ad market share is projected to continue, as digital platforms earn increasing shares of local ad revenues.
- AM listening levels have decreased by 50% in the past 22 years, resulting in a notably smaller share of local radio advertising revenue for AM stations.

The FCC's ownership restrictions add to the challenges faced by local radio stations. The local radio rules currently prevent many radio groups from acquiring any additional stations and enjoying the economic benefits of such local aggregation. The FCC's rules also disadvantage those stations not associated with constrained local clusters, many of which suffer from technological limitations and which cannot receive attributable investment from or be acquired by the constrained radio groups. This report compares these "unconstrained" stations with those station groups constrained by the local ownership limits and finds:

- In the Nielsen audio markets, there are 404 different local combinations of radio stations constrained from additional growth by their total number of stations locally owned and/or the number of AM or FM stations owned, with nearly 70% of those constrained groups located in markets ranked 76 and below.
- In most but not all radio markets, stations in constrained groups are stronger than unconstrained stations in terms of their technical parameters.
- Unconstrained stations generally reach smaller populations and attract smaller audiences than stations in constrained groups. This is particularly pronounced in mid-sized and smaller markets.

For these reasons, unconstrained stations could greatly benefit from combining with a larger local cluster, if permitted under the FCC's rules. To examine the economic effects of such combinations, this paper examined four actual examples of currently constrained station groups

in markets of varying size and analyzed the financial impact of their acquisition of an actual unconstrained station group in their same markets. To err on the conservative side, this report did not assume any increase in revenue by the stations following their combination but estimated the financial benefit of the proposed combination by analyzing the potential increased efficiencies and decreased expenses due to economies of scale. We modeled the financial picture of these stations before and after the proposed combination to determine their improvement in cash flows. The table below summarizes that analysis, which shows that radio stations in markets of all sizes would benefit from combinations prohibited by the existing ownership rules:

Summary of Cash Flow Benefits from Transactions Under Relaxed Ownership Rules

Market Sizes	**Improvement in Cash Flow (000)**	**Percentage Increase in Cash Flow**
Top Market	$2,006	6.0%
Large Market	$1,184	9.6%
Small Market	$306	13.8%
Very Small Market	$170	16.8%

It is likely, moreover, that following a combination of a currently constrained station cluster with a smaller unconstrained station group, the stations involved would earn additional revenues because larger radio groups appear better able to turn populations reached (i.e., potential audience) into revenues. Thus, the financial benefits stemming from station acquisitions made possible by ownership reform may likely be greater than shown in the chart above, which did not assume any station revenue increases.

An analysis of radio stations' cost structures further demonstrates the benefits to be gained from additional station combinations. Many unconstrained stations earn annual gross revenues less than $250 thousand, and many more earn revenues under the $500 thousand threshold. Those low levels of revenue often barely cover stations' fixed costs and prevent those stations from being vibrant local competitors. A much higher percentage of AM stations and small market stations fall under those revenue thresholds, thus reconfirming their precarious position.

These analyses of the overall radio industry, the differences between constrained and unconstrained stations, the economic benefits of station combinations, and the cost structure of radio stations all indicate a real need for relaxation of the local radio ownership rules. Enabling radio stations to take greater advantage of economies of scale will help them revitalize their competitive position by providing improved programming and local service and becoming more attractive platforms for advertisers in today's increasingly competitive audio marketplace.

Introduction

Due to the simultaneous increased competition for listeners and for advertisers, many local radio stations today find themselves in critical financial condition. In addition to competition from other broadcast stations, these challenged radio stations see increased competition from other audio entertainment and information sources (e.g., Spotify, Pandora, podcasts, etc.), and from other advertising platforms (e.g., Google, Facebook, other online sites, etc.).

When assessing the impact of this increased competition, it is important to remember that most of the costs of operating local radio stations are fixed. As a result, any decrease in revenue, even a modest one, can have profound negative impact on station profitability. Without a sound financial basis, local radio stations cannot make the necessary investments in programming and capital equipment to become or remain vibrant competitors. While they may be able to "keep the lights on," these stations do not materially contribute to competition in their local markets or the diversity of quality audio programming available to listeners.

Many of the radio stations facing the most serious economic challenges are not part of local clusters constrained by the FCC's current radio ownership rules. Instead, they are standalone stations or part of a local "duopoly" or other small cluster unconstrained by the present rules. The ability of these stations to compete against the growing array of audio providers and remain financially viable is highly questionable without some reform of the FCC's local radio rules permitting investment in or their acquisition by station groups able to take

advantage of increased efficiencies and economies of scale. The question of financial viability is especially urgent for AM radio stations and for those stations in smaller markets.

The purpose of this paper is to highlight the increasingly difficult competitive position of many local radio stations. First, we review the evidence showing the increasingly competitive nature of the audio marketplace and the growing struggles of local radio stations to attract audiences and generate necessary advertising revenue. Second, this report takes a close look at the radio stations that are not part of local clusters constrained by the FCC's ownership rules and compares those unconstrained stations with those stations in groups constrained by the present rules. This comparison reveals the technical disadvantages of many unconstrained stations and explains their challenges in reaching listeners and, thus, in attracting advertisers. Finally, we provide an economic analysis of typical radio stations earning various amounts of revenue. That examination will show the real difficulties of many local radio stations in covering their fixed costs.

Given that tenuous financial position of many radio stations and the growing competition they face, it is very likely that without regulatory relief they will remain "second class citizens" in their local markets. While these stations might be able to maintain their operations, they will be unable to make the necessary investments to compete more effectively in the ever-changing new media marketplace or to offer improved services to their listeners. In contrast, if the local radio limits were reformed, unconstrained stations could be acquired by currently constrained groups able to improve them through increased efficiencies and decreased expenses, due to economies of scale. Station groups constrained by the FCC's current rules would have a strong incentive to acquire unconstrained stations in the markets in which those constrained owners already operate, as they would be able to take advantage of greater economies of scale to

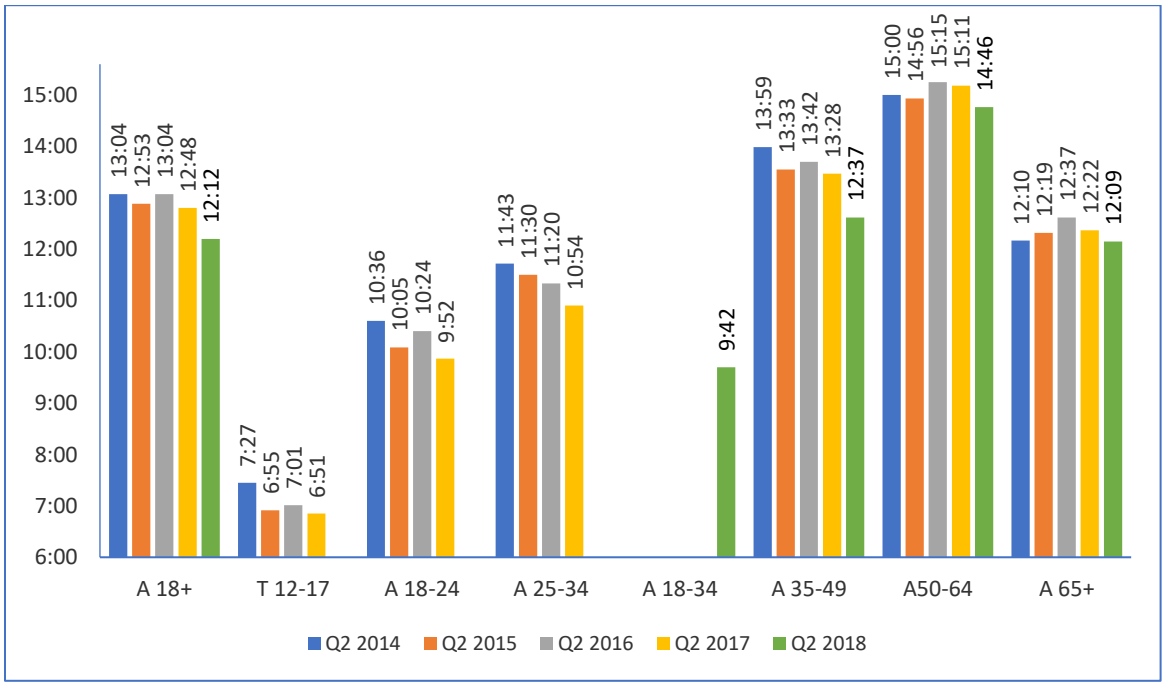
improve the cash flow and profitability of the combined station group. In all likelihood, currently constrained groups would be the potential buyers most willing to acquire and pay the largest amounts for additional in-market stations, due to their ability to realize significant synergies.

Current Competitive Condition of Local Radio Stations

Competition and the Listenership Levels of Local Radio Stations

Faced with increased competition from many different sources, local radio stations are seeing an erosion of their audiences. One straightforward way of measuring audience erosion is to analyze The Nielsen Co.'s quarterly Total Audience Reports. In these reports, which began in 2014, Nielsen generates estimates on the weekly usage of various media, including local radio station listening, television viewing, streaming on computers and mobile streaming. The listening levels reported for local AM and FM radio stations are obtained from their local and national audience surveys conducted throughout the U.S. Figure 1 shows the weekly listening totals for the second quarter over the past five years, for the overall population as well as various age groups.

Figure 1 - Weekly Time Spent Listening to AM/FM Radio (Hours: Minutes)



Source: The Nielsen Total Audience Report, 2nd Qtr.

As shown, while there are some fluctuations from year to year, there is a general downward trend in radio station listening over the 2014 to 2018 period. Overall, for adults aged 18+, average weekly listening levels decreased by 6.6% during this time period. For adults aged 18-24[1], the decline was 6.9% by 2017, and 8.5% by 2018 if using the A 18-34 value as a proxy for that year.[2] And although still higher than the average 18+, radio listening among adults ages 35-49 fell 9.8% from 2014-2018, dropped 1.5% for adults ages 50-64, and declined .1% for adults ages 65+. Note that the oldest age group (adults 65+) saw a 3.7% decrease in listening in

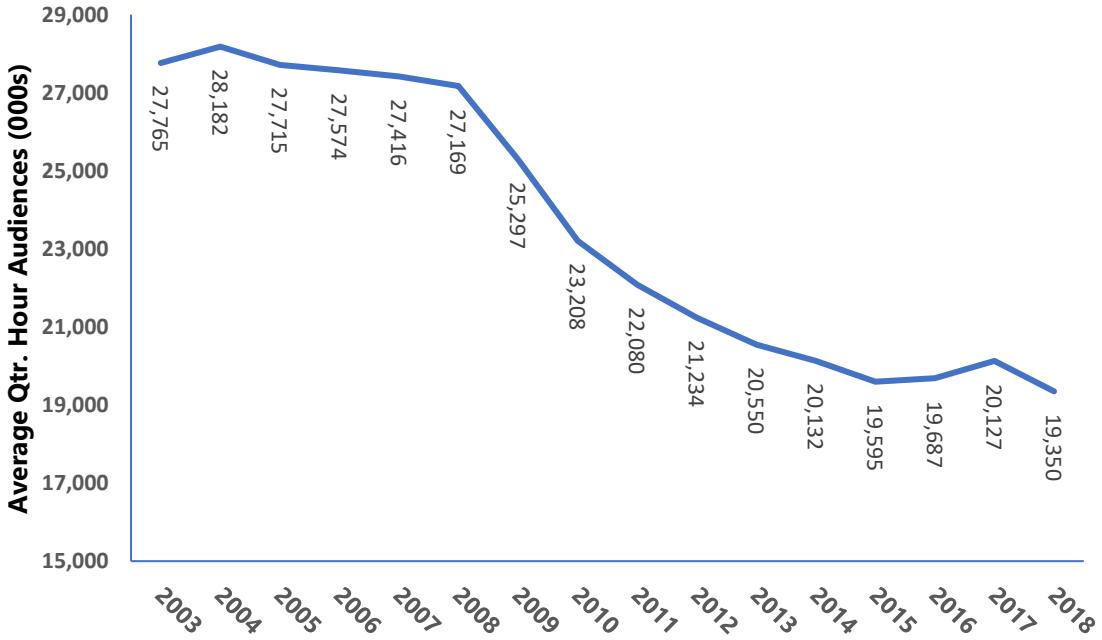
[1] Note that starting in 2018, Nielsen Audio combined the age groups 18-24 and 25-34 into one age group, 18-34.

[2] Using the A 18-34 value as a proxy actually understates the decline in radio listening, as it includes Adults ages 25-34 that historically have higher weekly levels of time spent listening than those ages 18-24.

just the past two years. Given the declines in listening among all age groups, particularly those under 50, the radio industry should expect further listening declines in the future.

While the above data show the most recent history of local radio station listening by different age groups, other data show a longer period of decreasing audiences to local radio stations. Figure 2 shows the nationwide RADAR Average Quarter Hour full day audiences (12 Midnight – 12 Midnight) for March of each year.[3] This decline is significant because radio station advertising is generally sold based on stations' average quarter hour listening.

Figure 2 - RADAR Average Quarter Hour Audiences: 2003-2018



Source: RADAR, Nielsen, 2018

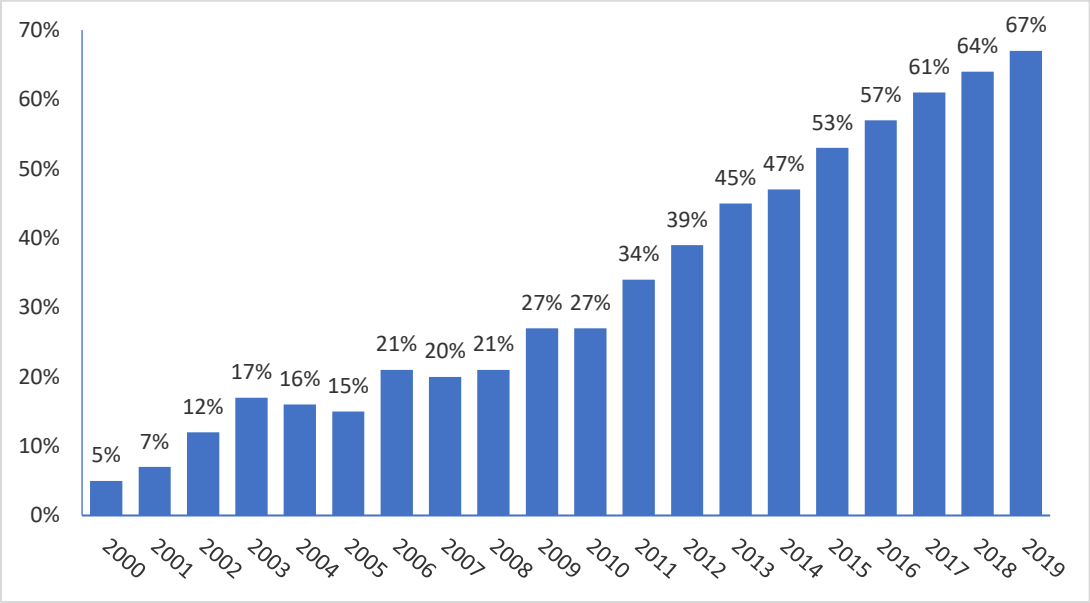
Over this 15-year period, the average audience decreased by 30.3% in total, or by a compounded average growth rate of -2.4% each year.

[3] RADAR is a nationwide radio audience service operated by Nielsen. RADAR estimates are based on a combination of PPM and Diary respondents.

Online Streaming of Audio Programming

Local radio stations are losing audiences in part because those audiences are listening to streaming music programming (as well as spending time on other media). More consumers can now access online streaming platforms in their automobiles. Of course, they are accessing these platforms via mobile and desktop devices in other locations as well. Through all these platforms, listening to online streaming of audio entertainment (see Figure 3) continues to grow.

Figure 3 - Monthly Online Audio Listening



Source: The Infinite Dial, Edison Research/Triton Digital, 2019

Through the various online streaming services and the streaming of local radio stations, the number of consistent online audio listeners keeps growing. While the youngest demographic groups utilize streaming services the most (ages 12-24: 91% reported listening to online audio in the past month in early 2019), other groups also are increasing their use (ages 25-54: 74% listened in the past month; age 55+: 40%). Overall, in early 2019, 60% of persons ages 12 and

older (or 169 million people) reported listening to online audio programming in the past week and 67% of those 12 and older (or 189 million people) in the last month.[4]

Streaming Audiences of Local Broadcasters and Pure Play Online Services

Of course, online audio listening figures include some listening to local radio stations that stream their programming. But Triton Digital streaming data show a significant increase in the level of competition from pure play streaming companies (e.g., Pandora, Spotify) in just the past few years. Each month, Triton Digital posts the top streaming companies based on their average active sessions (AAS) during the daypart 6:00 am to 12:00 am, Monday through Sunday.[5]

For these monthly rankings, this report grouped together the sum of the average active sessions and total time listening for the streaming services offered by local broadcasters as well as the pure play streaming companies. Figures 4 and 5 compare the average active sessions and total time listening for these two types of streaming services.

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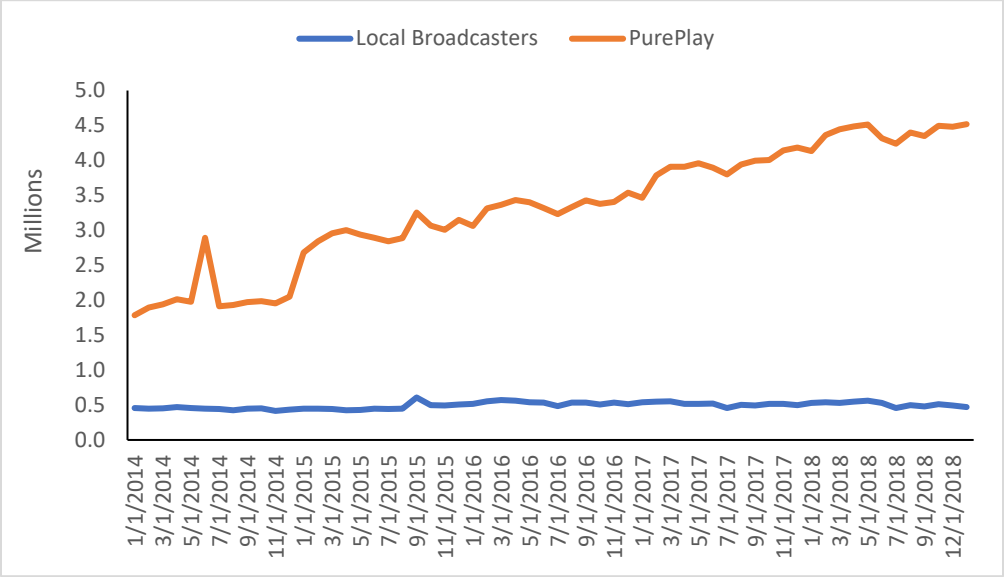
[4] The Infinite Dial, Edison Research/Triton Digital, 2019.

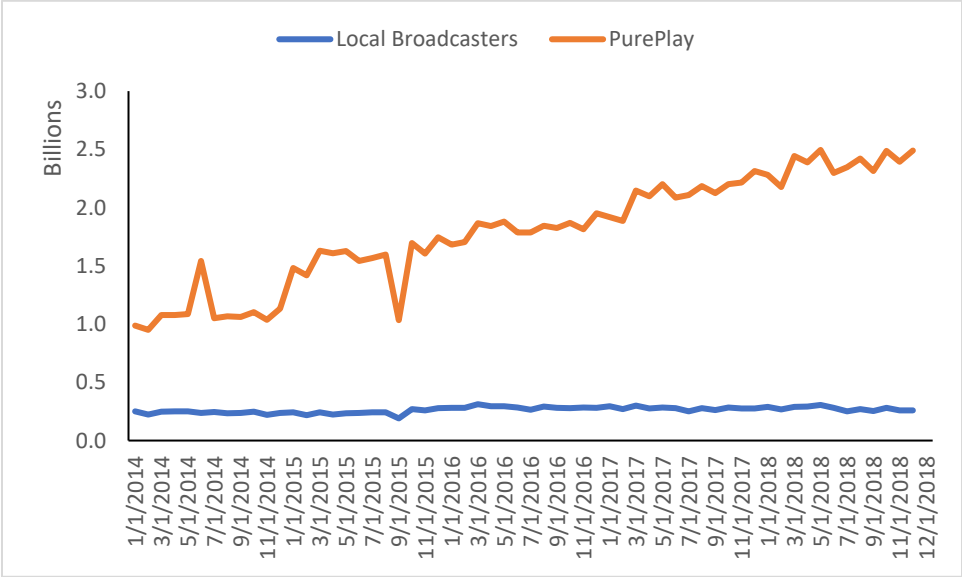
[5] See https://www.tritondigital.com/publishers/measurement/rankers.

Figure 4 - Comparison of Monthly Average Active Sessions



Source: Triton Digital Monthly Rankers, DAYPART 6:00am to 12:00am, Monday-Sunday

Figure 5 - Comparison of Total Time Listening



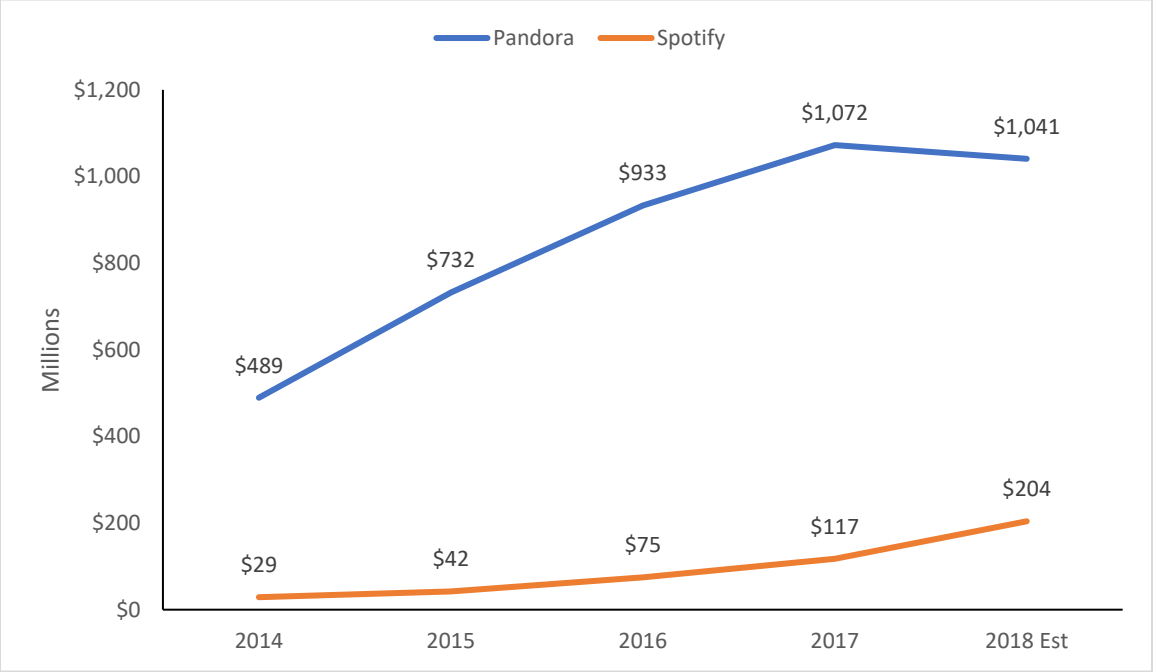
Source: Triton Digital Monthly Rankers, DAYPART 6:00am to 12:00am, Monday-Sunday

While there are some monthly blips (due to some anomalies as to which companies were included), the overall comparison in these figures shows that the pure play streaming companies continue to increase their dominance in attracting audiences. The pure play streaming

companies' average monthly active sessions increased 153.2% from January 2014 to December 2018, as compared to an 3.7% increase for local broadcasters. In terms of total time listening, the pure play companies' monthly levels increased 152.0% as compared to 3.5% for local broadcasters. While the pure play companies accounted for 79.8% of total streaming usage in January 2014, by December 2018 that share had risen to 90.6%.

In addition to competing for audiences, audio streaming companies are increasingly competitive in selling advertising time. These audio streaming companies can provide very targeted advertising opportunities. Figure 6 below shows BIA estimates of the advertising revenue generated by the two largest audio streaming services, Pandora and Spotify.

Figure 6 - Advertising Revenue for Audio Streaming Companies



Source: BIA Estimates from Company Filings

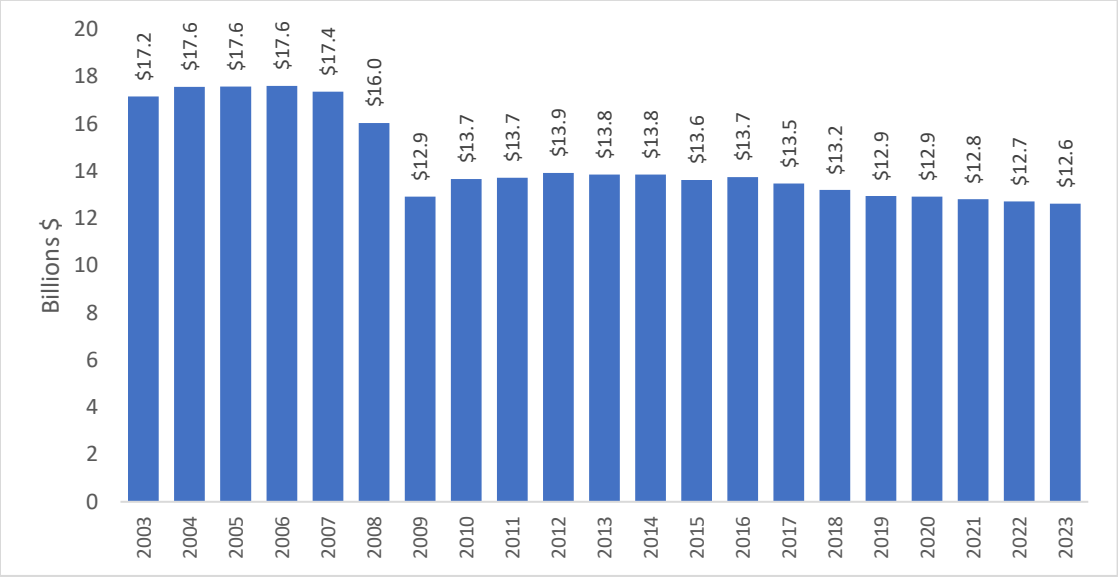
While Spotify is still relatively small, its growth rate is quite significant, a 46.7% compounded annual growth rate (CAGR) during this time. Pandora is also seeing strong growth with a 16.3% CAGR. Pandora, especially, is very competitive with local radio stations, as this

company employs local sales staffs in over 30 local markets targeting the same local advertisers as local radio stations.

Local Radio Industry Revenue

The erosion of audience to alternative audio sources as well as increased competition from other advertising platforms have led to a weakening of the radio industry's ability to generate revenue from over-the-air advertising sales. Figure 7 shows BIA's estimates and projections of total over-the-air (OTA) advertising revenue for local radio stations from 2003 to 2023.

Figure 7 - Local Radio Station Over-The-Air Advertising Revenue



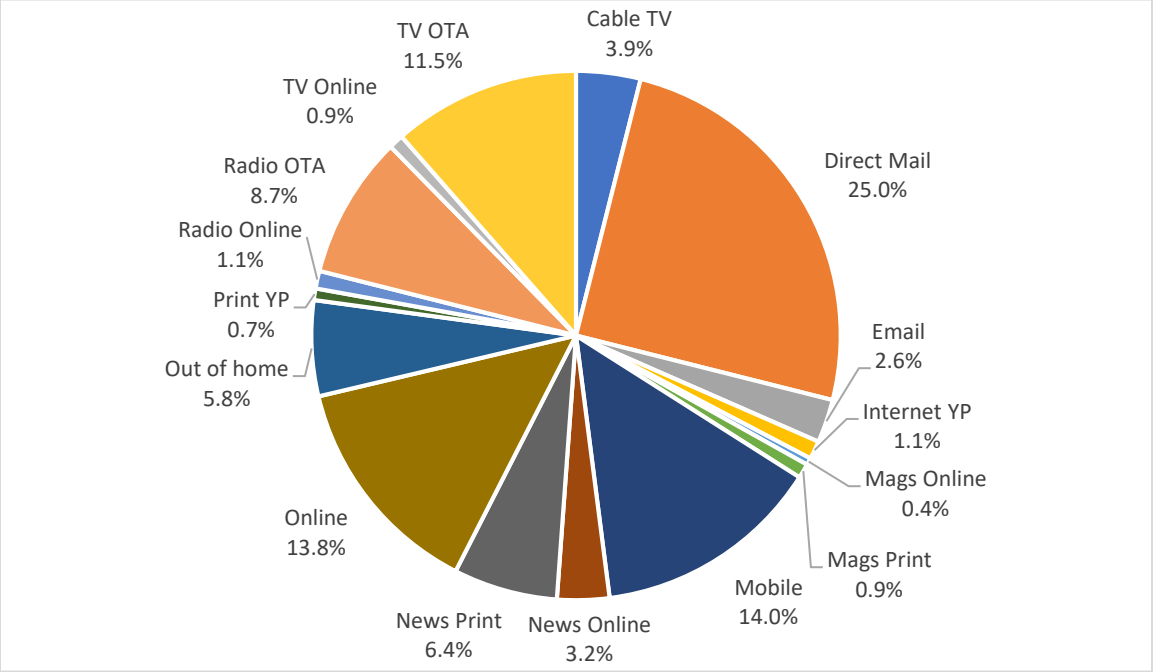
Source: BIA, 2018

Total radio industry OTA advertising revenue has seen slight annual declines in recent years and that decline is expected to continue in the near future. Over the longer term, however, the radio industry has not reached the ad revenue level it achieved prior to the recession of 2008-2009 and is not projected to come close to those levels. Moreover, given that inflation rates

during this period averaged around 2% each year, the inflation-adjusted revenue of the radio industry has declined even more significantly than Figure 7 shows.

Given this decline in OTA advertising revenue, the position of radio stations in their local advertising markets has eroded and this trend is expected to continue. Many advertisers today utilize a number of traditional and digital advertising platforms to disseminate their messages. The various platforms now available to national, regional and local advertisers have transformed the local advertising market. BIA's ADVantage local market intelligence service provides estimates for 16 local advertising platforms. Figure 8 shows the estimated advertising shares for these 16 platforms, including local radio stations' OTA and online advertising revenue, for 2019.

Figure 8 - 2019 U.S. Local Advertising Market: $148.5 Billion



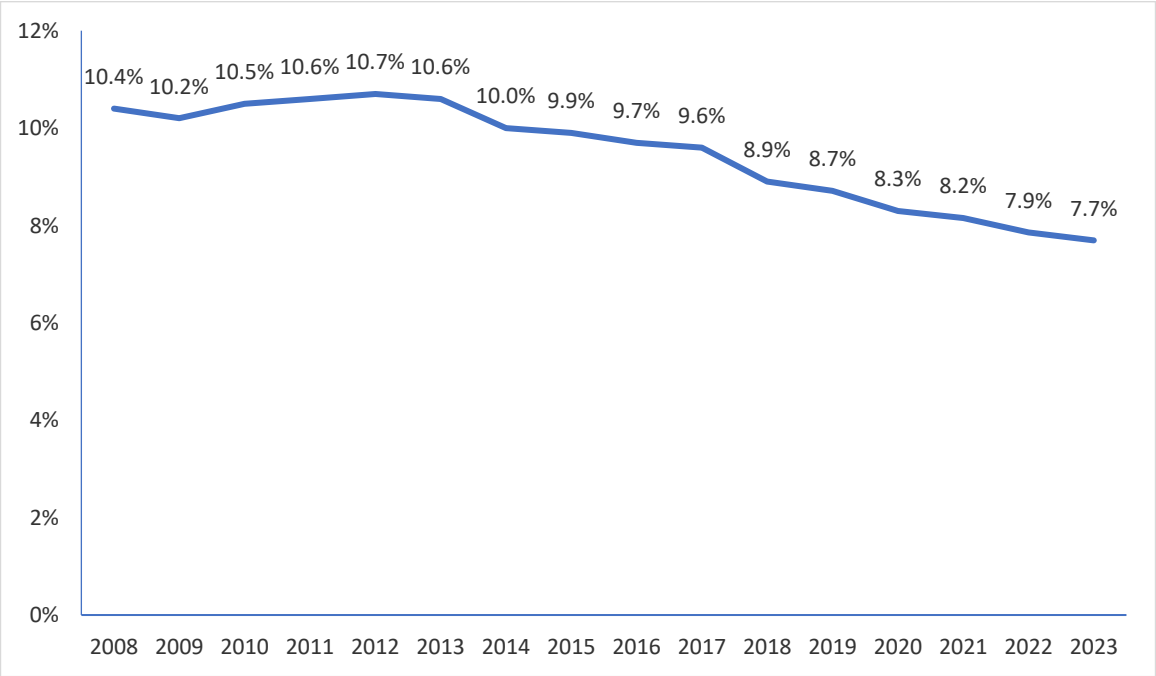
*Radio online revenue includes online revenue from terrestrial and online streaming services. *Mobile revenue does not include revenue generated by local traditional media mobile sites.

Source: BIA ADVantage, 2019

BIA estimates that local radio OTA advertising revenue in 2019 will be approximately $12.9 billion, representing just 8.7% of total local advertising in the U.S. By comparison, BIA estimates "pure play" online/interactive local advertising at $20.4 billion (13.8%) and local

mobile advertising at $20.7 billion (14.0%). BIA projects that total local advertising in the U.S. will grow to $164.0 billion in 2023 and radio's OTA share will decline to 7.7%. Over the same period, BIA projects online/interactive local advertising to increase to 16.6% of total local advertising and mobile's share of local advertising to increase to 16.5%. Figure 9 shows a steady decline in radio stations' projected share of local ad revenue in the future.

Figure 9 - Local Radio Stations' Over-the-Air Advertising as Share of Total Local Advertising Market: 2008-2022



Source: BIA/Kelsey, 2019

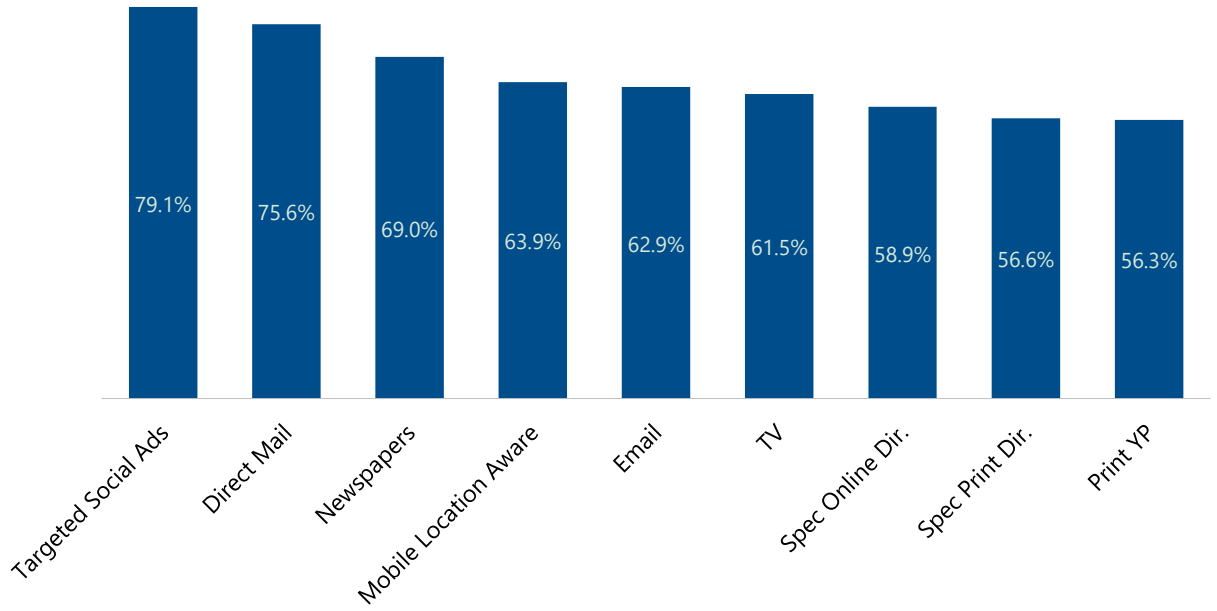
As shown above, local radio stations' share of total local advertising has decreased every year since 2013, and this decline is expected to continue through 2023.

<u>Advertisers Use of Alternative Advertising Platforms</u>

In addition to the revenue estimates discussed above, further evidence demonstrates the extensive amount of competition facing local radio stations. Specifically, BIA conducts an annual random survey of advertisers of all sizes asking about their use of advertising and

marketing vehicles. BIA's 2018 survey found that those advertisers that use broadcast radio also use a wide range of other advertising platforms. Figure 10 shows the high use of other advertising platforms by those advertisers that also utilize radio. In total, radio advertisers utilized 30 different advertising platforms in 2018.

Figure 10 - Top Advertising Platforms Used by Radio Advertisers



Source: Survey of Advertising and Marketing, BIA Advisory Services, LLC, 2018.

Clearly, radio advertisers are not just radio advertisers, but use a variety of other platforms to reach consumers – platforms that local radio stations must compete against for those advertisers' dollars. Unsurprisingly, online and mobile platforms are very frequently used by radio advertisers, along with other traditional media, including newspapers and television. These results from the "buy side" confirm the competitive nature of the advertising marketplace, as also shown by the advertising share and revenue estimates above.

Station Revenue by Market Size

The increasingly competitive landscape facing local radio stations affects all stations nationwide. However, the impact on stations in medium and small markets is more pronounced because these stations generate notably lower advertising revenues and have very compressed profit margins. The lower revenue earned per station in mid-sized and small markets is a direct consequence of the smaller economic bases and limited available advertising revenues in those markets. Table 1 shows the average radio station revenue in markets of various sizes.

Table 1 – 2018 Radio Station Advertising Revenues by Market Rank

	Nielsen Audio Market Size Ranges							
	Markets 1-10	Markets 11-25	Markets 26-50	Markets 51-75	Markets 76-100	Markets 101-150	Markets 151-200	Markets 201-265
Number of Commercial Stations	593	709	815	746	631	989	880	933
Average Rev. per Station (000s)	$5,631	$2,625	$1,888	$1,170	$755	$659	$590	$400

Source: BIA Media Access Pro, March 2019

In 2018, the average station in the smallest Nielsen radio markets (201-265) earned only 7.1 percent of the amount of revenue earned by the average radio station in the top-10 markets. Similarly, the average station in markets 76-100, 101-150 and 151-200 earned only 13.4, 11.7 and 10.5 percent, respectively, of the average top-10 station. For those radio stations located outside of Nielsen radio markets, the revenue picture is even bleaker, as they generally serve smaller populations in areas with smaller economic bases and available advertising revenues. Stations earning low levels of revenue in all areas are frequently in precarious financial positions because they have little or no cushion. Any negative impact on their revenues, even a minor one, can have serious negative implications on their viability.

Even though radio stations in the top 75 markets generate noticeably higher average revenues than small market stations, they also feel the effects of increased competition for both listeners and advertisers. Over half of all stations in those larger markets experienced a decrease in advertising revenue from 2012 to 2018 in nominal terms. After accounting for inflation, nearly 76% of stations in the top 75 markets experienced a decline in revenue during that period.

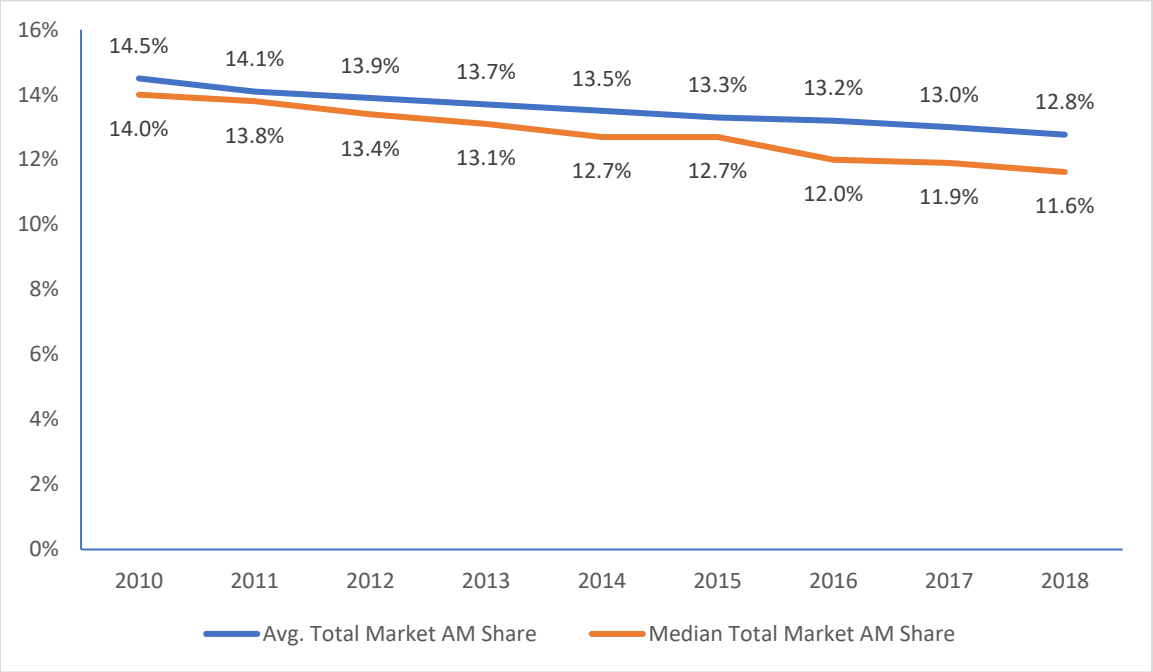
AM Radio Station Revenue and Audience Share

There are 2,573 commercial AM stations in the Nielsen Audio rated markets.[6] Despite representing slightly over 40% of the industry in Nielsen markets, AM stations, as expected, receive a much smaller share of listening and revenue and their share continues to erode. Figure 11 shows the average and median combined revenue share for all AM stations by market in the local Nielsen Audio radio markets from 2010 to 2018.[7]

[6] Data on the number of stations are as of March 29, 2019, Media Access Pro™, BIA Advisory Services, LLC.

[7] The Media Access Pro™ database includes information on all commercial and noncommercial radio and television stations, as well as daily and weekly newspapers. Included in that database are revenue estimates for commercial stations located in all Nielsen Audio radio markets. This database is updated daily reflecting the most recently announced radio station transactions.

Figure 11 – Total Market AM Share of Local Radio Over-the-Air Advertising Revenue in Nielsen Audio Markets, 2010-2018



Source: Media Access Pro™, BIA, 2019

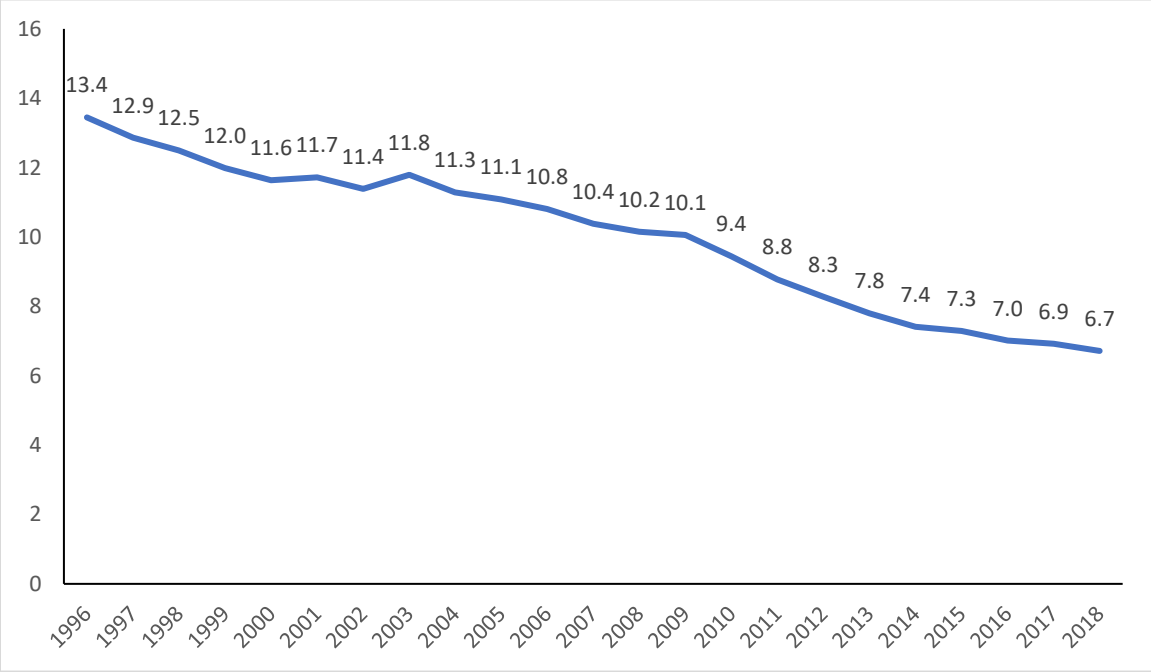
In 2010 in the average market, AM stations collectively accounted for 14.5% of local radio OTA advertising revenue, while by 2018 the average market's total AM revenue share was down to 12.8%. In 2010, half of the markets had AM stations collectively accounting for only 14.0% or less of the market's total radio revenues, while by 2018, half of the markets had AM stations collectively accounting for only 11.6% or less. That small share of radio ad revenue earned by all AM stations corresponds to slightly over 1.1% of the total U.S. local advertising market (as shown in Figure 8 above).

It is clear that in the past eight years, the competitive position of local AM radio stations has continued to deteriorate from an already very inferior position relative to FM stations. The fact that the average combined revenue share of local AM radio stations on a market basis is greater than the median highlights the fact that in some local radio markets, AM radio stations

are still quite competitive. In contrast, there are many more markets where AM stations collectively are not competitive. In 39 markets, AM stations collectively garner 5.0% or less in total radio over-the-air advertising revenue. In another 68 markets, AM stations earn between 5-10% of total radio over-the-air advertising revenue. These stations earn miniscule shares (between 0.5 to 1.0%) of the total advertising revenues in their respective local markets.

The major reason for this decrease in revenue is simply the decreasing audiences attracted to local AM stations. To demonstrate that decrease, Figure 12 shows the average audience share of all AM stations in the 236 Nielsen Audio markets that have been continuously measured since 1996.[8]

Figure 12 - Average AM Station Audience Share in Continually Measured Radio Markets



Source: Arbitron, Nielsen Audio

[8] Starting in 2007 and continuing for several years afterwards, many of the largest markets moved from a diary measurement survey tool to an electronic meter survey tool to measure audience listening.

Over these 22 years, the combined AM audience shares decreased by 50%. The number of AM stations ranked among the top 5 stations in their markets also has declined over time. In 2006, there were 145 AM stations located in 130 different radio markets ranked in the top 5 in audience share. By 2018, the number of these highly rated AM stations had dropped to 115 stations in 100 different radio markets.[9] While there have been some recent efforts to help struggling AM stations (e.g., allowing increased usage of FM translators), any positive effect of these efforts has not been seen yet in cumulative audience data.

Radio Stations' Competitive Position -- Conclusion

While some radio stations enjoy a strong position in their local markets, many other stations are struggling to earn ratings and generate sufficient advertising revenue. This struggle is especially pronounced for AM stations that have seen their audience and revenue shares decrease in recent years. Even FM stations (as well as AM stations) located in medium and smaller markets are challenged to generate sufficient advertising revenue to sustain themselves as viable competitors. Faced with increased competition for audiences and advertisers, local radio stations collectively have experienced notable decreases in their overall listening and real decreases in their over-the-air advertising revenue, highlighting the need for relaxing the local radio ownership rules.

[9] Media Access Pro™, BIA Advisory Services, LLC, 2018.

Examination of the Current Ownership Rule Constraints

The need for relaxation of the FCC's radio ownership caps can be seen very clearly by examining different groups of radio stations under the present ownership rules. Using BIA's Media Access Pro™ database, this report finds that 404 different local combinations of radio stations are constrained, under the existing ownership limits, either by the total number of stations locally owned and/or the number of AM or FM stations owned. See Table 2.[10] These constrained combinations are located in 217 different Nielsen Audio radio markets.

Table 2 - Number of Constrained Local Group Combinations

Market Size Range	# of AM Constrained Groups	# of FM Constrained Groups	# of Constrained Groups @ Max Total Stations Limit	Total Number of Constrained Groups
1 – 10	5	20	5	25
11-25	1	22	5	23
26-50	3	28	3	31
51-75	3	45	10	48
76-100	0	38	10	40
101-125	0	31	7	32
126-150	0	41	9	41
151-200	2	73	19	77
201+	0	84	38	87

Source: Media Access Pro™, BIA, April 2019

As indicated, there are 127 constrained station groups in the top 75 markets and 277 constrained groups in markets ranked 76 and smaller. While the number of groups constrained

[10] These constrained groups are only those located within the boundaries of 264 Nielsen Audio radio markets. Radio station ownership in Puerto Rico, while a Nielsen Audio radio market, is determined by signal coverage overlap and thus is not analyzed in this report.

by AM station ownership are limited, the constraints due to FM ownership have a more meaningful impact. There are 115 FM ownership-constrained clusters in the top 75 markets and 267 FM constrained clusters in the smaller markets. Note that some station groups may be constrained by both the number of AM or FM stations commonly owned in a market, as well as the total number of stations locally owned.

Given the relative success of FM stations in attracting audiences and generating revenue compared to AM stations, it is not surprising that greater numbers of radio station groups are constrained by their FM station ownership than by AM station ownership in all market size ranges. Also, it is not surprising to see the relatively larger number of constrained groups in smaller markets, as the maximum number of AM, FM and total stations any one entity can own is lower in these markets than in larger markets.

Analysis of Constrained Group Stations with Non-Constrained Stations by Market

This report now compares the stations in constrained groups to unconstrained stations across markets of all sizes. If the unconstrained radio stations generally have relatively inferior technical parameters, or if they do not reach a large proportion of the population (i.e., potential audience) in their local markets, then those stations face significant competitive challenges.

In order to make these comparisons, the unconstrained stations in the 217 Nielsen markets that have constrained station groups needed to be identified and compiled. These unconstrained stations could be part of another smaller local cluster or could be single stations. Since most constrained station clusters are constrained by the number of FM stations owned, this report initially focuses on comparing FM stations in constrained and unconstrained groups. Then, the AM constrained groups will be analyzed together.

In four of these 217 markets, there are no unconstrained stations. In those cases, there are two or more constrained groups owning all of the FM commercial stations located in that market.[11] Also, in Houston, the one constrained group only owns AM stations. As a result, we exclude those five markets from our analysis of unconstrained and constrained FM stations.

Comparisons of Station Classes

Our analysis of station type reveals 1,595 unconstrained commercial FM stations that could be combined with currently constrained radio groups if the FCC's ownership rules are relaxed. This includes 621 Class A stations, 194 Class B, 61 Class B1, 225 Class C, 174 Class C1, and 320 Class C2/C3 stations, as shown in Table 3.

Table 3 - Unconstrained FM Stations Available for Constrained Groups

Type of Station	# Available	% of Unconstrained Stations
Class A	621	38.9%
Class B	194	12.2%
Class B1	61	3.8%
Class C	225	14.1%
Class C1	174	10.9%
Class C2/3	320	20.1%
Total	1,595	

These available FM unconstrained stations are spread across the 212 markets. Table 4 shows the number of markets that have varying numbers of unconstrained FM stations, both in total and by station class.

[11] Those markets are Youngstown, OH, Battle Creek, MI, Florence, SC, and Sussex, NJ. Note that the Sussex, NJ radio market is a geographic area also part of the wider New York City, NY radio market as well.

Table 4 - Number of Markets with Varying Numbers of Available Unconstrained Stations

Station Counts of All FM Classes	# of Markets	Station Counts of Class B, C, C1	# of Markets
15 or More	23		
10 to 14	30	10 or More	12
5 to 9	95	5 to 9	28
2 to 4	55	2 to 4	75
1	9	1	41
Total	212	Total	156

As shown, there are 53 markets with at least 10 unconstrained FM stations of all classes and a total of 148 markets in which there are at least 5 unconstrained FMs of all classes. Yet, in many markets there are fewer unconstrained FM stations in the most desirable classes. It is therefore not surprising that unconstrained stations overall reach smaller populations and attract smaller audiences than constrained stations. As a result, unconstrained stations generally face substantial competitive challenges under the present ownership rules, which prevent their combination with many other radio groups.

Comparison of Population Reached

In order to make a fair comparison of the populations reached by the stations owned by constrained and unconstrained groups, this report compares the populations reached by stations within the same market. First, in every market we average the primary (70dBu) and secondary (60dBu) contours of all FM stations in constrained groups and similarly for all unconstrained FM stations.[12] We then divided the average population served by stations in the constrained group by the average population served by stations in the unconstrained group in each market.

[12] Media Access Pro™ includes the populations reached by all radio stations in its database of all commercial and noncommercial radio stations.

Across the 212 markets, the constrained station group average primary contour population was 147.8% higher than the unconstrained group, and the average secondary contour population was 82.9% higher than the unconstrained group. These averages were dramatically affected by some markets where the comparisons were extraordinary. The median market showed that the constrained station group primary contour population was 62.2% larger, and the secondary contour population was 41.8% larger, than the corresponding values for the unconstrained groups.

The differences in the populations reached by the constrained groups compared to the unconstrained groups across the various market sizes show that the constrained groups generally, but not always, have stronger stations in all market sizes. Table 5 shows the median value of the comparisons across these different groups for the various market sizes.

Table 5 - Comparison of Population Reached by Constrained Groups as Compared to Unconstrained Groups Across Market Sizes

	Median Market Population Advantage of Constrained Group vs. Unconstrained Group Stations	
Market Size Range	Primary Contour	Secondary Contour
1-10	50.2%	44.8%
11-25	80.6%	54.1%
26-50	79.7%	47.3%
51-75	64.6%	34.3%
76-100	96.2%	43.4%
101-125	109.7%	76.0%
126-150	88.0%	46.1%
151-200	69.5%	45.5%
201+	25.5%	18.1%

In all market size ranges, the unconstrained stations are significantly disadvantaged in terms of populations reached. It is especially noticeable in the mid-sized and smaller markets,

i.e., ranked 76-150. In only the very smallest markets, the disadvantage is not as severe, simply because there are fewer people in those markets as a whole.

Ratings Comparison

Given the relative reach of the populations shown above, it is not surprising that the relative audiences of the constrained and unconstrained station groups differ. Table 6 presents a summary ratings comparison of all markets that have station clusters constrained by their FM station ownership.

Table 6 - Comparison of Constrained and Unconstrained FM Stations Ratings

Unconstrained FM Share	Number of Markets	Top 75 Markets	Markets 76+	Avg. Fall 2018 Constrained FM Share	Avg. Fall 2018 Unconstrained FM Share	Average # of Unconstrained FM Stations
Greater than 50%	9	8	1	4.3	3.6	16.8
40% - 49.9%	11	8	3	4.0	3.3	14.5
30% - 39.9%	26	11	15	4.9	3.5	12.6
20% - 29.9%	52	15	37	5.1	3.4	8.7
10% - 19.9%	52	8	44	4.9	3.1	5.6
Under 10%	62	12	50	5.3	1.8	3.6
All Markets	212	62	150	5.0	2.9	7.5

This analysis looks at the FM shares for the Fall 2018 ratings period as determined by Nielsen Audio. As indicated, we divided the 212 markets in which there were both constrained and unconstrained stations into categories based on the total unconstrained FM share. There were 9 markets (8 in the top 75) in which the unconstrained FM stations accounted for over 50% of total listening. Similarly, there were 11 markets in which unconstrained FM stations accounted for between 40% and 49.9% of total local radio listening, 26 markets in which these FMs accounted for between 30% and 39.9% and 52 markets in which they accounted for between 20% and 29.9%.

In most of these markets, the unconstrained FM stations did not perform as well, on average, as the constrained FMs. Across all markets, the unconstrained FM stations garnered an average 2.9% share, compared to a 5.0% share for the constrained FMs. Also, the audience share of the unconstrained FM stations are much larger in total in the top 75 ranked markets (average: 27.6%) than in markets ranked 76 and below (average: 17.1%). This result shows that unconstrained FM stations in mid-sized and small markets particularly struggle to attract audiences.

AM Comparisons

Since there are a fewer number of cases where local ownership of AM stations is constrained, the comparisons will be done as an entire group rather than by market size range. There are thirteen markets where this report can compare the constrained group owning the maximum number of AM stations allowed for that market to unconstrained AM stations. It should also be noted that some of these AM constrained groups are also constrained with respect to the total number of stations they can own in their markets.

Populations Reached

As in comparing FM stations, this report compares the AM stations owned by constrained and unconstrained groups by analyzing the populations reached by the stations in these groups within the same market. First, in every market we averaged populations reached under the primary (5 mV/M), secondary (.5 mV/M), and 2 mV/M[13] contours of all AM stations in

[13] While the 2 mV/M contour is not specified in any FCC regulations, it is often used by radio networks to establish exclusive market areas for AM station programming. It serves as a useful compromise between the primary and secondary contours.

constrained groups and similarly for all unconstrained AM stations. We then compared those averages in each of the thirteen markets.

Across the thirteen markets, the constrained AM group average primary contour population was 44.5% higher than the unconstrained group; the average secondary contour population was 53.7% higher than the unconstrained group; and the average 2 mV/M contour was 48.0% higher than the unconstrained group. These averages are affected by some markets where the comparisons were extraordinary. Looking at the median, the constrained group primary contour population was 40.7% larger, the secondary contour population was 39.2% larger, and the 2 mV/M contour was 40.9% larger than the corresponding values for the unconstrained group.

The smaller populations generally reached by unconstrained AM stations in the limited number of markets with constrained AM groups indicates that unconstrained stations are relatively disadvantaged in those markets. Consequently, unconstrained AM stations and, as discussed above, unconstrained FM stations may greatly benefit if they were part of a larger local group under a relaxed ownership rule. These benefits would come from the cost savings enjoyed by larger local radio groups, a topic this report turns to next.

Potential Economic Benefits of Relaxing Radio Ownership Caps

To assess the economic benefits of loosening the local radio ownership rules, this report examines specific cases across various market sizes to estimate the impact. We used actual existing constrained and unconstrained local radio clusters to estimate the impact if they were now combined. The revenue estimates for these clusters are from BIA's Media Access Pro™ database of all commercial and noncommercial radio stations.

Our review of the constrained and unconstrained groups indicates an advantage in generating revenue for stations in constrained groups, even after accounting for the better technical facilities of and larger populations reached by the majority of stations in constrained groups. See Appendix A. To err on the conservative side, however, we do not assume in our financial models below any increase in revenue per station resulting from the proposed combinations, but only account for increased efficiencies and cost savings achieved from common ownership. The expense and cash flow estimates[14] come from BIA's knowledge about finances in the radio industry.[15]

Top Market Example

The first example is from a constrained cluster in the top ten markets, owning 5 FM and 2 AM stations. The unconstrained cluster in that same market owns 2 FM and 1 AM stations. Table 7 shows the financial picture of these two clusters before and after they are combined.

Table 7 - Top Market Combination Example

	Constrained Cluster: 5 FM, 2 AM	Unconstrained Cluster: 2 FM, 1 AM	Combined: 7 FM, 3 AM	Benefit
Revs. (000s)	$88,300	$19,550	$107,850	
Net Revs. (000s)	$75,938	$17,204	$93,142	
Exp. (000s)	$47,241	$12,317	$57,552	$2,006
Cash Flow (000s)	$28,698	$4,888	$35,591	
Cash Flow Margin[16]	33.7%	25.0%	34.8%	

In this example, the combined operation would generate nearly $108 million in gross revenue and over $93 million in net revenue (after agency and rep commissions are subtracted).

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[14] Those cash flows sometimes are a bit misleading as to the overall profitability as they do not include the depreciation, amortization, interest and corporate overhead costs. These costs can be substantial.

[15] BIA has been conducting financial valuations of local radio stations for over 34 years.

[16] Cash Flow Margins are typically characterized as a percentage of Net Revenues.

Combining these operations into one would lead to substantial cost savings, conservatively estimated to be over $2 million. These cost savings could involve combining operations in one location saving considerable amounts, having fewer sales managers and/or fewer engineers and other back office personnel, as well as other potential cost savings. With those cost savings, the combination's cash flow increases by 6.0% over the sum of the two cash flows prior to the combining of these two stations groups. Thus, both the previously constrained group of stations and the unconstrained group would benefit from the combination of the two groups.

Large Market Example

The next example is from a constrained cluster in a market ranked between 26-50, owning 5 FM and 1 AM stations. The unconstrained cluster in that same market owns 2 FM stations. Table 8 shows the financial picture of these two clusters before and after they are combined.

Table 8 - Large Market Combination Example

	Constrained Cluster: 5 FM, 1 AM	Unconstrained Cluster: 2 FM	Combined: 7 FM, 1 AM	Benefit
Revs. (000s)	$34,800	$8,700	$43,500	
Net Revs. (000s)	$30,972	$7,830	$38,802	
Exp. (000s)	$20,532	$5,873	$25,221	$1,184
Cash Flow (000s)	$10,439	$1,957	$13,485	
Cash Flow Margin	33.7%	25.0%	34.8%	

In this example, the combined operation would enjoy a nearly $1.184 million cost savings from the total for the two clusters operating separately, with specific examples of cost savings discussed above. This would boost cash flow by 9.6% from what it otherwise would have been.

Small Market Example

The next example is from a constrained cluster in a small market ranked between 101-110, owning 4 FM and 2 AM stations. The unconstrained cluster in that same market owns 3 FM stations. Table 9 shows the financial picture of these two clusters before and after they are combined.

Table 9 - Small Market Combination Example

	Constrained Cluster: 4 FM, 2 AM	Unconstrained Cluster: 3 FM	Combined: 7 FM, 2 AM	Benefit
Revs. (000s)	$5,975	$2,900	$8,875	
Net Revs. (000s)	$5,378	$2,668	$8,046	
Exp. (000s)	$3,734	$2,088	$5,516	$306
Cash Flow (000s)	$1,643	$580	$2,529	
Cash Flow Margin	30.6%	21.7%	31.4%	

In this small market example, the combined operation would enjoy over $300 thousand cost savings from the total for the two clusters operating separately, with examples of cost savings discussed above. This would boost cash flow by 13.8% from what it otherwise would have been.

Very Small Market Example

The last example is from a constrained cluster in a very small market ranked between 140-150, owning 3 FM and 1 AM stations. The unconstrained cluster in that same market owns 2 FM and 1 AM stations. Table 10 shows the financial picture of these two clusters before and after they are combined.

Table 10 – Very Small Market Combination Example

	Constrained Cluster: 3 FM, 1 AM	Unconstrained Cluster: 2 FM, 1 AM	Combined: 5 FM, 2 AM	Benefit
Revs. (000s)	$3,800	$500	$4,300	
Net Revs. (000s)	$3,496	$483	$3,979	
Exp. (000s)	$2,546	$420	$2,796	$170
Cash Flow (000s)	$950	$63	$1,183	
Cash Flow Margin	27.2%	13.0%	29.7%	

In this very small market example, the combined operation would enjoy $170 thousand in cost savings from the total for the two clusters operating separately, with examples of cost savings discussed above. This would boost cash flow by 16.8% from what it otherwise would have been. It should also be noted the unconstrained cluster in this example only garners 5.0% of the local radio over-the-air revenue, and given that level of revenue, struggles to operate.

Economic Benefit Conclusions

To summarize, when the potential improvement from the relaxation of the local ownership rules are examined with actual local stations' finances, one can easily see the benefits from such relaxation. The overall improvements in cash flows are shown below in the following table.

Table 11 - Summary of Cash Flow Benefits from Transactions Under Relaxed Rules

Market Sizes	Improvement in Cash Flow (000)	Percentage Increase in Cash Flow
Top Market	$2,006	6.0%
Large Market	$1,184	9.6%
Small Market	$306	13.8%
Very Small Market	$170	16.8%

It is not surprising to see these percentage improvements because much of the costs incurred by local radio stations are fixed (as further explained below), and as those costs are spread over more stations with greater combined revenues, the potential for financial benefit is

significant. Moreover, the benefits from increased common ownership are relatively greater in smaller radio markets.

We again emphasize that our assumptions here were conservative, in that this report did not assume an increase in the revenues earned per station following the combination of unconstrained stations with a previously constrained radio cluster. As explained in more detail in Appendix A, we believe it likely that such increases in revenue would occur, because large radio clusters appear better able than smaller radio groups to turn populations reached (i.e., potential audiences) into actual revenues. Thus, the financial benefits stemming from ownership reform may likely be greater than shown in the discussion and summary chart above, which did not assume any station revenue increases.

The Challenges of Many Radio Stations in Covering their Fixed Costs

Finally, this report further examines the problems that many stations – especially unconstrained ones – experience in generating revenue sufficient to even cover their fixed costs. As shown below, broadcast stations have substantial fixed costs that must be met before any station can invest in higher quality (i.e., more expensive) programming, hire additional staff or upgraded its equipment.

General Cost Structure of Radio Stations

The revenue generated by local radio stations must be enough to cover the basic costs of running a station. These costs are divided into six general areas: engineering, programming, news (if separate from programming), advertising & promotion, sales, and general & administrative. While stations in various markets may have very different cost structures, the

following is representative of an independently owned standalone station that may be generating approximately $250 thousand in gross advertising revenue.[17]

Table 12 - Representative Costs for $250K Gross Rev. Radio Station

Department	Costs
Engineering	$30,000
Programming	$50,000
News	$5,000
Adv. & Promotion	$2,500
Sales[18]	$70,000
Gen. & Admin.[19]	$90,000
Total	$247,500

Clearly, in this case the local radio station is barely getting by. While there may be radio stations that have higher and lower costs than those suggested above, this example is very indicative of the strains that such stations are facing in today's media marketplace. With revenue barely exceeding expenses, the local radio station lacks the resources to invest in new equipment or improvements to its programming, including local news.

Even a radio station earning $500 thousand in gross revenues will face similar financial problems. While its cost structure is similar to the example above, there are additional costs here,

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[17] BIA Advisory Services has been valuing radio stations for over 34 years and have seen thousands of financial statements from independent radio stations. While the examples shown are not averages across all of those stations, they are good examples of what we have seen.

[18] In addition to the sales department costs, this value also includes amounts paid for agency and rep commissions, which are typically subtracted from gross revenue.

[19] Includes amortization and depreciation and any interest expenses in addition to other general & administrative costs at a radio station of this revenue size.

with larger sales and other staff, and slightly more spending on engineering and promotion, to compete against more stations in a larger market. The following is representative of an independently owned station that may be generating approximately $500 thousand in gross advertising revenue.

Table 13 - Representative Costs for $500K Gross Rev. Radio Station

Department	Costs
Engineering	$45,000
Programming	$100,000
News	$25,000
Adv. & Promotion	$10,000
Sales	$140,000
Gen. & Admin.	$160,000
Total	$480,000

Here again, the local radio station is “just getting by” covering its costs, leaving little for the owner to reinvest in the operation while at the same time facing increased competition from many different sources.

These two examples are important when considering relaxation of the local ownership rules because many stations that are not part of constrained local radio groups fall into these revenue ranges. Table 14 shows the percentage of all unconstrained AM and FM radio stations by market size range that fall below $250 and $500 thousand in annual revenue.

Table 14 - Percentage of Unconstrained AM and FM Stations Below $250 and $500 Thousand in Revenue by Market Size Range

	AM Stations		FM Stations	
Market Size Range	$250K or Below	$500K or Below	$250K or Below	$500K or Below
1-10	49.4%	59.1%	16.0%	23.4%
11-25	59.8%	75.2%	21.6%	28.8%
26-50	65.0%	79.7%	17.4%	25.4%
51-75	80.6%	91.1%	31.2%	44.5%
76-100	85.5%	94.3%	31.6%	47.6%
101-125	84.4%	95.0%	36.0%	49.5%
126-150	86.7%	95.3%	40.4%	58.9%
151-200	85.6%	91.3%	44.2%	66.3%
201+	90.3%	96.4%	50.0%	73.3%

The percentages are conservative in describing the financial health of unconstrained stations, as the costs in the largest markets are likely higher than the above estimates, and hence, the percentages of unconstrained stations struggling to meet their fixed costs are probably higher in large markets than reflected in Table 14. Note that higher percentages of AM stations fall below the $250K and $500K thresholds, which is not surprising given the smaller audiences AM stations attract. Finally, also note that the percentages of stations below the revenue thresholds are higher in smaller markets, reflecting the lower revenue potential in those markets.

Conclusions

Local radio stations, like all media outlets, face intense competition for usage and for advertising revenue. As shown in this report, the total local radio station industry experienced a

substantial decrease in revenue during the last recession and has not, nor is expected to, come close to those revenue levels in the future, as digital platforms continue to increase their share of local ad revenues at the expense of traditional media. At the same time, usage of local radio stations has also decreased as more consumers turn to alternative sources of information and entertainment (e.g., online streaming services, podcasts, etc.). All types of radio stations have been negatively impacted by this usage and revenue decline.

In response to these market trends and financial storms, many radio stations have been combining on a local level, subject to the FCC's ownership rules. Under the present rules, there are 404 radio station clusters that have reached the maximum levels of ownership permitted in their local Nielsen audio markets. As the above analyses showed, those radio stations that are not part of constrained clusters particularly struggle to attract audiences and advertising revenues in today's highly competitive marketplace.

While some unconstrained radio stations are successful competitors in their local markets, many are just "getting by." Stations struggling to earn sufficient revenue to cover their fixed costs do not have the financial resources to invest in their physical plant and/or new programming to attract more listeners and become more viable competitors. The proportion of AM stations and small market stations in this position is especially high.

While FCC policy in the past has favored having as many independent owners of radio stations as possible in local markets, the economics of the modern audio marketplace and the weak competitive position of many stations suggest that radio broadcasters need to achieve greater economies of scale to remain effective competitors. If local ownership rules were relaxed and some of the weaker stations were combined with other local radio groups, they could be

placed on a sounder financial footing, become more vibrant competitors in their local markets, and offer improved service to local audiences.

Appendix A – Comparison of Station Revenue for Constrained and Unconstrained Groups

Revenue Comparison

Given the greater reach that constrained stations tend to have and the resulting larger audiences they tend to attract, we also examined how these differences affected the revenues generated by constrained and unconstrained stations. That comparison is made both in terms of the total revenue generated by these stations as well as the revenue per population reached by these stations.

Revenue by Station

For the 212 markets with both constrained and unconstrained FM stations, the average constrained FM station generated 167.8% greater revenue than the unconstrained FM stations in the same markets. This average is greatly affected by some markets in which the revenue advantage is extremely large. Yet, even when looking at the median market, the advantage of constrained stations is still significant, at 93.3%.

There are a number of exceptions. For example, in Raleigh-Durham, NC, the average constrained FM station generated $3,745,000 in over-the-air advertising revenue in 2018, while the average unconstrained FM station in that market generated $3,929,000 for that same year. In 2018 overall, there were 34 markets in which the average unconstrained FM station generated greater revenue than the average constrained FM station.

Comparing the differences in revenue generated by stations in the constrained groups to the unconstrained groups shows that the constrained group stations generate greater revenue in all market sizes. Table 15 shows the median value of the comparisons across these different groups for the various market sizes.

Table 15- Comparison of Median Market FM Station Revenue of Constrained Groups as Compared to Unconstrained Groups Across Market Sizes

Market Size Ratings	Median Market Revenue Advantage of Constrained Group vs. Unconstrained Group Stations
1-10	64.11%
11-25	68.36%
26-50	73.25%
51-75	144.17%
76-100	138.38%
101-125	141.69%
126-150	50.79%
151-200	117.53%
201+	69.85%

Clearly, constrained group stations have a substantial advantage over unconstrained stations in terms of revenues earned. Significantly, this revenue advantage is greater than the constrained group stations' advantages over unconstrained stations in terms of their populations reached or ratings achieved. (See pp. 22-25 above.) The stations in larger constrained clusters evidently are better able to turn potential audiences into revenue than are unconstrained stations. Thus, relaxing the ownership rules to permit the formation of larger combinations would likely increase station revenues, compared to the revenues earned by the same stations prior to the combination of unconstrained stations with a previously constrained cluster.

Revenue Per Population Reached

Constrained FM radio stations' advantage in generating revenue is clearly shown when the revenue per population variable is compared for constrained and unconstrained station groups. To make this comparison, we simply divide the average revenue of each of the two groups of stations by the average population served under the secondary contour (60 dBu). This comparison removes the impact of the larger populations reached that generally favors the constrained FM radio stations.

The average constrained FM station generated 64.6% greater revenue per population reached than the average unconstrained FM station in the same markets. In looking at the median, the advantage of the constrained station is still noticeable, at 29.4%. Note the lower advantage values after accounting for the differences in the populations reached, relative to the previous revenue comparisons. Still, the constrained groups are able to generate higher revenue even after accounting for the larger populations they reach, thus indicating that larger radio clusters are better than smaller groups at turning potential listeners into actual revenue.

Comparing the differences in the revenue per population reached generated by stations in the constrained groups shows that the constrained group stations generate greater revenue in all market sizes. Table 16 shows the median value of the comparisons across these different groups for the various market sizes.

Table 16- Comparison of Average FM Station Revenue Per Population Reached of Constrained Groups as Compared to Unconstrained Groups Across Market Sizes

Market Size Ratings	Median Market Revenue Per Population Reached Advantage of Constrained Group vs. Unconstrained Group Stations
1-10	21.46%
11-25	11.91%
26-50	17.18%
51-75	51.12%
76-100	75.75%
101-125	38.18%
126-150	21.94%
151-200	34.16%
201+	29.01%

Attachment B

THE ECONOMIC IRRATIONALITY OF THE TOP-4 RESTRICTION

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March 15, 2019

BIA ADVISORY SERVICES

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Executive Summary

The Federal Communication Commission's rule banning combinations among any of the top 4 ranked local television stations in all 210 TV markets continues to prevent many local stations from competing effectively in their markets. At a time when local stations must reinvest in their operations, programming and physical plant to remain competitive, many stations, including a number of top 4 ranked ones, are currently financially challenged and likely to remain so, thus hampering them from making these necessary investments. By prohibiting many local combinations, the FCC's rule will result in numerous local stations continuing to be weak competitors in their markets and lacking the means to improve their position. With all the competition for viewers and advertising revenue facing local television stations today, it is irrational to hamstring these stations and prevent combinations that would improve overall competition in local markets.

This report describes the competitive position of the local television station industry overall and examines the relative position of stations affected by the FCC's top 4 restriction. By examining these two areas, this report demonstrates that the blanket continuation of this restriction is not good policy.

Competition facing local television stations is increasing every day. In addition to the hundreds of cable and satellite delivered networks, newer Over the Top (OTT) video services are seeing significant increases in their subscriber bases. Simultaneously, there is increased competition in local advertising markets from new advertising platforms. Evidence showing the impact on local television stations of greater competition for audiences and advertisers includes:

- Total time viewing traditional TV (live plus DVR time shifting, counting broadcast and cable channels) by all adults has decreased by 9.6% in just the past five years, with substantially larger decreases among consumers under the age of 50.
- Viewing of video on mobile and other devices has increased significantly in recent years, especially among younger demographic groups.
- In the second quarter of 2018, consumers ages 18-34 spent only 25% of their daily media time with traditional TV and spent 58% of their media time with apps/web on smartphones and tablets, internet on a computer, and on TV-connected devices (DVDs, game consoles and internet connected devices). Consumers ages 35-49 spent only 35% of their daily media time on traditional TV and 48% of their time on apps/web on smartphones and tablets, internet on a computer, and TV-connected devices.
- Local television stations' share of the total local advertising marketplace is only expected to be 11.5% in 2019, down from 13.5% in 2010. That share is projected to continue to decrease in the future. In contrast, the digital sector's share of local ad markets has skyrocketed in recent years and is projected to continue to grow.
- Total local television station over-the-air (OTA) advertising revenue has decreased by 13.4% since 2000 and by 17.6% from the peak year of 2006. After accounting for inflation, total local TV station OTA ad revenue has fallen by 40% since 2000.

Increased competition has placed many local TV stations, including stations ranked among the top 4 in ratings, in a precarious competitive position in their local markets. This report examined in detail the audience and advertising shares of local TV stations in the 128 markets

that have at least four full power commercial stations and in which the top 4 stations in terms of audience share are full power commercial stations. These analyses showed:

- In the median market, the number one station's audience share was 25.0% larger than the number two station's audience share; the number two station's audience share was 21.7% larger than the number three station's share, and the number three station's share was 25.0% larger than the fourth ranked station's share. In the average market, the gaps between stations' audience shares are considerably greater, due to the significant number of markets with extremely large differences between the audience shares earned by top 4 stations.
- The differences in advertising revenue share among top 4 stations is generally even more pronounced. For example, in the median market, the second ranked station's revenue share was 29.0% larger than the third ranked station's share, and the third ranked station's share was 32.4% larger than the fourth ranked station's share. Again, in the average market, the gap between stations' revenue shares are much larger than in the median market.
- In 25 of these 128 markets, the fourth ranked station's share of local over-the-air television advertising revenue is below 10%. In these markets, the fourth ranked stations' average share of total local advertising revenues is less than 1%.
- In 56 of the 128 markets, the top ranked station's audience share is larger than the combination of the audience shares of the third and fourth ranked stations. Nearly 84 percent of these 56 markets are medium-sized or small (i.e., TV markets ranked #51 or below).
- In 61 of the 128 markets, the advertising revenue share of the top earning station is larger than the revenue shares of the third and fourth ranked stations combined. Over 88 percent of these 61 markets are medium-sized or small (i.e., TV markets ranked #51 or below).
- In 19 of these 128 markets, the top earning station's ad revenue share is larger than the revenue shares of even the second and third ranked stations combined, and in an additional 34 markets, the top earning station's revenue share is larger than the revenue shares of the second and fourth ranked stations combined.

This report also examined the 112 markets that have at least five full power commercial stations and in which the top 4 stations in terms of audience share are full power. In nearly 70% of these markets, the largest gaps in revenue shares were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest revenue share gap was between the fourth and fifth ranked stations in only about 31% of these markets. These results call into question the rationality of the blanket ban on combinations among top 4 stations, which has been justified on the significant competitive gap between the top 4 and all other stations in local markets.

All these analyses demonstrate that many top 4 stations, particularly the third and fourth ranked (and even some second ranked) stations, struggle to earn audience share and advertising revenue and remain viable competitors in their local markets. A review of revenue data from the past five years also indicates that the competitive positions of third and fourth ranked stations have not improved over time but have generally worsened.

As shown above and in this report, many local TV stations struggle to compete successfully just against other local TV stations, let alone the myriad other marketplace competitors. These stations will struggle to invest in improved programming, upgraded sales operations and technical plant, which casts doubt on their future competitive viability. Given marketplace realities, the FCC should not continue to maintain its rule prohibiting top 4 station combinations across-the-board in all markets.

Introduction

The level of competition facing local television stations has never been greater. While local television stations have for some time been competing for audiences with cable networks and their distribution systems, they now also compete for audiences with myriad online and mobile video programming services and news sources. Many of these newer competitors are large entities with considerable resources to invest in their services. In response, over-the-air (OTA) broadcast networks and local television stations are compelled to invest even more in new and varied programming.

At the same time, local television stations are encountering more competition in their local advertising marketplaces. Growth in online and mobile advertising has been staggering, placing even more competitive pressure on local television stations. As a result, total local television station advertising revenues have notably declined in nominal terms since 2000, and if inflation is considered, that decline is much larger.

Under these market conditions, local television stations are struggling to continue – let alone increase -- investments in their operations, programming and physical plant. To keep pace with their new advertising competitors, local television stations need to invest in data-driven and automated sales operations. Faced with competitive online and mobile advertising platforms, local television stations are being pressured to provide more information about the types of audiences they attract (beyond just gender and age), requiring stations to invest in new data, as well as personnel qualified to interpret that expanded data. Given the automated manner in which these competitive digital media are bought and sold, local television stations are additionally

being pressured to invest in similar automated systems and hire personnel to monitor those systems and stations' advertising inventories. Programming investments, including in news, sports and other locally-oriented programming, are also necessary to retain even the smaller audiences that stations now attract. Finally, the advent of a new transmission system in the next few years, ATSC 3.0, will require notable capital investments by local television stations. Only stations able to afford investments in ATSC 3.0 will be capable of offering ultra-HD programming, mobile services, interactivity, data delivery and other services necessary to effectively compete in today's media marketplace.

While some local television stations are stepping up to meet these challenges and making the necessary investments, others are hard pressed to do so. Even stations ranked among the top four in ratings in their local markets are finding these challenges difficult to meet in the current competitive landscape. This is especially true for many third and fourth ranked stations in many markets, and it is also true for some second ranked stations in many small markets, particularly where they face a dominant market leading station. Beyond struggling today to compete for advertising revenues in their local markets, their inability to make sufficient investments in programming, operations, equipment and technology will relegate these stations to being permanent competitive "also rans," rather than vibrant competitors, in their local communities in the future.

In light of these realities, the FCC should no longer maintain its blanket ban on combinations among any top 4 ranked stations. This ban is especially counter-productive in markets where lower ranked top 4 stations attract relatively limited shares of viewing and local TV station ad revenue and generate truly miniscule shares of total local advertising revenues. Allowing top 4 combinations in these local markets would be pro-competitive and help ensure

continued vibrant competition from all local television stations. An examination of the gaps in advertising revenue share between the top five stations in local markets also shows that there are many more markets where the largest competitive gaps are between the first and second ranked, the second and third ranked, or the third and fourth ranked stations, rather than between the fourth and fifth ranked stations. These data further weaken the support for a rigid top 4 demarcation for station combinations.

This paper describes competition in the video marketplace and identifies the challenges faced by many of the top 4 ranked stations in local markets. We begin by providing information on the competitive position of the local television industry as a whole. Recent data on the audiences attracted and revenue generated by local television stations clearly demonstrate the effects of increased competition for viewers and advertisers. We then examine recent data on the audiences and advertising revenue shares generated by full power commercial television stations ranked among the top 4 in their local markets. These data demonstrate that many third and fourth ranked stations, and in some markets even the second ranked stations, are in a precarious competitive position. In such cases, combinations among these stations will improve competition in local markets. If the Commission retains its prohibition on combinations among top 4 stations in all markets, many of these local television stations will "wither on the vine," becoming less competitively relevant in their local markets and less able to offer local services relevant to their communities.

Increased Competition for Viewing Audiences

Attracting audiences continues to be increasingly more difficult for local television stations. In addition to the hundreds of cable and satellite delivered networks, more

entertainment and informational choices are now supplied by various internet-based services and sources. Innumerable websites provide both local and national news on a constant basis. Additionally, multiple over-the-top (OTT) services each provide hundreds (or thousands) of hours of video programming, including growing amounts originally produced by those services. This vastly increased amount and diversity of programing has led to decreased viewing of local television stations, resulting in financial challenges for many stations.

OTT Services Subscription Levels

While Netflix began in the 1990s, first delivering movies on DVDs, the more recent growth in its subscriber levels for its OTT service is remarkable. By the end of 2018, it reported 60.55 million subscribers in the U.S., up 189% from the fourth quarter of 2011.[1] Amazon Prime reported having over one hundred million subscribers at year's end 2018, up from 25 million at the end of 2013.[2] At the same time, Hulu reported a 48% annual increase in 2018 in the number of its subscribers, now totaling 25 million in the U.S.[3] Other recent entrants into this area include "virtual" MPVDs, such as Sling TV, which had over 2.4 million subscribers at the end of 2018.[4] Finally, Google's live streaming service, YouTube TV, recently reached the one million subscriber mark.[5]

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[1] https://www.statista.com/statistics/250937/quarterly-number-of-netflix-streaming-subscribers-in-the-us/.

[2] See http://fortune.com/2019/01/17/amazon-prime-subscribers/ and https://www.statista.com/statistics/546894/number-of-amazon-prime-paying-members/

[3] https://www.hulu.com/press/hulu-tops-25-million-total-subscribers-in-2018/.

[4] See Nick Pino, *Sling TV beats Hulu, YouTube to largest live streaming TV provider title*, https://www.techradar.com/news/sling-tv-beats-hulu-youtube-to-largest-live-streaming-tv-provider-title

[5] https://www.tubefilter.com/2019/03/01/youtube-tv-hulu-with-live-tv-subscriber-count-2019/ (citing Bloomberg report).

These new entrants, supported by their growing subscriber levels, continue to invest in new programming options, including substantial numbers of original scripted series. Taking advantage of economies of scale, large OTT service providers can spread the very substantial costs of their programming investments over their millions of subscribers.

Viewing Levels Analysis

The growth of these new video programming services has resulted in smaller audiences for local television stations. We can see that competitive impact through the quarterly Nielsen Media Total Audience Reports, which obtain information from various surveys to provide a full picture of the platforms and devices U.S. consumers use to access video entertainment and information.

The quarterly Nielsen Total Audience Reports utilize information from various Nielsen panels on media consumption patterns, such as the hours consuming television (either watching live television or DVR time shifted),[6] consuming video on a computer or smartphone or via TV-connected devices, as well as consumption of other media. Not surprisingly, given the many choices now available to consumers, the total hours that consumers spend watching traditional television platforms has significantly decreased just since 2014. Figure 1 shows overall weekly viewing for adults (A 18+), as well as for several age demographic groups, for the second quarter of the past five years.[7]

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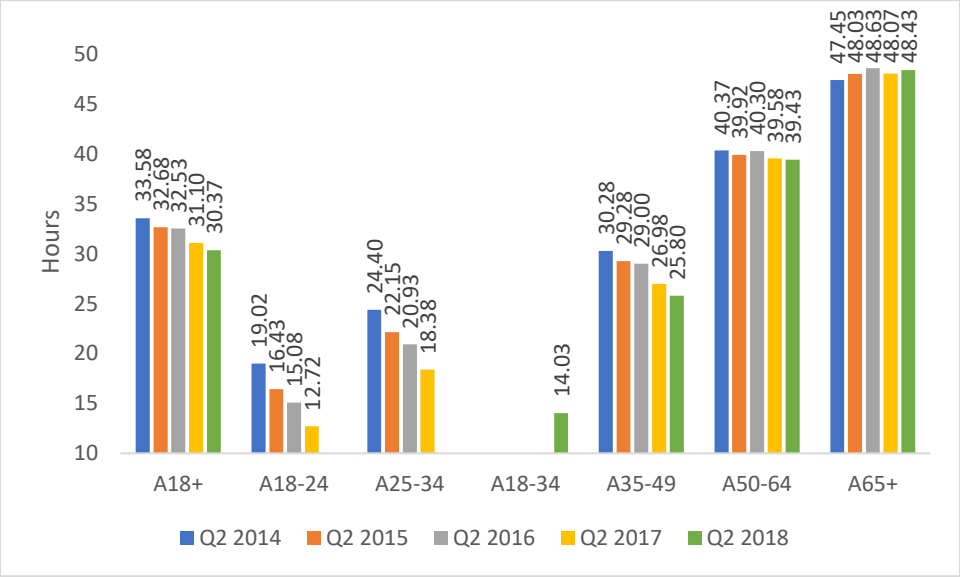
[6] Note that Nielsen includes in "television" viewing not only the viewing of local television stations but also the viewing of cable channels.

[7] It is important to compare the report from the same quarter for each year as there are seasonal differences in the usage of various media.

Figure 1 - Weekly Time Spent Viewing Live+DVR Time Shifted TV



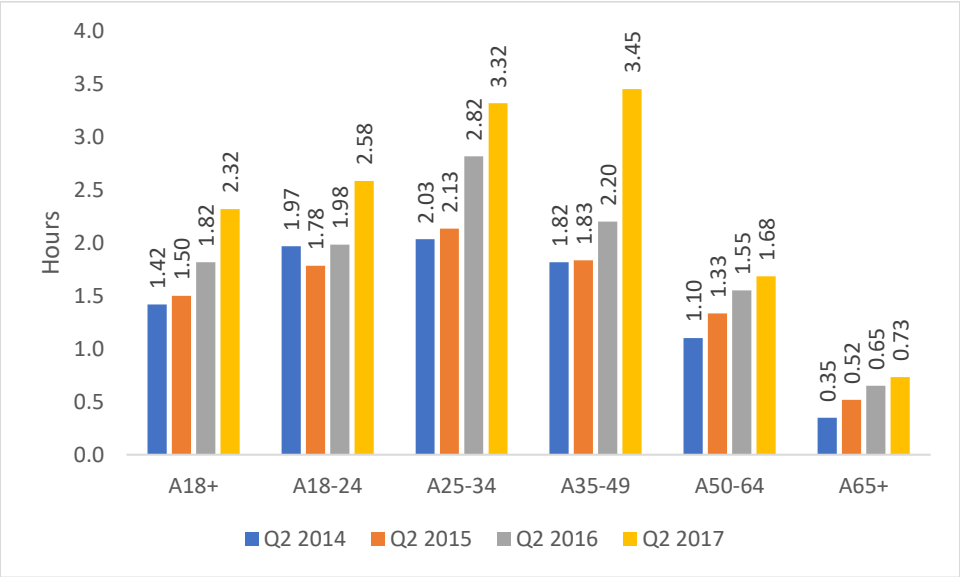
Source: Nielsen Media Research

The total sample of all adults aged 18 and older saw a 9.6% decrease in weekly time spent watching TV (broadcast and cable, either live or DVR time shifting) during this time period. For adults aged 18-24[8], the decline was 33.1% by 2017 and for adults aged 25-34, the decline was 24.7% by 2017. Even older demographic groups are watching less traditional television. Over the full five-year period, viewing by those ages 35-49 and ages 50-64 fell by 14.8% and 2.3%, respectively. Only the oldest age group, Adults 65+, saw a slight increase in viewing of 2.1% (though the Q2 2018 level is down from the high in Q2 2016). As shown below, the age demographic groups showing the largest decreases in viewing traditional TV have embraced other video alternatives.

[8] Note that starting in 2018, Nielsen combined the age groups 18-24 and 25-34 into one age group, 18-34.

To show that movement to alternative video sources, Figure 2 shows the weekly hours spent watching video on a computer between 2014 and 2017.[9] Note that this viewing not only includes OTT services such as Netflix or Hulu, but also any watching of video on the computer (e.g., YouTube videos).[10]

Figure 2- Weekly Time Spent Watching Video on a Computer



Source: Nielsen Media Research

While the percentage increases are high due to the low levels of computer video viewing in the past, they are still remarkable. The weekly computer video viewing of adults ages 18 and older increased by 63.4%. Viewing by adults ages 18-24 grew 31.0%; ages 25-34 by 63.5%; ages 35-49 by 89.6%; and ages 50-64 by 52.7%. Computer video viewing by the oldest group, ages 65 and older, increased by 109.5% (although from a low level initially). Moreover, the

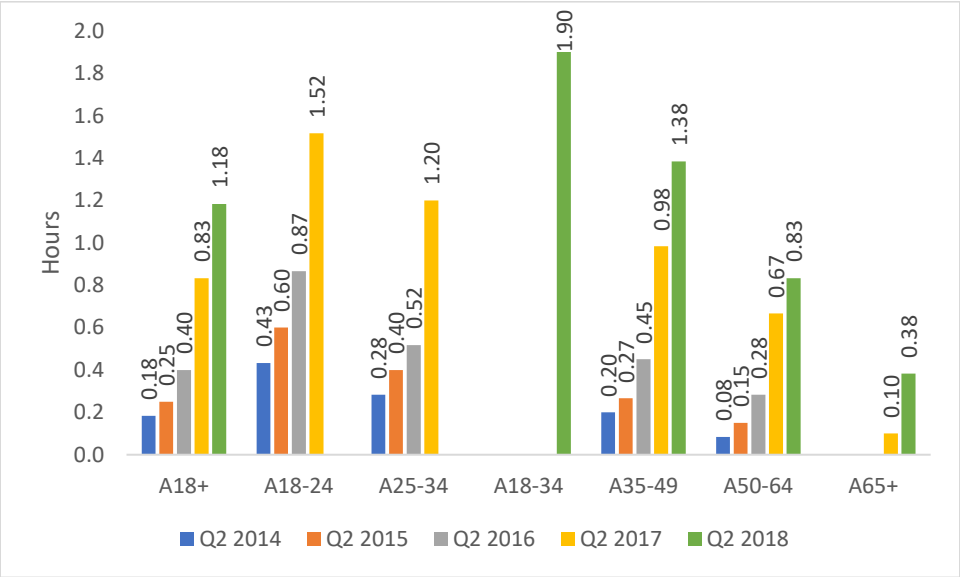
[9] Unfortunately, starting in Q2 2018, Nielsen Media changed its reporting procedures so comparisons cannot be made for viewing video on computers.

[10] This viewing could also include watching video from local television stations' websites. Unfortunately, there is no further breakdown of this viewing.

amount of time viewers spend watching video on computers appears to be accelerating, with notably greater increases in online viewing after 2015.

In addition, some of the reduced time watching Live TV plus DVR is due to increased viewing on smartphones. Figure 3 shows the increases in those values for the past five years.

Figure 3 - Weekly Time Spent Watching Video on a Smartphone

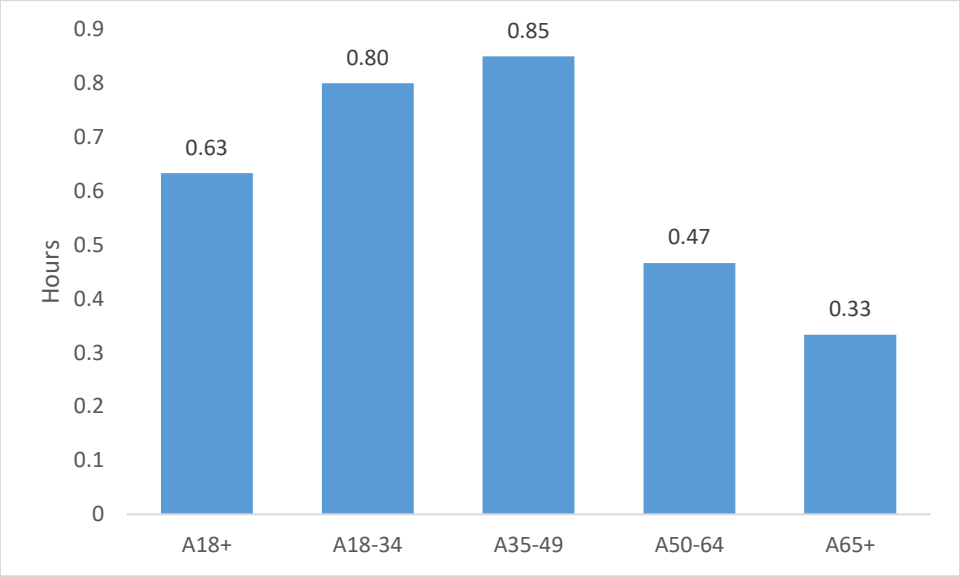


Source: Nielsen Media Research

The strong growth in this viewing option across all age groups is clear. Consumers' time spent watching video via their smartphones is poised to continue growing, given the near ubiquity of smartphone ownership among almost all demographic groups.

The increasing competitiveness of other video options beyond local TV stations is also shown in Nielsen's new reporting on video viewing on tablets. In the most recent quarterly report, Nielsen for the first time presented consumers' weekly viewing amounts on tablets for various age groups. Those results are shown below in Figure 4.

Figure 4 - Weekly Viewing Hours on Tablets – 2nd Qtr. 2018



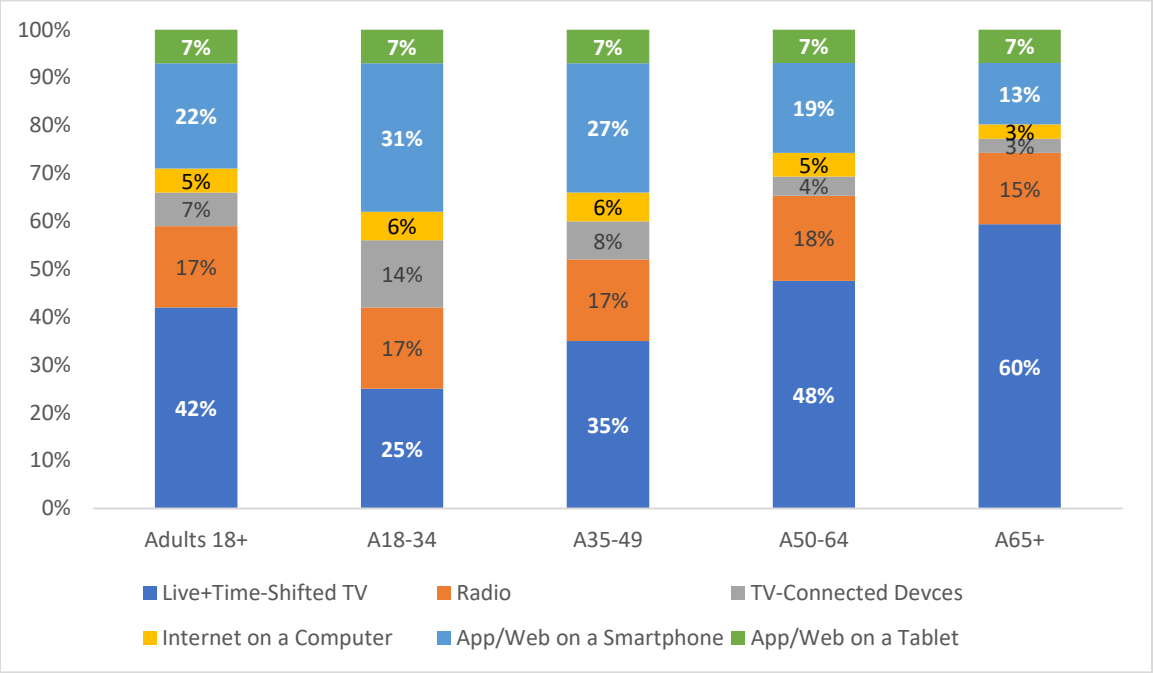
Source: Nielsen Media Research

Note that even in the first year of reporting viewing on tablets, it is already comparable to the viewing levels of smartphones in the third year of that reporting. Clearly, tablet viewing of video is another new and growing source of competition for traditional television viewing.

The growth of all these other platforms and devices has greatly affected the share of daily time consumers spend with various media platforms. According to Nielsen, consumers ages 18-34 spend only 25% of their daily media time using live+time-shifted TV (which includes both broadcast and cable/satellite, not just local TV stations). In contrast, these younger consumers spend 58% of their daily media time on app/web on a smartphone, app/web on a tablet, internet on a computer, and on TV-connected devices (DVDs, game consoles and internet connected devices). Even consumers ages 35-49 spend only 35% of their daily media time on traditional TV and 48% of their time on app/web on smartphones and tablets, internet on a computer, and

on TV-connected devices.[11] Only those ages 50+ now spend more of their daily media time on live+time-shifted broadcast and cable/satellite TV than with these various other platforms.[12]

Figure 5 - Share of Daily Time Spent by Platform



Source: Nielsen Total Audience Report, Q2, 2018

Increased Competition for Advertisers

At the same time local television stations are confronting more competition for viewers and losing audiences, they are also confronting more and varied competition in the local advertising marketplace. In order to provide the best information on that local advertising marketplace, BIA has for the past ten years widened the advertising platforms for which it

[11] The Nielsen Total Audience Report Q2 2018 at 7. Consumers in both of these age demographic groups spend 17% of their daily media time with radio.

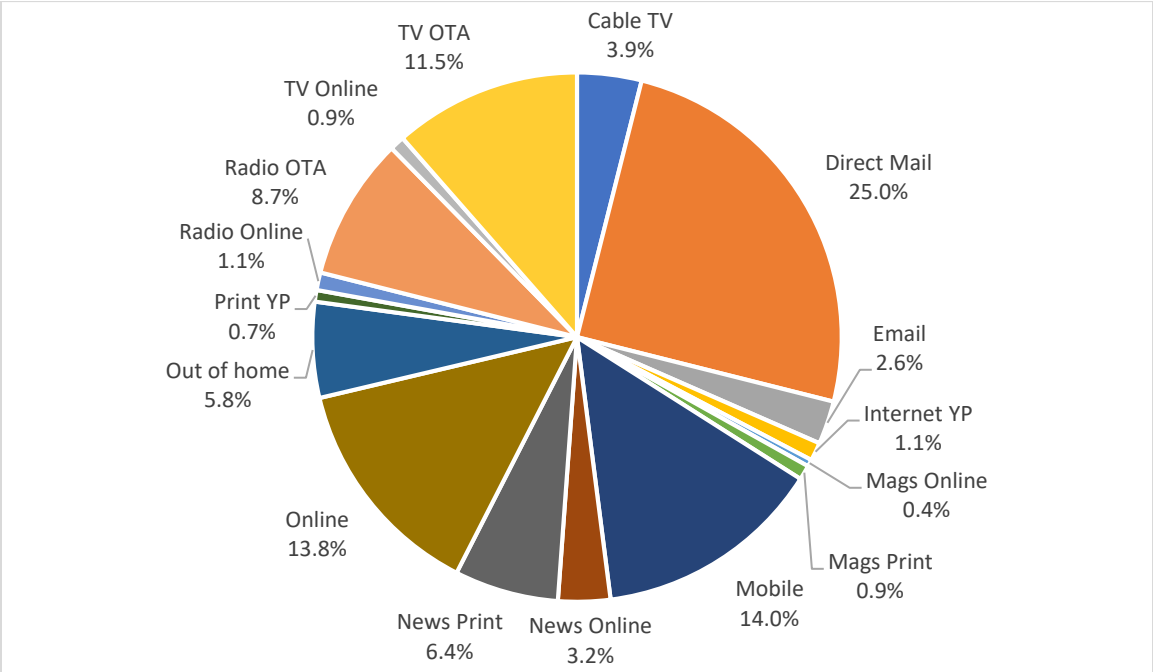
[12] Among all adults 18+, daily media time is split about evenly between traditional TV (42%) and newer devices and platforms (41%), with 17% spent with radio. Even adults ages 50-64 spend 35% of their daily media time on these newer devices and platforms. Id.

provides local advertising estimates. Through its online dashboard, BIA ADVantage, specific local information on sixteen different advertising platforms are provided to all types of media and online companies – local radio stations, local television stations, pure-play online companies, and MVPDs, among others.

The Combined Local Advertising Market

Across the various advertising platforms, BIA estimates that national, regional, and local advertisers will spend $148.5 billion in 2019 targeting consumers in all 210 television markets combined. Of that total, local television stations collectively will receive 11.5% through selling advertising on their over-the-air signals, or $17.0 billion. Figure 6 shows the breakout of advertising revenue shares across the 16 different advertising platforms.

Figure 6 - 2019 Ad Spending by Media Across All Local Markets Combined



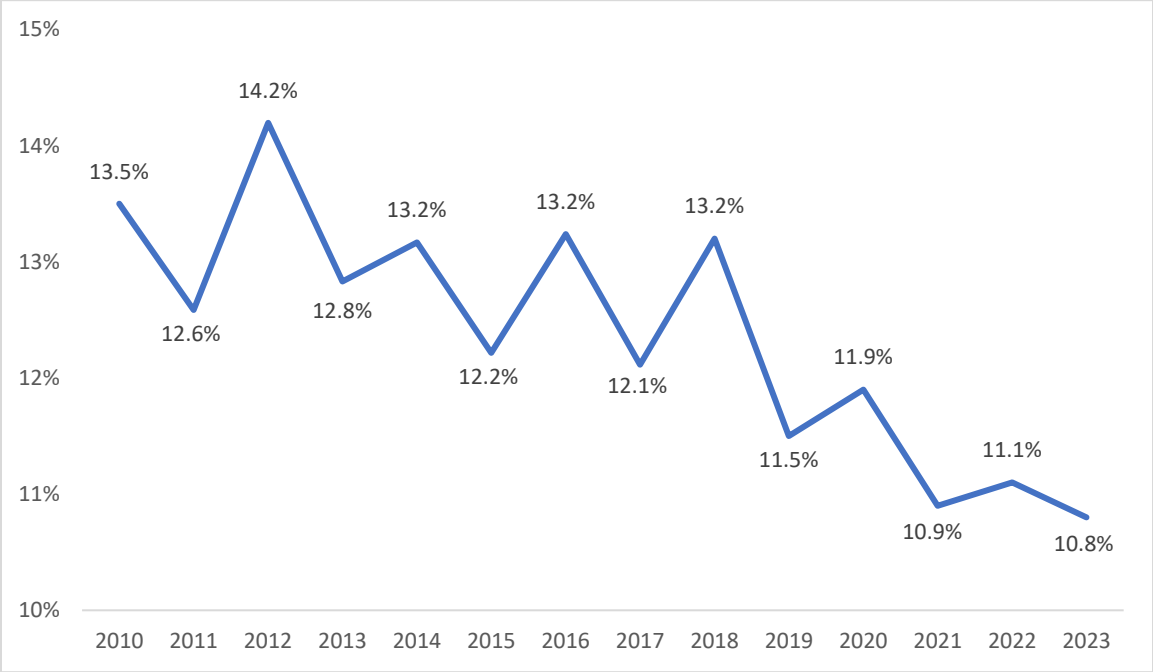
Source: BIA ADVantage, 2019

Note: "Radio online" revenue includes online revenue from terrestrial radio and online streaming services; "mobile" revenue does not include revenue generated by traditional media mobile sites.

According to our estimates, the competitive position of local television stations in local markets is expected to weaken further over the next five years. Figure 7 shows local television

stations' over the air advertising as a share of total local advertising from 2010 through 2023. By 2023, another non-election year, local television stations' over-the-air advertising is expected to only be 10.8% of total local market advertising.[13]

Figure 7 - Local Television Station OTA Advertising as Share of Total Local Market Advertising: 2010 - 2023



Source: BIA ADVantage, 2019

At the same time, "pure-play" digital advertising platforms will continue to see substantial gains. While in 2019 online sites are expected to realize 13.8% of total local market advertising revenue and mobile sites 14.0%, by 2023 those shares will increase to 16.6% and 16.5%, respectively. And these gains will come after years of growth for the digital ad sector.[14]

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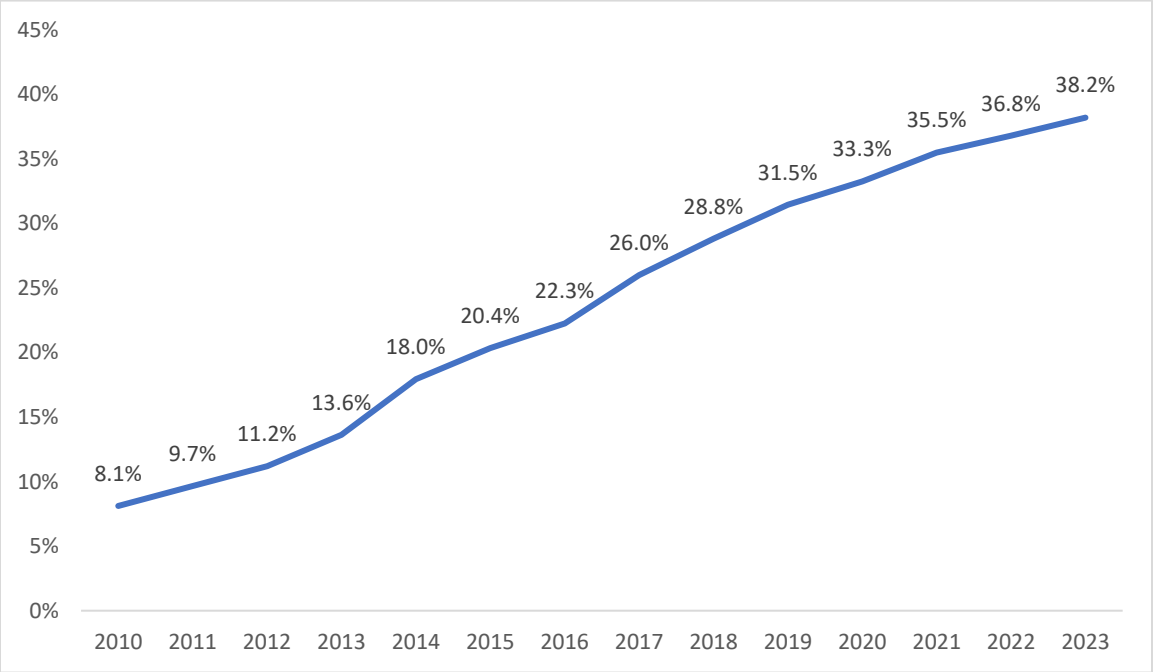
[13] BIA ADVantage, January 2019.

[14] The shares of online and mobile have been growing rapidly for several years. For example, just five years ago, mobile accounted for only 4.6% of total local ad revenues.

Figure 8 below shows the growth of the pure-play digital sector's share of the total local advertising market over time.

Figure 8 – Pure-Play Digital (Online + Mobile) Advertising Share of Total Local Market Advertising: 2010 – 2023*

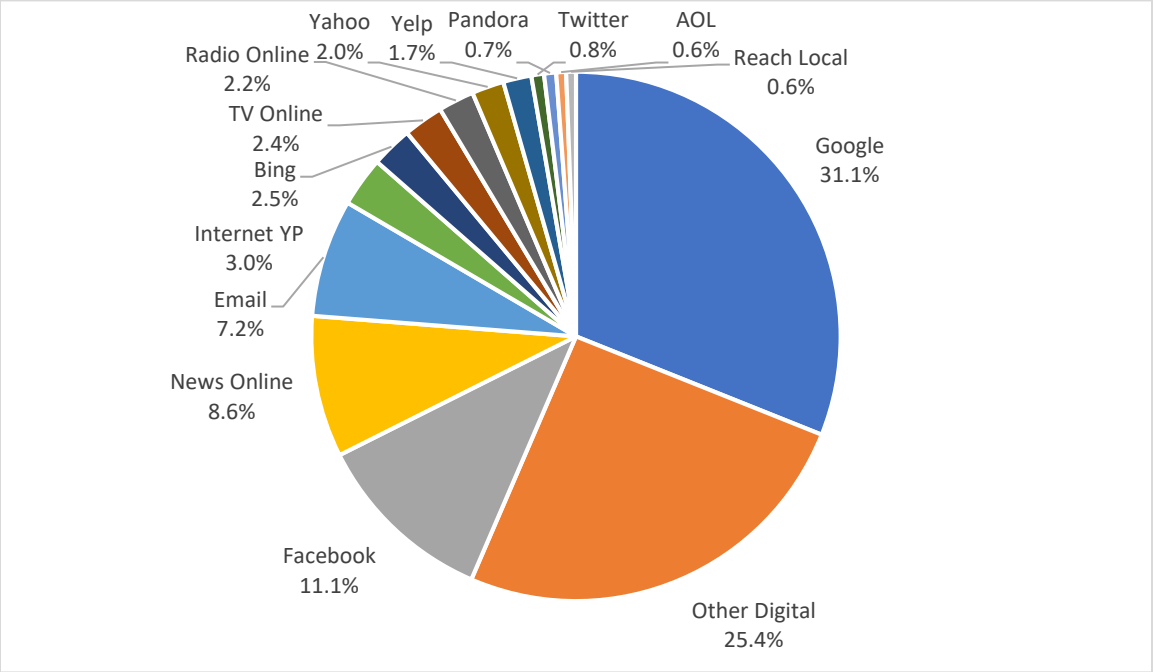


*Includes email and internet yellow pages Source: BIA ADVantage, 2019

Significantly, the share increases for online and mobile advertising platforms are being driven by the greater focus by many national online firms on selling advertising targeted to local markets. BIA estimates the digital advertising revenues generated in individual television markets for these national firms (e.g., Google, Facebook) as part of its ADVantage data service. Figure 9 shows the distribution of the estimated 2019 total digital advertising revenue ($55.1 billion) generated in all 210 television markets combined.[15]

[15] Total digital ad revenue includes the revenues of pure-play online and mobile ad platforms, email, and directories, plus the digital ad revenues of traditional media (local TV, local radio, local newspapers, and local magazines) platforms.

Figure 9 – 2019 Total Digital (Online + Mobile) Ad Spending Across All Local Markets Combined



Source: BIA ADVantage, 2019

While local TV stations' online platforms are expected to earn 2.4% of digital ad revenues across all local markets in 2019, Google and Facebook together will receive more than two-fifths of these revenues. Note that Google's total estimated local advertising revenues are expected to be around $17.0 billion, which will be about the same as the total over-the-air ad revenues for all TV stations in 2019, and will soon exceed total television industry ad revenues.[16] Online companies like Google and Facebook, as well as other national and local online advertising platforms, can provide very targeted audiences for local, regional and national advertisers wishing to reach specific consumers in all television markets.

[16] BIA ADVantage, January 2019.

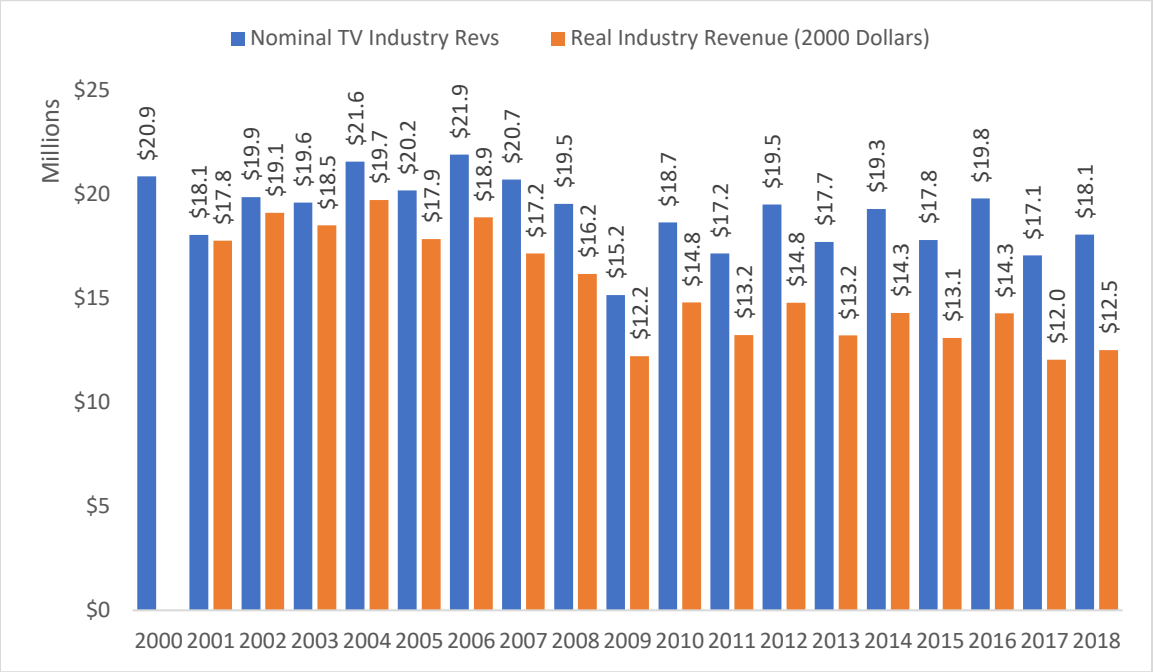
Local TV Stations' Total Over-the-Air Advertising Revenue History

The discussion above highlights the increased competition that television stations face in their local advertising markets. Given this increased competition, the total advertising revenue generated by local television stations has decreased in nominal terms over recent years, and after considering both the growth in the overall economy and the increase in prices, that decrease is even more striking.[17] Figure 10 shows the estimated total over-the-air advertising revenue generated by all commercial television stations since 2000. This chart also includes the real industry revenue (in terms of 2000 dollars).[18]

[17] Despite the growth of many television stations' retransmission consent fees in recent years, over-the-air advertising revenues remain the considerable majority of total station revenues. Thus, declines in these ad revenues very significantly affecting stations' cash flow and profit margins.

[18] Annual revenue values were deflated using the Consumer Price Index for each of the years.

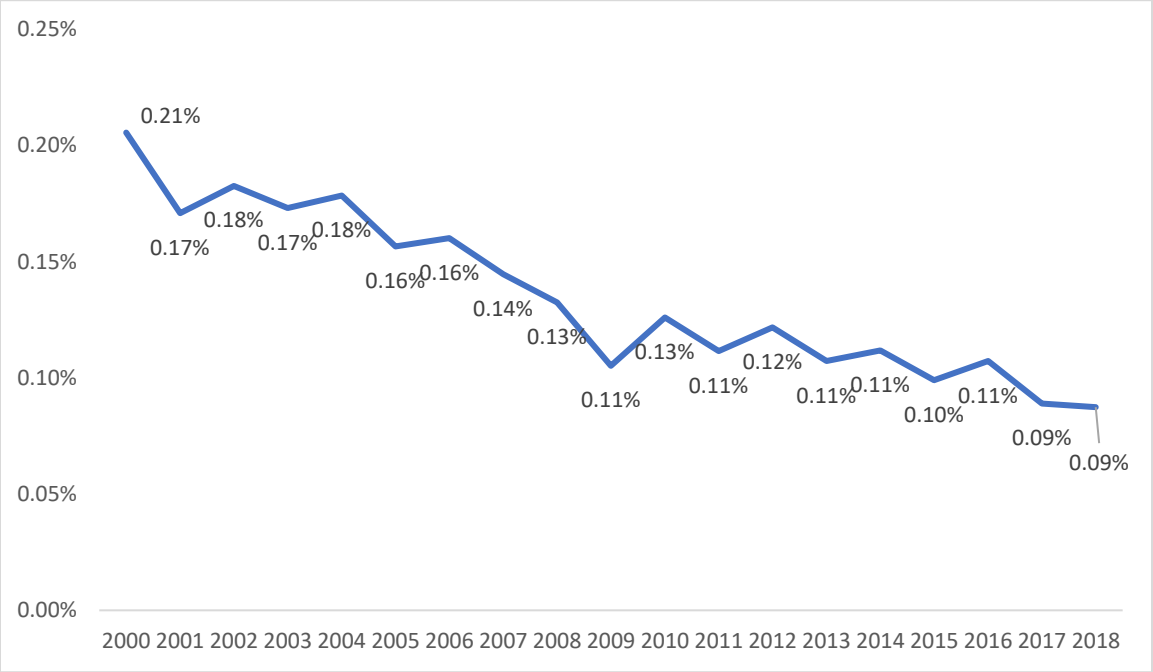
Figure 10 - Nominal and Real Local Television Station Industry Revenue



Source: BIA Advisory Services, LLC, 2019

Over this eighteen-year span, local TV stations' total over-the-air advertising revenue decreased in nominal terms by 13.4% (and the nominal decline was 17.6% from the peak year of 2006). After accounting for inflation, the decrease in revenue from 2000 is significantly larger, at -40.0%. This decrease is shown just as clearly by comparing local stations' total ad revenue as a percentage of the entire economy (i.e., nominal gross domestic product). That relationship is shown in Figure 11 below.

Figure 11 - Local Television Station Over-the-Air Advertising Revenue as % of U.S. GDP



Source: BIA Advisory Services, LLC, 2019

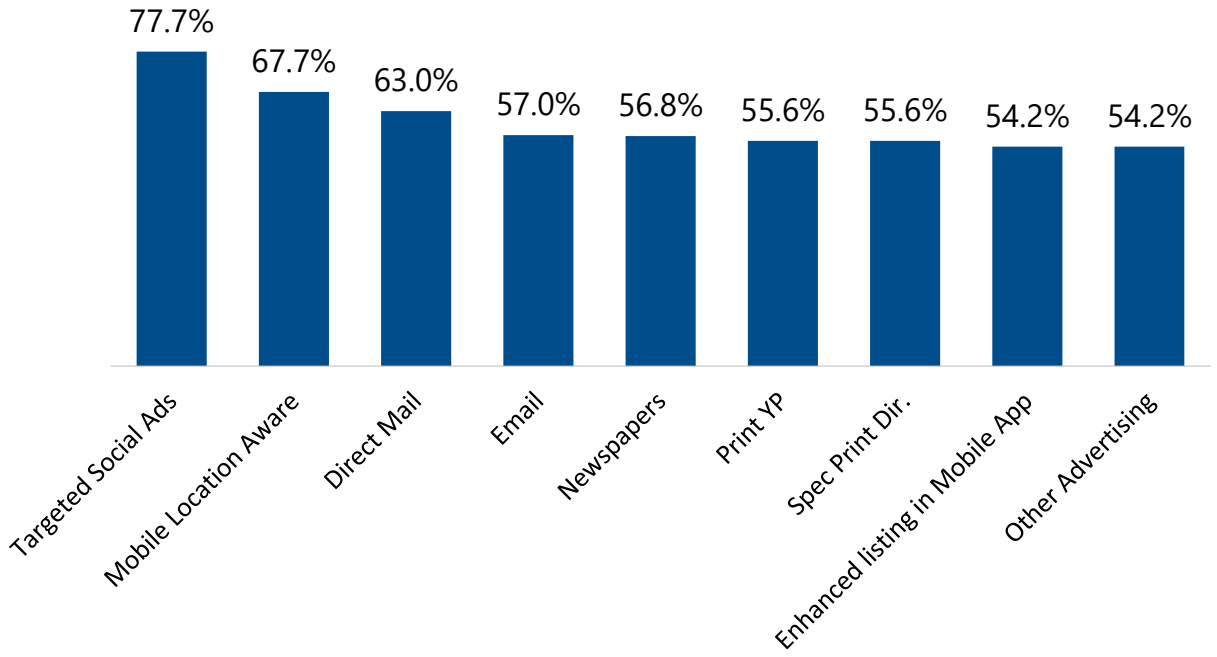
While in 2000, local television station over the air advertising revenue represented over 0.2% of the entire U.S. economy, by 2018 that value had decreased by more than half. Obviously, the new and varied competitive advertising platforms have taken their toll on the position of local television stations in the overall national economy.

<u>Advertisers' Use of Alternative Advertising Platforms</u>

In addition to the revenue estimates discussed above, further evidence demonstrates the extensive competition facing local television stations. Specifically, BIA conducts an annual random survey of advertisers of all sizes asking about their use of advertising and marketing platforms. To get a better sense of the competition facing local television stations, Figure 12 shows the high use of other advertising platforms by those advertisers that also utilize television

(broadcast and/or cable). In total, TV advertisers utilized 31 different advertising platforms in 2018.[19]

Figure 12 - Other Advertising Platforms Most Frequently Used by TV Advertisers



Source: Survey of Advertising and Marketing, BIA Advisory Services, LLC, 2018.

Clearly, TV advertisers are not just TV advertisers, but use a variety of other platforms to reach consumers – platforms that local TV stations must compete against for those advertisers' dollars. Unsurprisingly, online and mobile platforms are very frequently used by TV advertisers, along with some traditional media. These results from the "buy side" confirm the competitive nature of today's advertising marketplace, which includes a wide range of options for advertisers.

[19] "Other advertising" in Figure 12 includes, for example, local radio stations, out-of-home venues (e.g., billboards, cinema), and native/social advertising.

Analysis of Rating and Revenue Gaps Between Top Stations in Local Markets

In order to compete against these new and often larger and stronger competitors for audiences and advertisers in the modern media marketplace, local stations must invest in new and improved programming, technology and sales operations. Unfortunately, many local stations do not attract audiences and generate revenues sufficient to make those investments. To demonstrate the precarious position of many local television stations, including a number of those ranked among the top 4 in ratings in their markets, this report has examined the recent audience shares and advertising revenue shares of stations in markets with at least four commercial full power television stations.

Ratings Analyses

As of January 2019, there were 159 markets with four or more full power commercial television stations, where we conducted analyses of the November 2018 Full Day (9 AM – Midnight) audience share information. In order to most accurately evaluate the impact of the top 4 restriction specifically, we focused our analyses on 128 of these 159 markets in which the top 4 in terms of ratings are full power commercial television stations.[20] These analyses were

[20] In the other 31 markets with at least four full power commercial stations, there are Class A, low power or noncommercial stations ranked among the top 4 in ratings in their markets. Because this report conducted multiple analyses of the revenues of top 4 stations, we excluded markets where noncommercial stations were among the top 4 in ratings. Like noncommercial stations, Class A and low power TV stations are not subject to the restrictions of the FCC's multiple ownership rules, including the local TV rule; thus, this report also excluded markets in which Class A and low power TV stations were ranked among the top 4 in ratings. Removing these stations from our analyses is a more conservative approach, as the Class A/LPTV/noncommercial stations in those 31 markets tend to perform relatively poorly compared to the full-power television stations in the 128 markets. Although we believe that the group of 128 markets is the most appropriate one for conducting our analyses, this report also duplicated several analyses using all 159 markets.

conducted using stations' total audiences, including any audiences stations attracted from their multicast program streams.

In the average market among the 128 markets, the top ranked station's audience share was 37.5% larger than the second ranked station's audience share; the second ranked station's audience share was 34.5% larger than the third ranked station's share; and the third ranked station's share was 54.8% larger than the fourth ranked station's share. These averages are affected by many markets where there is a wide difference.[21] In the median market, the number one station's audience share was 25.0% larger than the number two station's audience share; the number two station's audience share was 21.7% larger than the number three station's share; and the number three station's audience share was 25.0% larger than the number four station's share.

In the 16 markets that have only four full-power commercial stations and those four are the top 4 in ratings, the fourth ranked station falls well behind the third ranked station, let alone the first or second ranked. In the median market of that group, the number three ranked station's audience share is 54.6% larger than the number four ranked station's share.

Another way of examining the vast differences between higher and lower ranked television stations is to compare the combined audience shares of the third and fourth ranked stations with the highest ranked station in each of the 128 markets. Table 1 below shows the 56 markets in which the combined audience share of the third and fourth ranked station is less than the number one ranked station's share. Note that only nine of these markets are in the top 50 in

[21] For example, there are nine markets where the number one station's audience is twice or more the size of the number two station, and an additional 32 markets where the number one station's audience is at least 50% greater than the number two station's audience.

size, and 23 of these markets are ranked 100 or below. Table 1 is sorted by the differences in these values from greatest to least.

Table 1 - Comparison of the Number One Ranked and the Third and Fourth Ranked Stations' Combined Audience Shares

Rank	Market	#1 Share	#3+#4 Share		Rank	Market	#1 Share	#3+#4 Share
120	Macon, GA	15.72	4.35		125	Monterey-Salinas, CA	10.49	8.26
64	Dayton, OH	18.98	10.00		49	Louisville, KY	13.03	10.90
137	Monroe, LA-El Dorado,AR	15.69	6.81		52	Providence, RI	11.04	8.92
122	Peoria-Bloomington, IL	14.77	6.59		90	Savannah, GA	10.46	8.37
118	Traverse City-Cadillac, MI	17.27	9.13		147	Anchorage, AK	11.48	9.56
73	Charleston-Huntington,WV	15.77	8.67		106	Lincoln-Hastings, NE	10.47	8.76
154	Albany, GA	11.74	5.35		50	Memphis, TN	12.57	10.88
127	Columbus, GA	13.65	8.19		21	St. Louis, MO	12.61	11.04
68	Des Moines-Ames, IA	15.59	10.24		24	Pittsburgh, PA	14.56	13.06
78	Toledo, OH	15.52	10.22		27	Nashville, TN	13.83	12.42
128	Corpus Christi, TX	13.40	8.11		59	Mobile, AL-Pensacola	14.43	13.24
110	Sioux Falls-Mitchell, SD	16.82	11.61		26	Baltimore, MD	10.90	9.72
101	Myrtle Beach-Florence, SC	12.24	7.17		148	Sioux City, IA	12.94	11.76
97	Burlington, VT, NY	11.50	6.81		74	Omaha, NE	13.60	12.76
163	Bluefield-Beckley, WV	10.07	5.58		53	Buffalo, NY	11.04	10.21
159	Gainesville, FL	11.38	6.92		95	Jackson, MS	10.23	9.51
167	Billings, MT	13.48	9.05		51	New Orleans, LA	12.77	12.06
89	Chattanooga, TN	11.57	7.59		23	Charlotte, NC	10.13	9.47
100	Greenville-New Bern, NC	11.73	7.95		119	Eugene, OR	10.10	9.49
98	Ft. Smith-Fayetteville, AR	11.68	7.99		94	Baton Rouge, LA	10.40	9.90
63	Lexington, KY	11.09	7.60		102	Davenport, IA	12.15	11.73
57	Wilkes Barre-Scranton, PA	12.96	9.63		70	Roanoke-Lynchburg,VA	10.19	9.81
107	Johnstown-Altoona, PA	10.66	7.56		80	Huntsville-Decatur, AL	8.45	8.10
71	Flint-Saginaw-Bay City,MI	14.23	11.62		20	Sacramento-Stockton	9.00	8.75
124	Montgomery, AL	9.34	6.90		45	Harrisburg-Lancaster,PA	12.47	12.25
67	Wichita - Hutchinson, KS	12.10	9.72		56	Ft. Myers-Naples, FL	11.26	11.04
61	Knoxville, TN	10.47	8.14		152	Joplin, MO-Pittsburg,KS	12.53	12.32
104	Boise, ID	12.50	10.25		82	Paducah-Cape Girardeau	11.31	11.11

Source: BIA Advisory Services analysis of Nielsen Media Research audience data

This ratings analysis demonstrates that there are many markets where stations ranked among the top 4 have widely divergent audience shares.[22] Many of those markets are smaller in size with limited overall advertising bases. As a result, and as demonstrated more directly by the revenue analyses below, many stations among the top 4 in ratings in their local markets are competitive "also rans" facing serious financial challenges.

Revenue Comparisons

While the audience share comparison clearly showed the disadvantages that many local television stations, especially in smaller markets, face in today's increasingly competitive environment, a comparison of station revenues more accurately illustrates the financial hardships experienced by these stations. After analyzing the relative advertising revenue shares of local stations, it is clear that the lower ranked stations among the top 4 in ad revenues often find it extremely difficult to invest in the necessary improvements to their programming and physical plant to compete effectively.

For the revenue comparison in the 128 markets with four full power commercial television stations ranked in the top 4 in ratings, this report utilized the over-the-air advertising revenue share data included in BIA's Media Access Pro™ database of all commercial and noncommercial radio and television stations. The fourth ranked station is in an especially precarious financial position in many different television markets. Of these 128 markets, there

[22] When examining all of the 159 markets with at least four full power commercial TV stations (including those 31 markets in which Class A, low power or noncommercial stations are ranked among the top 4 in audience share), the very large disparity between the top rated station and the third and fourth rated stations occurs in even a greater proportion of markets. In 76 of those 159 markets, the combined audience share of the third and fourth ranked stations is less than the number one ranked station's audience share.

are 25 in which the fourth ranked station receives 10% or less of the local television over-the-air advertising revenues in those markets.[23] And in these 25 markets, the fourth ranked stations' average share of *total* local advertising revenues is less than 1.0%. Table 2 identifies those markets, along with the fourth ranked station's shares of local television over-the-air and total local advertising revenue.

[23] In one market, Peoria, IN-Bloomington, IL, even the third ranked station's revenue share is less than 10% (8.0%) of local TV station ad revenues.

Table 2 - Markets with Fourth Ranked Station's Share of TV OTA Revs. 10% or Less

Mkt. Rank	Market	4th Ranked Station Share	
		TV OTA Adv. Revs.	Total Local Adv. Revs.
163	Bluefield-Beckley-Oak Hill, WV	0.8%	0.1%
137	Monroe, LA-El Dorado, AR	2.3%	0.3%
120	Macon, GA	2.8%	0.3%
154	Albany, GA	3.0%	0.4%
89	Chattanooga, TN	4.1%	0.5%
128	Corpus Christi, TX	5.0%	0.9%
122	Peoria-Bloomington, IL	5.9%	0.6%
167	Billings, MT	6.7%	0.9%
124	Montgomery, AL	7.2%	1.1%
50	Memphis, TN	7.7%	0.9%
97	Burlington, VT-Plattsburgh, NY	8.1%	0.7%
115	Lansing, MI	8.1%	1.0%
68	Des Moines-Ames, IA	8.4%	1.1%
21	St. Louis, MO	8.4%	1.0%
159	Gainesville, FL	8.5%	1.5%
118	Traverse City-Cadillac, MI	8.8%	0.8%
48	Greensboro-High Point-Winston Salem, NC	9.0%	0.9%
82	Paducah-Cape Girardeau-Harrisburg-Mt Vernon	9.1%	0.9%
100	Greenville-New Bern-Washington, NC	9.1%	1.1%
107	Johnstown-Altoona, PA	9.3%	0.9%
26	Baltimore, MD	9.4%	1.3%
52	Providence, RI-New Bedford, MA	9.7%	1.2%
91	Cedar Rapids-Waterloo-Iowa City-Dubuque, IA	9.7%	1.2%
47	Norfolk-Portsmouth-Newport News, VA	9.8%	1.4%
63	Lexington, KY	9.9%	1.5%

Note that 20 of these markets are mid-sized or small, with limited available advertising revenue overall. Those stations earning low ad revenue shares in markets with smaller advertising bases are severely constrained in their abilities to make the necessary investments in programming and physical plant to improve their competitive positions.

Next, we analyzed the revenue gaps among stations ranked in the top 4 in revenue share in the same 128 markets that have four or more full power commercial stations (and in which the top 4 rated stations are full power commercial). In the average market, the number one ranked

station's revenue share was 38.0% larger than the second ranked station's revenue share; the second ranked station's revenue share was 46.8% larger than the third ranked station's share; and the third ranked station's revenue share was 75.9% larger than the fourth ranked station's share. These averages are once again affected by many markets where there is a wide difference.[24] In the median market, the number one station's revenue share was 23.7% larger than the number two station's share; the number two station's revenue share was 29.0% larger than the number three station's share; and the number three station's revenue share was 32.4% larger than the number four station's share.

It is significant that the gaps between top 4 stations are generally larger for revenue share than for audience share. These greater revenue gaps indicate that stations attracting smaller audiences are even more competitively disadvantaged in generating revenue than what their audience shares would otherwise suggest. This relatively greater revenue disadvantage makes it even more difficult for lower ranked stations to improve their competitive position in their local markets by acquiring or producing improved programming or investing in their operations and station plant.

The serious financial challenges facing third and fourth ranked stations are yet more pronounced in the 16 markets that have only four full-power commercial stations and those four are the top 4 stations in ratings. In the median market of that group, the advertising revenue share of the top ranked station is 32.2% larger than the second ranked station's share, the second ranked station's share is 45.0% larger than the third ranked station's share, and the third ranked

[24] For example, there are 15 markets where the number one station's revenue share is twice or more the size of the number two station's share, and an additional 25 markets where the number one station's revenue share is at least 50% greater than the number two station's share.

station's share is 67.3% larger than the fourth ranked station's share. In markets with only four commercial full power television stations, the second, third and fourth ranked stations generate very significantly smaller revenue shares than the top ranked stations, thereby limiting their ability to make necessary investments to improve their competitive position. And it is in these smaller markets with few stations where the current top 4 rule effectively prevents any station combinations.

As was done with audience shares, this report analyzes the wide gaps in the revenue shares among top 4 stations, by comparing the combined advertising revenue shares of the third and fourth ranked stations with the highest ranked station. Table 3 below shows the 61 markets (out of the 128 markets) in which the combined revenue share of the third and fourth ranked station is less than the number one ranked station's share.[25] This table is sorted by the differences in these values from greatest to least.

As with the previous comparison of audience shares, this list is dominated by mid-sized and small markets. Only seven of these markets are in the top 50 in size, and 28 of the markets are ranked 100 or smaller. Those markets with the largest differentials between the top ranked station and the sum of the third and fourth ranked stations are among the smallest markets. Lower ranked top 4 stations in small markets thus are doubly financially challenged because they earn notably smaller shares of the limited advertising revenues available in those small markets.[26]

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[25] This analysis again shows that stations attracting smaller audiences are even more competitively disadvantaged in generating revenue than what their audience shares would otherwise indicate. While there were 56 markets in which the combined audience share of the #3 and #4 stations was less than the top station's audience share, there were 61 such markets when analyzing revenue share.

[26] When examining all of the 159 markets with at least four full power commercial stations (including those 31 markets in which Class A, low power or noncommercial stations are ranked

Table 3 - Comparison of the Number One Ranked and the Third and Fourth Ranked Stations' Combined Advertising Revenue Shares

Rank	Market	#1 Share	#3+#4 Share		Rank	Market	#1 Share	#3+#4 Share
154	Albany, GA	70.9%	14.2%		149	Wichita Falls, TX	40.2%	28.8%
167	Billings, MT	60.9%	20.6%		115	Lansing, MI	39.8%	28.9%
122	Peoria-Bloomington, IL	54.1%	13.9%		101	Myrtle Beach, SC	40.5%	30.1%
120	Macon, GA	53.8%	17.0%		98	Ft. Smith-Fayetteville, AR	38.8%	29.6%
124	Montgomery, AL	49.8%	17.7%		71	Flint-Saginaw, MI	36.3%	27.3%
73	Charleston-Huntington, WV	53.7%	24.2%		9	Atlanta, GA	35.3%	26.3%
159	Gainesville, FL	55.0%	26.4%		127	Columbus, GA	38.5%	29.9%
128	Corpus Christi, TX	43.9%	17.0%		63	Lexington, KY	32.1%	23.6%
64	Dayton, OH	50.4%	25.4%		125	Monterey-Salinas, CA	39.6%	31.1%
137	Monroe, LA-El Dorado, AR	46.1%	21.8%		82	Paducah-Cape Girardeau	35.1%	27.3%
102	Davenport, IA	45.4%	21.9%		100	Greenville-New Bern, NC	40.4%	33.3%
89	Chattanooga, TN	44.6%	21.4%		85	Syracuse, NY	33.3%	26.3%
147	Anchorage, AK	48.9%	25.8%		103	Evansville, IN	35.3%	28.5%
148	Sioux City, IA	49.1%	26.6%		195	Eureka, CA	36.0%	30.0%
163	Bluefield-Beckley, WV	44.2%	21.7%		61	Knoxville, TN	37.5%	32.0%
68	Des Moines-Ames, IA	41.5%	19.3%		26	Baltimore, MD	34.3%	28.9%
110	Sioux Falls-Mitchell, SD	48.8%	28.1%		47	Norfolk-Portsmouth, VA	33.9%	29.2%
94	Baton Rouge, LA	42.8%	22.3%		69	Green Bay-Appleton, WI	34.5%	30.1%
91	Cedar Rapids-Waterloo, IA	43.6%	23.5%		62	Tulsa, OK	34.0%	29.8%
107	Johnstown-Altoona, PA	40.7%	21.4%		80	Huntsville-Decatur, AL	34.0%	30.4%
57	Wilkes Barre-Scranton, PA	42.4%	23.3%		77	Columbia, SC	37.9%	34.3%
109	Tyler-Longview, TX	42.7%	24.0%		28	Indianapolis, IN	32.9%	29.6%
52	Providence, RI-New Bedford	39.9%	23.5%		144	Odessa-Midland, TX	30.2%	27.4%
90	Savannah, GA	42.9%	27.0%		84	Harlingen-Weslaco, TX	28.3%	25.7%
150	Erie, PA	45.0%	29.9%		17	Denver, CO	28.1%	26.5%
118	Traverse City-Cadillac, MI	38.2%	23.2%		106	Lincoln-Hastings, NE	33.9%	32.8%
97	Burlington, VT-Plattsburgh	41.6%	27.0%		58	Little Rock-Pine Bluff, AR	30.6%	29.7%
78	Toledo, OH	38.1%	24.3%		50	Memphis, TN	32.3%	31.7%
74	Omaha, NE	40.9%	28.4%		56	Ft. Myers-Naples, FL	29.8%	29.2%
79	Portland-Auburn, ME	40.8%	28.3%		8	Pittsburgh, PA	31.4%	30.9%
104	Boise, ID	40.5%	29.0%					

Source: Media Access Pro™, BIA Advisory Services, 2019

among the top 4 in audience share), the very large disparity between the top ranked station and the third and fourth ranked stations occurs in an even higher proportion of markets. In 86 of these 159 markets, the combined advertising revenue share of the third and fourth ranked station is less than the top ranked stations' revenue share.

Other Combinations of Top 4 Stations

While most of this report has focused on the third and fourth ranked stations in local television markets, other station combinations also may improve the provision of video programming and competitiveness in the advertising marketplace. In many markets, the top station is so strong that a combination of the second ranked station with either the third or fourth ranked station may enhance competition in those markets. Out of the 128 markets with four or more full power commercial stations (and in which the top 4 rated stations are full power commercial), there are 19 markets where a combination of the ad revenue shares of the second and third ranked stations would still be smaller than the revenue share of the highest ranked station. In an additional 34 markets, a combination of the ad revenue shares of the second and fourth ranked stations would be smaller than the share of the highest ranked station. Tables 4 and 5 identify these markets and the differentials between the top ranked station's advertising revenue share and the combination of the revenue shares of the number two station with either the third or fourth ranked station.

Table 4 - Top Ranked Station vs. Combination of #2 and #3 Stations

Market	Mkt. Rank	#1 Rev. Share	#2 Rev. Share	#3 Rev. Share
Albany, GA	154	70.9%	14.5%	11.2%
Billings, MT	167	60.9%	18.2%	13.9%
Charleston-Huntington, WV	73	53.7%	16.2%	13.3%
Gainesville, FL	159	55.0%	18.4%	17.9%
Dayton, OH	64	50.4%	18.8%	14.4%
Peoria-Bloomington, IL	122	54.1%	30.2%	8.0%
Macon, GA	120	53.8%	26.1%	14.2%
Anchorage, AK	147	48.9%	21.4%	14.8%
Montgomery, AL	124	49.8%	27.9%	10.5%
Sioux Falls-Mitchell, SD	110	48.8%	21.0%	16.6%
Sioux City, IA	148	49.1%	24.0%	16.1%
Tyler-Longview, TX	109	42.7%	25.4%	12.5%
Monterey-Salinas, CA	125	39.6%	19.8%	15.8%
Davenport, IA-Rock Island, IL	102	45.4%	30.0%	11.6%
Boise, ID	104	40.5%	20.7%	16.1%
Erie, PA	150	45.0%	25.2%	17.1%
Baton Rouge, LA	94	42.8%	28.8%	11.5%
Wilkes Barre-Scranton, PA	57	42.4%	28.9%	11.73%
Myrtle Beach-Florence, SC	101	40.5%	23.6%	16.24%

Source: Media Access Pro™, BIA Advisory Services, LLC, 2019

Table 5 - Top Ranked Station vs. Combination of #2 and #4 Stations

Market	Mkt. Rank	#1 Rev. Share	#2 Rev. Share	#4 Rev. Share
Albany, GA	154	70.9%	14.5%	3.0%
Billings, MT	167	60.9%	18.2%	6.7%
Gainesville, FL	159	55.0%	18.4%	8.5%
Charleston-Huntington, WV	73	53.7%	16.2%	10.9%
Macon, GA	120	53.8%	26.1%	2.8%
Dayton, OH	64	50.4%	18.8%	11.0%
Peoria-Bloomington, IL	122	54.1%	30.2%	5.9%
Anchorage, AK	147	48.9%	21.4%	11.1%
Sioux Falls-Mitchell, SD	110	48.8%	21.0%	11.6%
Montgomery, AL	124	49.8%	27.9%	7.2%
Sioux City, IA	148	49.1%	24.0%	10.5%
Monroe, LA-El Dorado, AR	137	46.1%	31.4%	2.3%
Bluefield-Beckley, WV	163	44.2%	34.2%	0.8%
Chattanooga, TN	89	44.6%	32.2%	4.1%
Greenville-New Bern, NC	100	40.4%	24.2%	9.1%
Erie, PA	150	45.0%	25.2%	12.8%
Boise, ID	104	40.5%	20.7%	12.9%
Corpus Christi, TX	128	43.9%	32.2%	5.0%
Tyler-Longview, TX	109	42.7%	25.4%	11.5%
Knoxville, TN	61	37.5%	22.2%	10.2%
Davenport, IA	102	45.4%	30.0%	10.3%
Monterey-Salinas, CA	125	39.6%	19.8%	15.3%
Portland-Auburn, ME	79	40.8%	27.1%	10.3%
Baton Rouge, LA	94	42.8%	28.8%	10.8%
Myrtle Beach-Florence, SC	101	40.5%	23.6%	13.8%
Atlanta, GA	9	35.3%	21.4%	11.0%
Cedar Rapids-Waterloo, IA	91	43.6%	30.9%	9.7%
Savannah, GA	90	42.9%	28.7%	11.5%
Burlington, Plattsburgh	97	41.6%	31.1%	8.1%
Omaha, NE	74	40.9%	27.4%	11.1%
Norfolk-Portsmouth, VA	47	33.9%	21.8%	9.8%
Wilkes Barre-Scranton, PA	57	42.4%	28.9%	11.5%
Lansing, MI	115	39.8%	29.9%	8.1%
Harlingen-Weslaco, TX	84	28.3%	15.6%	11.1%

Source: Media Access Pro™, BIA Advisory Services, LLC, 2019

As shown above, in a number of markets the combined revenue shares of the second ranked and either the third or fourth ranked station would still remain below the top station's revenue share, and in some cases have less than half of the leading station's revenue share.

Significantly, these disparities tend to be the greatest in smaller markets. So, while a second ranked station may garner a 15-25% share of the ad revenues generated by all local market TV stations, that share in smaller markets is a portion of quite limited local market revenue. Hence, such second ranked stations may experience significant difficulties in making the necessary investments in programming and physical plant to remain viable competitors in the current video marketplace, despite their position relative to other TV stations in their local markets. Moreover, stations earning 15-25% of the revenues earned by local market TV stations earn around a miniscule 2-4% of the total ad revenues in their local markets as a whole. For example, in Albany, GA, the second and third ranked stations combined only garner 3.4% of the total advertising revenue in that market. Likewise, in Billing, MT the second and fourth ranked stations combined only garner 3.2% of the total advertising revenue in that market.

Competitive Analysis Including Fifth Ranked Stations

It is also instructive to compare the relative advertising revenue share of fifth ranked television stations to those in the top 4 in their local markets. There are 129 markets with five or more full power commercial television stations. Once again, in order to most accurately evaluate the impact of the top 4 rule, we focused our analyses on only those markets in which the top 4 stations in terms of ratings are full power commercial television stations. Of the 129 markets with at least five full power commercial television stations, the top four stations in ratings are commercial full power stations in 112 of them.[27]

[27] In the other 17 markets, a Class A, low power or noncommercial TV station is among the top 4 in ratings.

To compare the financial position of local stations in these 112 markets, this report examined the gaps in their ad revenue shares and analyzed where the largest gaps occurred (i.e., between the first and second ranked stations, the second and third ranked stations, etc.). We were particularly interested in the number of markets in which the largest revenue gap was between the fourth and fifth ranked stations, as compared to the total number of markets in which the largest gaps were among the top 4 stations. In nearly 70% of these markets (78 of the 112 markets), the largest gaps in revenue shares were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest revenue share gap was between the fourth and fifth ranked stations in only about 31% of the markets.[28]

These results call into question the logic of the blanket ban on combinations among top 4 stations, which has been justified on the asserted significant competitive gap between the top 4 and all other stations in local markets. Evidence in this report instead shows wide competitive gaps among top 4 stations, whether examining ad revenues or audience ratings.[29]

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[28] This pattern is even more pronounced when examining all of the 129 markets with at least five full power commercial stations (including those 17 markets in which Class A, low power or noncommercial stations are ranked among the top 4 in audience share). In nearly 73% of these markets, the largest gaps in revenue shares were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest revenue share gap was between the fourth and fifth ranked stations in under 28% of the markets.

[29] An examination of ratings gaps yields similar results. In over 66% of these markets (74 of the 112 markets), the largest gaps in ratings were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest ratings share gap was between the fourth and fifth ranked stations in only about 42% of the markets. Note that the sum of these two values (66% + 42%) exceed 100%, as there nine markets in which the largest ratings gap between different ranked stations was identical. (Assume, for example, in a market the ratings gap between the third and fourth ranked stations was the same as the ratings gap between the fourth and fifth ranked stations, and this gap was the largest for that market. This market was treated as having its largest gap between both the third and fourth ranked and the fourth and fifth ranked stations.) With respect to the 129 markets with at least five full power television stations (including those 17 markets in which Class A, low power or noncommercial stations are ranked

Historical and Wider Market Analysis of the Competitive Position of the Third and Fourth Ranked TV Stations

The preceding analysis shows the difficult competitive position of many third and fourth (and even some second) ranked television stations, looking narrowly at just their share of local television station advertising revenues for one year. Below, we expand the analysis to include all advertising platforms competing with local television stations (as identified earlier in this paper) and data from the most recent five years.

Third and Fourth Ranked Stations in Total Local Advertising Marketplace

The BIA ADVantage service includes advertising revenue estimates for each of the individual sixteen platforms identified above for each TV market. Comparing those estimates to the ad revenues of the third and fourth ranked stations in each market shows the competitive position of these stations in the overall local advertising marketplace. Figure 13 shows the revenue share of the third ranked station in the median market for the most recent five years. This historical and wider market analyses included the 128 markets with at least four commercial full power television stations and in which the top 4 stations in terms of ratings are full power commercial.

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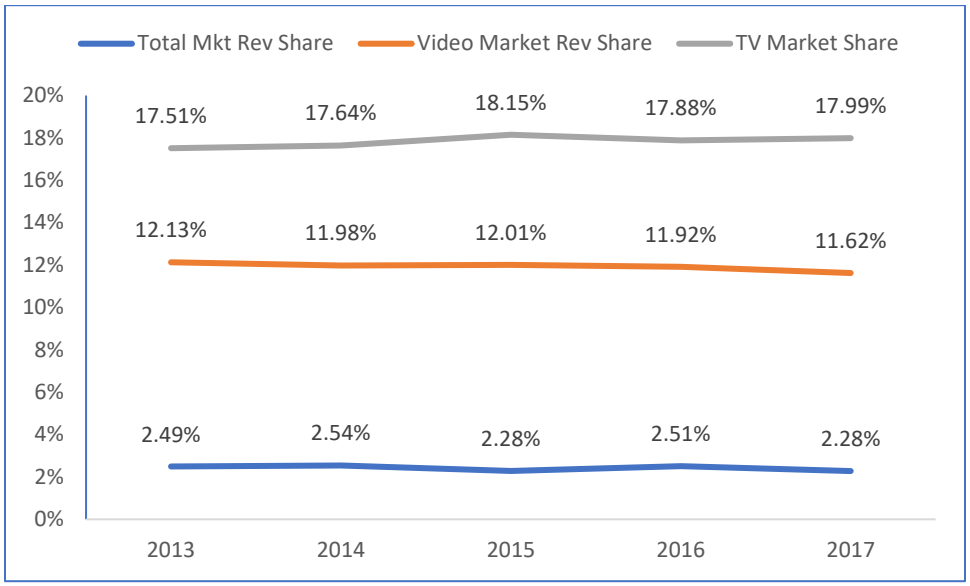
among the top 4 in audience share) the results are generally the same. In over 67% of these markets (87 of the 129 markets), the largest gaps in ratings were between the first and second ranked, the second and third ranked, or the third and fourth ranked stations. The largest ratings share gap was between the fourth and fifth ranked stations in only about 40% of the markets. Again, the sum of these two values exceed 100%, as there were 10 markets where the ratings gap between different ranked stations was identical.

Figure 13 - Third Ranked Station Revenue Share: 2013 – 2017



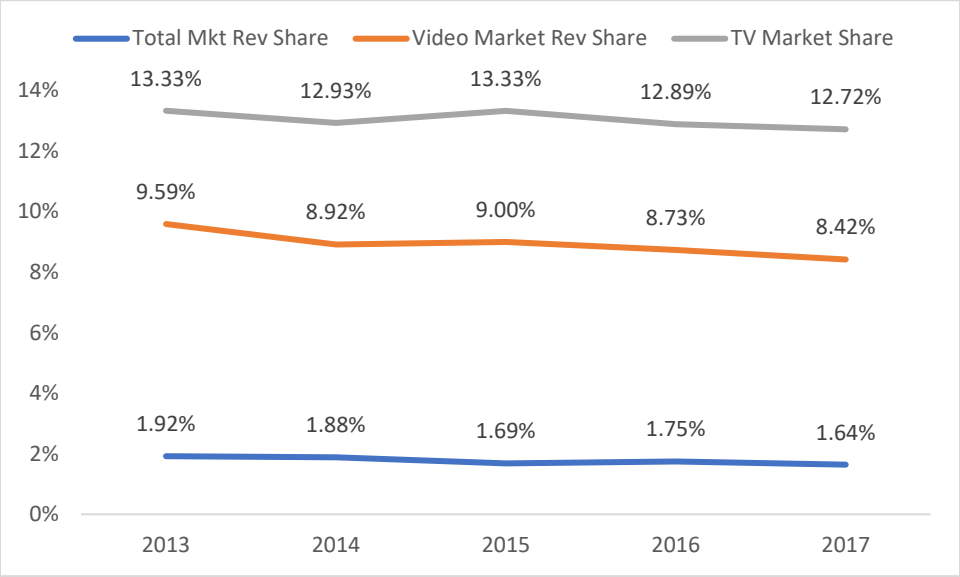
Source: BIA ADVantage and Media Access Pro™, 2019

While the third ranked station in the median market during this period saw its local television station revenue share slightly increase,[30] its share in the wider markets in which it competes – local video and total local advertising – decreased during this time. Note that even with the slight improvement in the third ranked station's share of local television advertising, that share is still very substantially less than the first and second ranked stations' shares in local markets, as shown earlier in the paper.

Figure 14 shows the corresponding results for the fourth ranked station in the median market for the same time period.

[30] However, note that the 2017 value is lower than the 2015 level.

Figure 14 - Fourth Ranked Station Revenue Share: 2013 – 2017



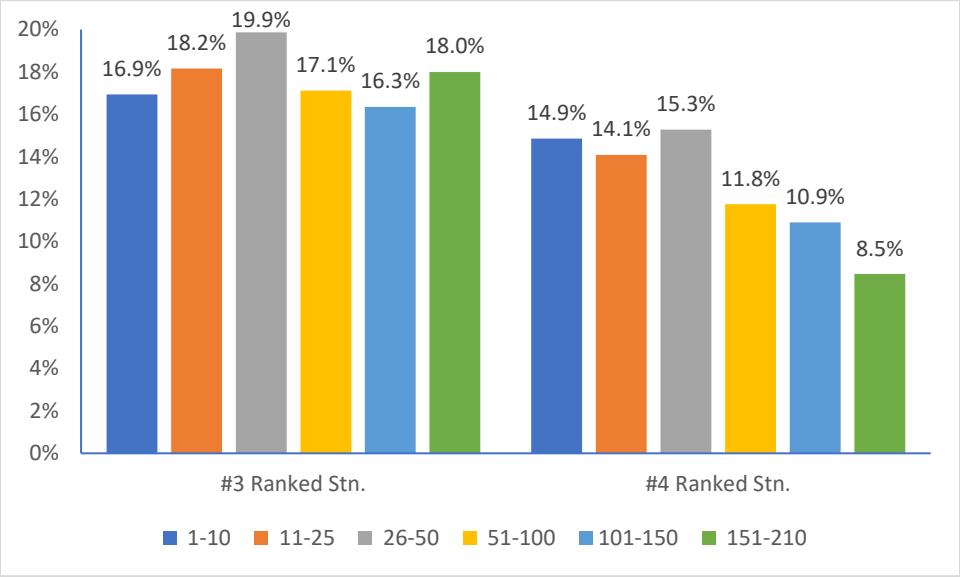
Source: BIA ADVantage and Media Access Pro™, 2019

The revenue share of the fourth ranked station decreased across all measures, with the local television and local video advertising shares of this median market station decreasing by more than one-half and one percentage point over this period, respectively. Notably, the revenue share of the fourth ranked station generally decreases in even numbered election years, as these stations do not benefit from increased political advertising revenue as do higher ranked stations with larger audiences.

Third and Fourth Ranked Stations by Different Market Sizes

This report now analyzes by market size the revenue shares of the third and fourth ranked stations, looking only at local over-the-air television advertising revenue. This comparison understates the competition faced by these stations, as it does not include the impact of the new and often larger advertising platforms that compete against local television stations. Figure 15 shows the median market over-the-air advertising revenue shares in 2017 for the third and fourth ranked stations across various market size ranges for the same 128 markets.

Figure 15 - Third and Fourth Ranked Station Revenue Share by Market Size



Source: Media Access Pro™, BIA Advisory Services, LLC

While the third and especially the fourth ranked stations tended to earn lower revenue shares in mid-sized and smaller markets,[31] these stations also earned lower shares in some of the largest markets (those ranked 1-10 and 11-25). The reason for this is simple – the largest markets have the most full-power television stations generating local advertising revenue, thus reducing the revenue shares realized by the third and fourth ranked stations. In markets ranked 1-10, the average number of full-power television stations in 2017 was 15.2; in markets 11-25, 10.6 stations; in markets 26-50, 8.3 stations; in markets 51-100, 6.8 stations; in markets 101-150, 5.0 stations; and in markets 151-210, 4.4 stations.

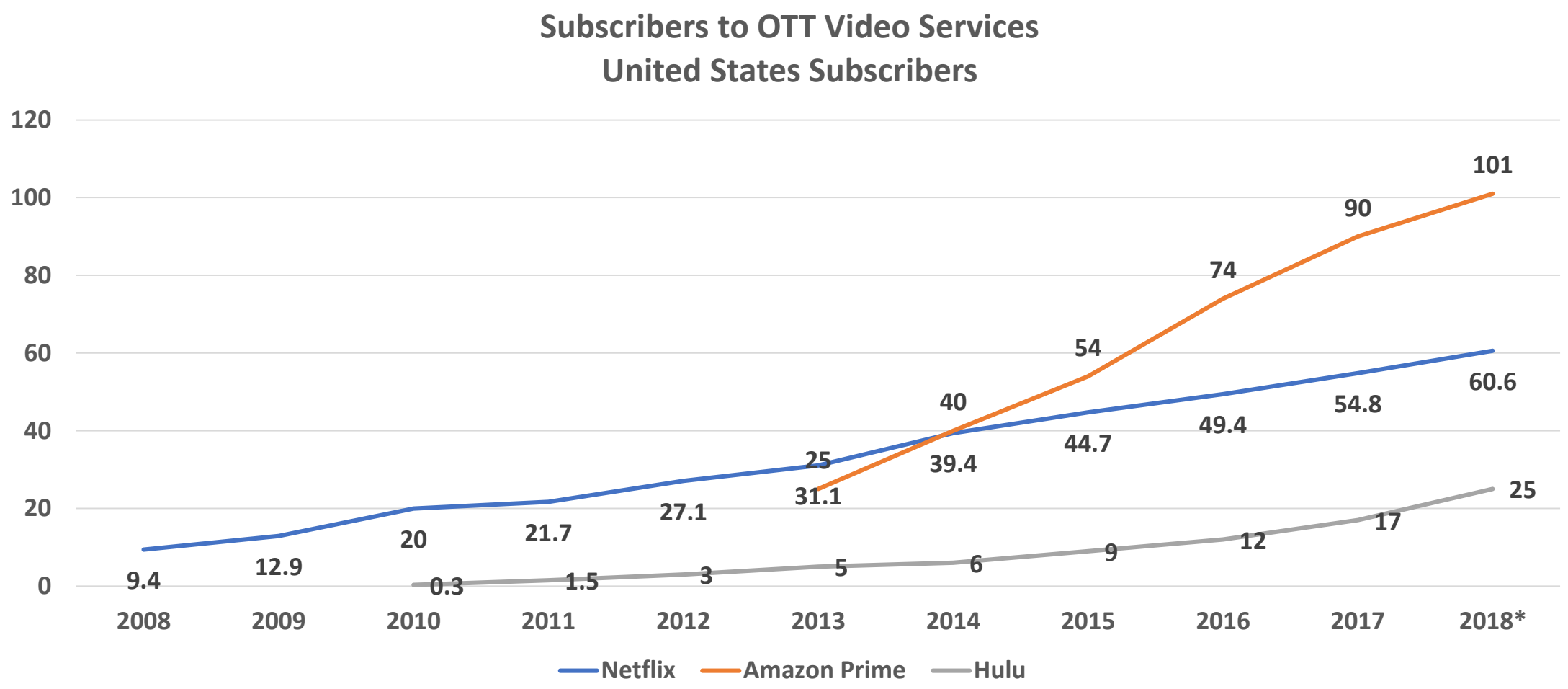
[31] The revenue share earned by the third ranked station in the smallest market range (markets 151-210) is slightly higher than the third ranked station's share in markets 101-150. However, the competitive position of the third ranked stations in markets 151-210 is unlikely to be better than the third ranked stations in markets 101-150, as the average total market revenue in the smallest market range is substantially less (60% less) than the total average revenues in markets 101-150.

Conclusion

This report combines an examination of the overall local television station industry and a detailed analysis of the relative competitive positions of stations ranked among the top 4 in ratings in their local markets. That combined analysis demonstrates the perilous financial conditions that many local television stations now face, and the dim prospects many of these third and fourth (and even some second) ranked stations have to materially improve their ability to compete against other local TV stations, let alone all the other viewing and advertising options available today. To compete more effectively for audiences and advertisers, these "shaky" stations will need to invest in their operations, programming and physical plant. Given their present financial conditions, they cannot make those necessary investments for the future, and some stations even find it challenging today to cover their substantial fixed costs.

One potential remedy for many of these struggling top 4 stations would be to allow them to merge with a more successful station in the same market. By removing the across-the-board ban on top 4 combinations and more freely allowing these mergers, the FCC would actually increase competition in local markets, while also enhancing these stations' ability to make necessary investments and improve their services to better attract the viewing public.

Attachment C



*Sources for 2018 data:

- Netflix: Retrieved from Statista. Original source: Netflix.com. Release date: January 2019.
- Amazon Prime: Retrieved from Statista. Original source: Consumer Intelligence Research Partners. Release date: January 2019.
- Hulu: Retrieved from Statista. Original source: Hulu press release. Release date: January 2019.

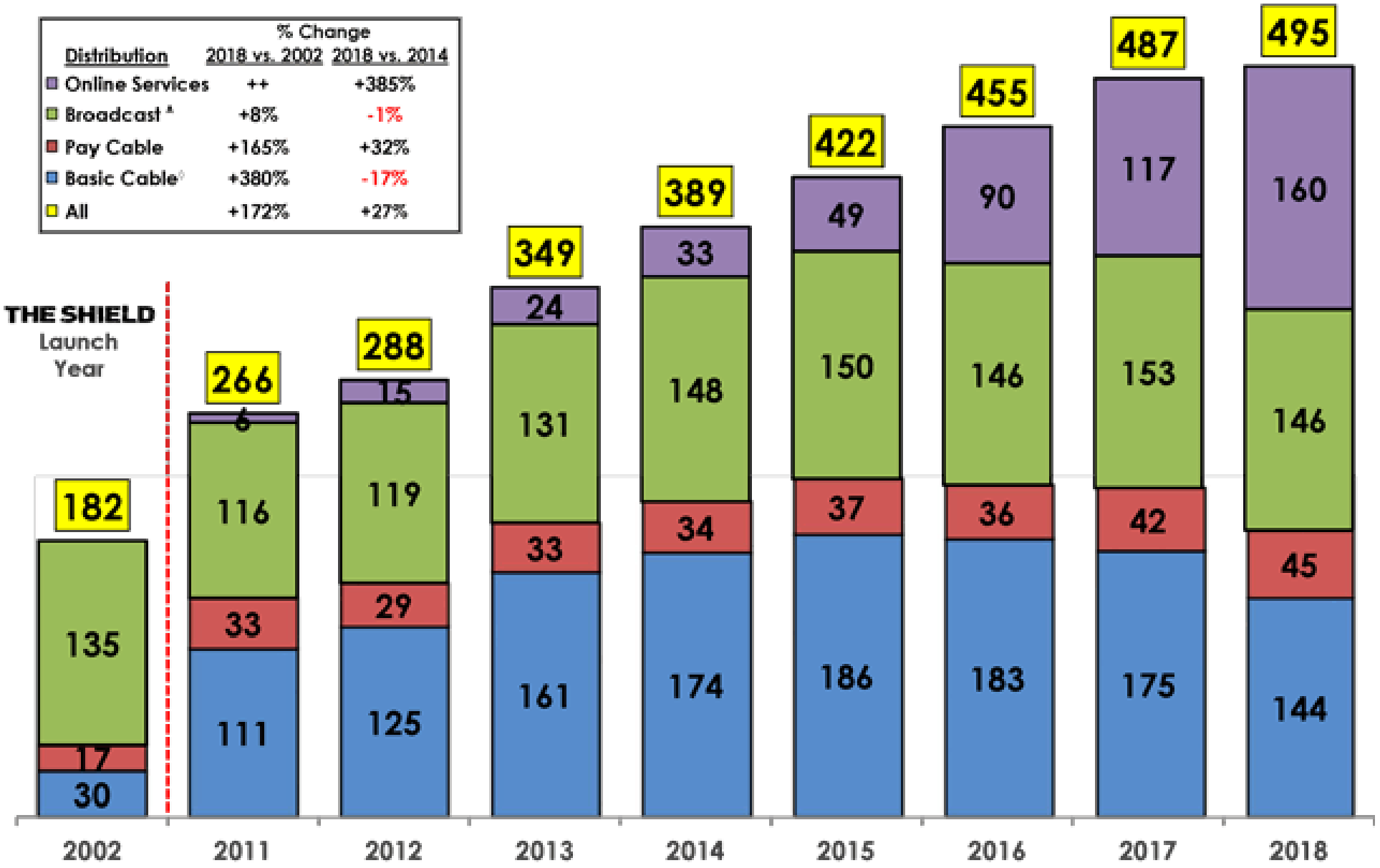
Attachment D

FX NETWORKS RESEARCH

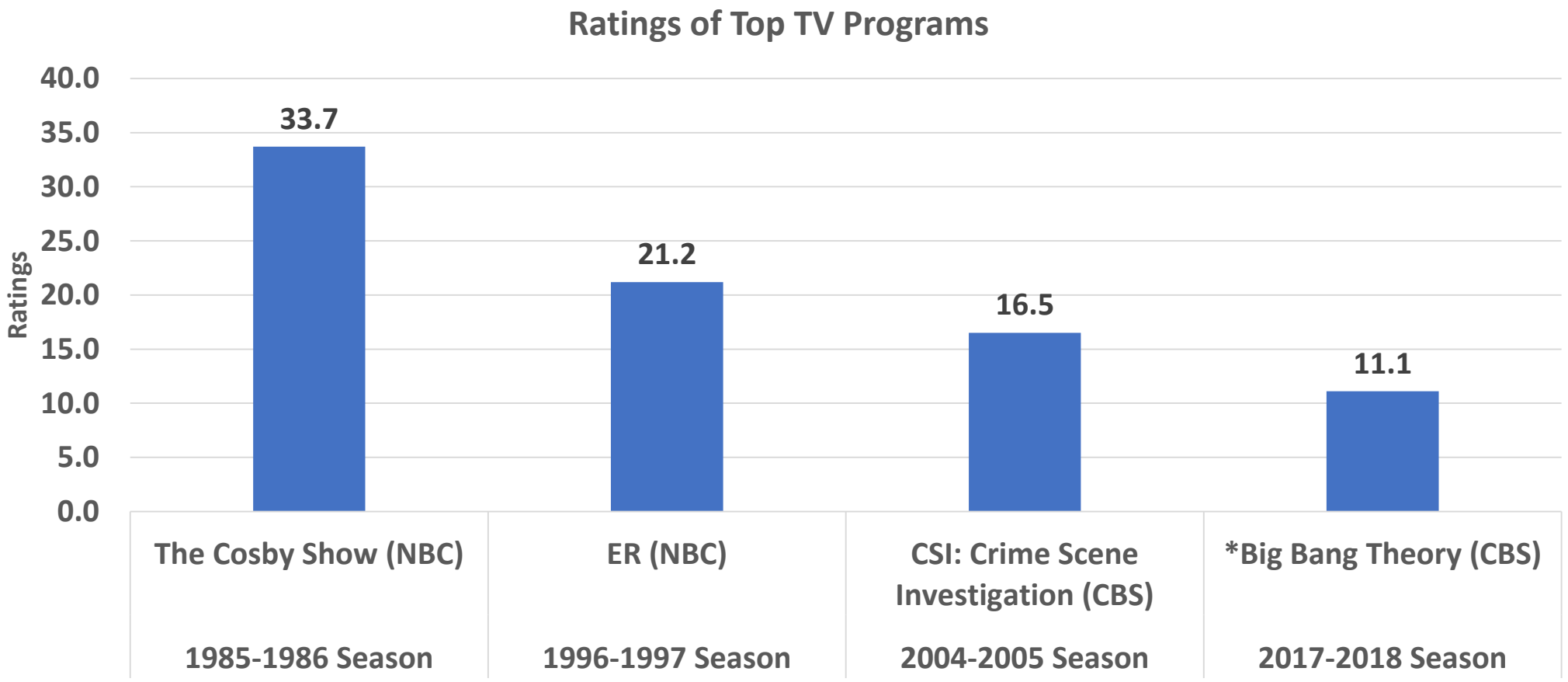
Estimated Number of Scripted Original Series*

Broadcast, Cable, and Online Services

Distribution	% Change 2018 vs. 2002	% Change 2018 vs. 2014
Online Services	++	+385%
Broadcast [A]	+8%	-1%
Pay Cable	+165%	+32%
Basic Cable[◊]	+380%	-17%
All	+172%	+27%

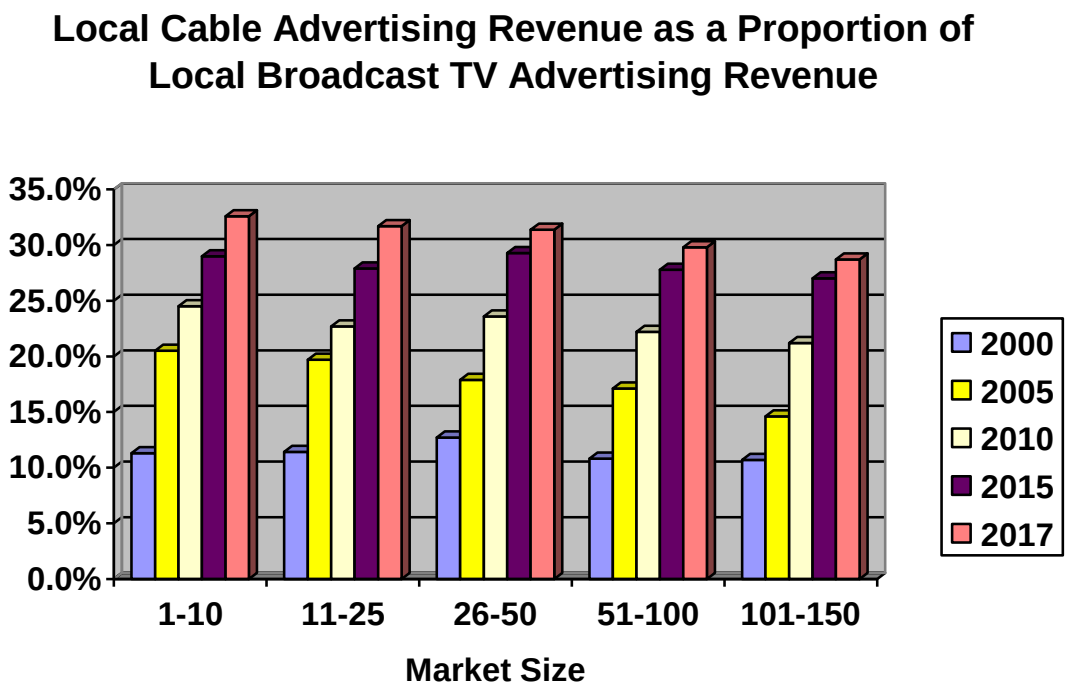


Attachment E



Sources and Notes:
1985-1986, 1996-1997, 2004-2005 Seasons*: Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present.* Household ratings based on Live-Only viewing*;*
*2017-2018 Seasons: *Television and Record Industry History Resources web site. Tim Brooks, editor.* Household rating based on Live +7 Day viewing.

Attachment F



Source: Data is based on an analysis of Bond & Pecaro estimates from *The Television Industry: A Market by Market Review*.

Growth of Local Cable Advertising Revenue as a Proportion of Local Broadcast TV Advertising Revenue

As demonstrated in the chart above, local cable made significant gains between 2000 and 2017, with their advertising revenues growing as a proportion of the ad revenues generated by broadcast television in local markets. In the Top 10 Nielsen Designated Market Areas (DMAs), the advertising revenues of local cable grew from an amount that was approximately 11.3 percent of local broadcast TV station ad revenues in these markets in 2000, to an amount that was about 32.6 percent of local broadcast TV station revenue in those markets in 2017. In total, local cable ad revenues in the Top 10 markets reached approximately $1.86 billion in 2017. To put this figure into context, the average of $186 million in local cable ad revenues per each Top

10 market was the equivalent of having an additional 4.6 broadcast TV stations in each market, based on average TV station ad revenues* in these markets in 2017.

In markets ranked 11 through 25, the ad revenues of local cable rose from an amount that was about 11.4 percent of local broadcast TV station ad revenues in 2000 to an amount that was approximately 31.7 percent of local broadcast TV ad revenues in 2017. The average advertising revenues earned by local cable was approximately $64 million per market in DMAs 11-25 in 2017, representing roughly the equivalent of three additional broadcast TV stations per market, based on average TV station ad revenues in those markets. In market ranges 26-50 and 51-100, the proportion of local cable ad revenues to local broadcast TV station revenues more than doubled from 2000-2017, with cable's 2017 local ad revenues equating to approximately two additional broadcast TV stations in each of those markets. Local cable's ad revenues as a proportion of local broadcast TV station ad revenues also more than doubled in DMAs 101-150 from 2000-2017.**

In short, these figures illustrate the expansion of local cable as a significant presence in local advertising markets and as a competitor to broadcast TV stations for local ad revenues.

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* Source: BIA Media Access Pro.

**Insufficient data was available for markets 151-210. Therefore these markets are excluded from this analysis.

Attachment G

The Relationship Between Market Size and

Advertising Revenue Per TVHH

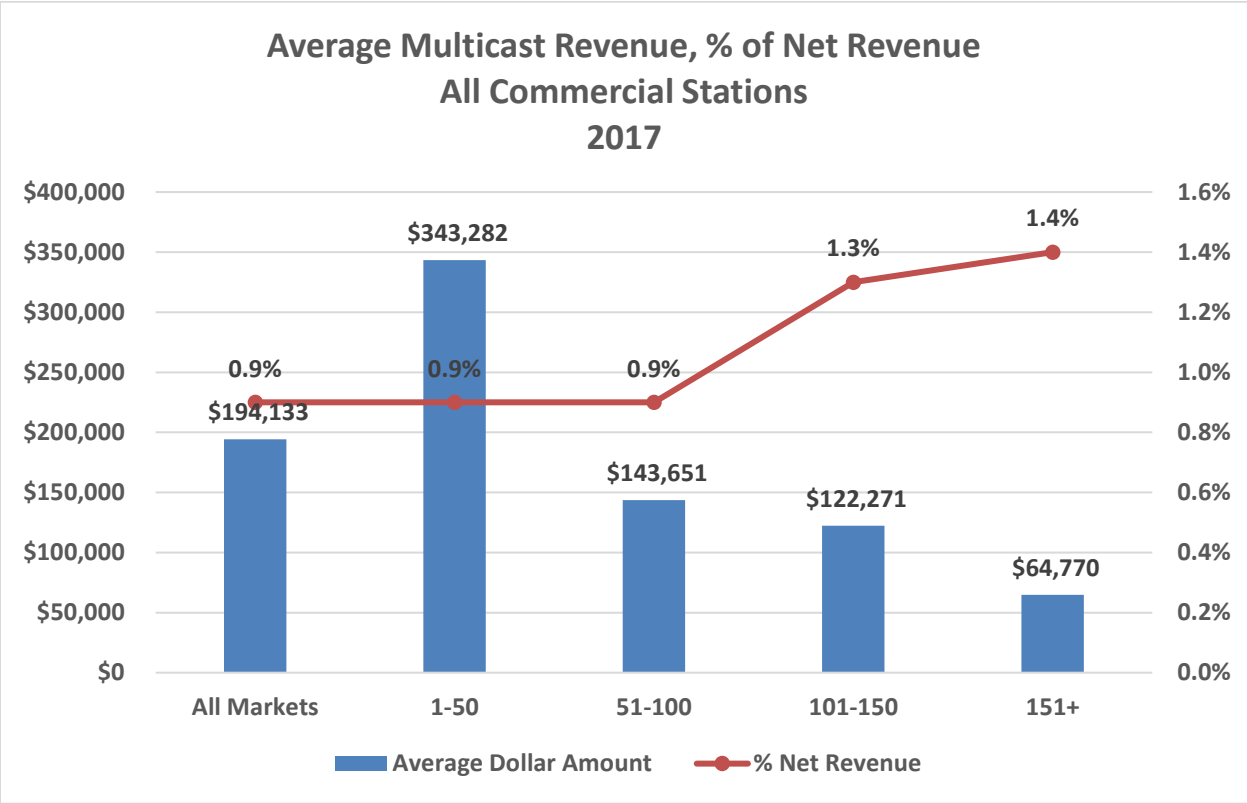
	Markets 1-10	Markets 11-25	Markets 26-50	Markets 51-100	Markets 101-150	Markets 151-210
Number of U.S. Commercial TV Stations	151	159	206	331	226	160
Avg. Ad Revenue per Station (000)	$40,350	$20,708	$13,363	$7,883	$5,082	$3,421
Avg. Revenue per TV HH in Market	$181	$146	$133	$124	$110	$113

Source: Analysis of BIA Media Access Pro data as of January 7, 2019.

Attachment H

Multicast Revenue

Market Size	Multicast Revenue[1] 2017 Average Dollar Amount All Commercial Stations	% of Net Revenue[2]
All markets	$194,133	0.9%
1-50	$343,282	0.9%
51-100	$143,651	0.9%
101-150	$122,271	1.3%
151+	$64,770	1.4%



[1]Data derived from the 2018 NAB Television Financial Survey database. Multicast revenue is defined as any revenue that is derived directly from a station's subchannels. Data does not include revenue from major affiliates (ABC, CBS, Fox, NBC) carried on a station's subchannel.

[2]Net revenues is defined as the total of gross advertising revenues, plus network compensation plus trade-outs and barter plus multicast revenue plus other broadcast related revenues minus agency and rep commissions.

Attachment I

Short Markets
(excluding Big 4 Multicast Affiliations)
As of February 1, 2019

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
9	Boston, MA	NBC	NBC
43	Birmingham, AL	ABC	ABC
47	Albuquerque-Santa Fe, NM	FOX	FOX
72	Springfield, MO	ABC	ABC
78	Harlingen-Weslaco-Brownsville-McAllen, TX	FOX	
83	Chattanooga, TN	FOX	FOX
94	Charleston, SC	ABC	ABC
99	South Bend-Elkhart, IN	ABC, FOX	FOX
102	Tri-Cities, TN-VA	ABC	ABC
103	Evansville, IN	FOX	FOX
104	Ft. Wayne, IN	NBC	NBC
105	Augusta, GA	NBC	
108	Springfield-Holyoke, MA	CBS, FOX	FOX
112	Tallahassee, FL-Thomasville, GA	FOX	FOX
113	Peoria-Bloomington, IL	ABC	ABC
117	Fargo-Valley City, ND	CBS	CBS
118	Macon, GA	ABC	ABC
121	Lafayette, LA	NBC	NBC
122	Bakersfield, CA	FOX	FOX
124	Santa Barbara-Santa Maria-San Luis Obispo, CA	FOX	FOX
125	Youngstown, OH	FOX	FOX
126	Monterey-Salinas, CA	ABC	ABC
129	Wilmington, NC	CBS	CBS
133	Columbus-Tupelo-West Point, MS	ABC	ABC
134	Wausau-Rhinelander, WI	FOX	FOX
136	Columbia-Jefferson City, MO	FOX	FOX
137	Monroe, LA-El Dorado, AR	ABC	ABC
138	Salisbury, MD	FOX, NBC	FOX
139	Rockford, IL	CBS	
140	Beaumont-Port Arthur, TX	NBC	NBC
141	Topeka, KS	FOX	FOX
144	Duluth, MN-Superior, WI	CBS	CBS
145	Palm Springs, CA	CBS, FOX	CBS, FOX

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
146	Minot-Bismarck-Dickinson, ND	FOX	FOX
150	Panama City, FL	CBS	CBS
152	Albany, GA	ABC	ABC
155	Bangor, ME	FOX	
156	Biloxi-Gulfport, MS	CBS, NBC	CBS, NBC
158	Terre Haute, IN	FOX	FOX
159	Sherman, TX - Ada, OK	ABC, FOX	ABC, FOX
160	Binghamton, NY	NBC	NBC
161	Idaho Falls-Pocatello, ID	FOX	FOX
162	Wheeling, WV- Steubenville, OH	ABC, FOX	ABC, FOX
163	Bluefield-Beckley-Oak Hill, WV	FOX	FOX
164	Missoula, MT	FOX	FOX
166	Yuma, AZ-El Centro, CA	ABC	ABC
168	Hattiesburg-Laurel, MS	ABC, FOX	ABC
169	Utica, NY	CBS	CBS
170	Clarksburg-Weston, WV	ABC	ABC
171	Rapid City, SD	FOX	FOX
172	Lake Charles, LA	ABC, CBS	ABC
173	Dothan, AL	NBC	NBC
174	Quincy, IL-Hannibal, MO-Keokuk, IA	ABC, FOX	ABC, FOX
175	Harrisonburg, VA	CBS, FOX, NBC	CBS
176	Elmira, NY	CBS	CBS
177	Jackson, TN	CBS, NBC	CBS
178	Watertown, NY	FOX, NBC	FOX
179	Alexandria, LA	CBS	CBS
180	Jonesboro, AR	CBS, FOX, NBC	CBS, NBC
181	Bowling Green, KY	CBS, FOX	CBS, FOX
182	Marquette, MI	FOX	FOX
183	Charlottesville, VA	ABC, FOX	FOX
184	Laredo, TX	ABC, CBS, FOX	ABC, FOX
185	Butte-Bozeman, MT	FOX	FOX
186	Bend, OR	CBS, FOX	FOX
187	Grand Junction-Montrose, CO	ABC	
188	Lafayette, IN	ABC, FOX, NBC	ABC, NBC
189	Twin Falls, ID	ABC, FOX, NBC	FOX
190	Lima, OH	ABC, CBS, FOX	CBS, FOX
191	Meridian, MS	NBC	NBC
192	Great Falls, MT	FOX, NBC	FOX

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
193	Greenwood-Greenville, MS	CBS, FOX, NBC	FOX, NBC
194	Parkersburg, WV	ABC, CBS, FOX	CBS, FOX
195	Eureka, CA	CBS	
196	San Angelo, TX	ABC	
197	Cheyenne, WY-Scottsbluff, NE	ABC	ABC
199	Mankato, MN	ABC, FOX, NBC	FOX
200	Ottumwa, IA-Kirksville, MO	CBS, NBC	CBS
201	St. Joseph, MO	CBS, FOX, NBC	CBS
202	Fairbanks, AK	CBS, FOX	CBS, FOX
203	Victoria, TX	CBS, NBC	CBS, NBC
204	Zanesville, OH	ABC, CBS, FOX	
205	Helena, MT	ABC, CBS, FOX	FOX
206	Presque Isle, ME	ABC, FOX, NBC	FOX
207	Juneau, AK	FOX, NBC	FOX
208	Alpena, MI	ABC, FOX, NBC	ABC, FOX
209	North Platte, NE	ABC, CBS, FOX	FOX
210	Glendive, MT	ABC, FOX, NBC	NBC

Source: BIA Media Access Pro data as of February 1, 2019. Analysis takes into consideration the following service types: full power, satellites, and multicast. (i.e., those markets that do not receive the full complement of ABC, CBS, FOX, NBC affiliates via one of those service types is considered a short market.)

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
193	Greenwood-Greenville, MS	CBS, FOX, NBC	FOX, NBC
194	Parkersburg, WV	ABC, CBS, FOX	CBS, FOX
195	Eureka, CA	CBS	
196	San Angelo, TX	ABC	
197	Cheyenne, WY-Scottsbluff, NE	ABC	ABC
199	Mankato, MN	ABC, FOX, NBC	FOX
200	Ottumwa, IA-Kirksville, MO	CBS, NBC	CBS
201	St. Joseph, MO	CBS, FOX, NBC	CBS
202	Fairbanks, AK	CBS, FOX	CBS, FOX
203	Victoria, TX	CBS, NBC	CBS, NBC
204	Zanesville, OH	ABC, CBS, FOX	
205	Helena, MT	ABC, CBS, FOX	FOX
206	Presque Isle, ME	ABC, FOX, NBC	FOX
207	Juneau, AK	FOX, NBC	FOX
208	Alpena, MI	ABC, FOX, NBC	ABC, FOX
209	North Platte, NE	ABC, CBS, FOX	FOX
210	Glendive, MT	ABC, FOX, NBC	NBC

Source: BIA Media Access Pro data as of February 1, 2019. Analysis takes into consideration the following service types: full power, satellites, and multicast. (i.e., those markets that do not receive the full complement of ABC, CBS, FOX, NBC affiliates via one of those service types is considered a short market.)