Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
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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

COMMENTS OF WEST VIRGINIA RADIO CORPORATION

West Virginia Radio Corporation ("WV Radio") submits these comments in response to the Commission's *Notice of Proposed Rulemaking* ("*2018 NPRM*")[1] concerning its quadrennial review of broadcast ownership rules. In particular, WV Radio submits these comments in response to the Commission's proposals in the *2018 NPRM* to modify the Local Radio Ownership Rule. WV Radio is the licensee of several broadcast stations in West Virginia and western Maryland. WV Radio believes that the FCC must remove all broadcast ownership limits for smaller and undefined market areas to ensure the survival of local broadcasting in the expanded 21st Century media marketplace.

WV Radio applauds the efforts of the Commission in moving forward with its next Quadrennial Review of the FCC's broadcast ownership rules, specifically by requesting comment in the *2018 NPRM* on any necessary changes to the Local Radio Ownership Rule.[2] That rule, which was implemented over two decades ago, has failed to keep up with changes in the broadcast marketplace – specifically the increased competition for listeners and advertising revenue faced by broadcasters from audio streaming services such as Pandora and Spotify as

[1] *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, Notice of Proposed Rulemaking, FCC 18-179 (rel. Dec. 13, 2018) ("*2018 NPRM*").

[2] *Id.* at 8-17, ¶¶ 14-39.

well as satellite radio service provided by SiriusXM.[3] Despite demonstrable evidence over the past several years of the detrimental effect of new media on local broadcasters, the Commission has failed to remove the local radio ownership caps.[4] Removal of the local radio ownership caps – especially in smaller and undefined market areas – would ensure that local broadcasters are able to realize increased economies of scale in order to compete in the current marketplace.[5] The time is now for the FCC to act to ensure the continued viability of local broadcasting in the 21st Century.

I. THE FCC HAS AN OBLIGATION TO REVIEW THE LOCAL OWNERSHIP RULE TO ENSURE THAT THE RULE REMAINS NECESSARY IN THE PUBLIC INTEREST AS A RESULT OF COMPETITION IN THE BROADCAST MARKETPLACE

Section 202(h) of the Telecommunications Act of 1996 (the "1996 Act"), mandates that the FCC periodically review whether the Local Radio Ownership Rule continues "to be necessary in the public interest as a result of competition."[6] In doing so, the National Association of Broadcasters ("NAB") asserts that the FCC "must account for today's reality," and "'reexamine [its] approach . . . where the factual circumstances which support [the Local Radio Ownership Rule] are no longer valid . . . .'"[7] In the *2018 NPRM*, the Commission stated

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[3] *See* National Association of Broadcasters' Notice of *Ex Parte* at 1, MB Docket Nos. 18-349, 16-306, GN Docket No. 12-268, WTB Docket No. 18-122 (Mar. 6, 2019) ("NAB March 6, 2019 *Ex Parte* Notice"); Letter from Rick Kaplan, *et al.*, National Association of Broadcasters, to Michelle Carey, Esq., Chief, Media Bureau, Federal Communications Commission at 1 (June 15, 2018) ("NAB June 15, 2018 Letter").

[4] *See 2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd. 9864, 9897, ¶ 82, & 9898-99, ¶ 87 (2016) ("*2010/2014 Quadrennial Review Order*").

[5] *See* NAB June 15, 2018 Letter at 3.

[6] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act").

[7] NAB June 15, 2018 Letter at 2 (quoting *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 742, 767 (6th Cir. 1995)). *See also id.* ("finding under the Communications Act that the FCC was 'statutorily bound to determine' whether certain previously adopted rules still served the public

that its "primary rationale" for the rule is to "*promote competition* among radio stations within a local market."[8] The rule is also intended to promote broadcast localism.[9] Thus, the Commission must either amend or repeal the Local Radio Ownership Rule when the rule fails to promote competition and/or localism in the *current* broadcast marketplace.

II. THE LOCAL OWNERSHIP RULE NO LONGER ENSURES COMPETITION IN THE BROADCAST MARKETPLACE

The broadcast marketplace has undergone radical changes since the establishment of the Local Ownership Rule in 1996. Broadcasters now face stiff competition for listeners and limited advertising revenue from newer forms of media.[10] Listeners are increasingly moving away from the broadcast medium towards the adoption of new digital audio programming services.[11] As the FCC's 2018 Marketplace Competition Report noted, there has been a 4% drop in consumers' time spent listening to broadcast radio, while time spent listening to audio streaming services and

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interest, given a change in relevant circumstances'" (quoting *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C. Cir. 1979))).

8 *2018 NPRM* at 6, ¶ 9 (emphasis added) (citing first *2010/2014 Quadrennial Review Order*, 31 FCC Rcd. at 9897, ¶ 82, & 9898-99, ¶ 87; then citing *2002 Biennial Regulatory Review*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd. 13620, 13712-13, ¶ 239 (2003) ("*2002 Biennial Review Order*"); and then citing *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd. 2010, 2069, ¶ 110 (2008) ("*2006 Quadrennial Review Order*")).

9 *Id.* (citing first *2010/2014 Quadrennial Review Order*, 31 FCC Rcd. at 9897, ¶ 82 & 9898-99, ¶ 87; then citing *2002 Biennial Review Order*, 18 FCC Rcd. at 13738, ¶ 303 & 13739, ¶¶ 305-06; and then citing *2006 Quadrennial Review Order*, 23 FCC Rcd. at 2075, ¶ 124 & 2077, ¶ 127).

10 NAB March 6, 2019 *Ex Parte* Notice at 1.

11 Comments of National Association of Broadcasters at 1-4, MB Docket No. 18-227 (Sept. 14, 2018) ("NAB Sept. 14, 2018 Comments").

podcasts is up 2%.[12] Advertisers are keenly aware of consumers' notable shift to newer forms of media.

Connoisseur Media, LLC notes that "[n]ow, in virtually every radio market, *50 percent or more of local advertising dollars* [] go to digital competitors who did not exist in 1996 when the current rules were adopted."[13] Advertisers are increasingly favoring online and digital advertising over traditional media outlets such as radio broadcasting.[14] Indeed, NAB has noted that "BIA estimates that the share of local advertising revenues earned from online and mobile rose from 7.6 percent in 2008 to 32.8 percent this year and will reach 41.9 percent in 2022."[15] This marked shift of revenue away from broadcasters is taking place while the overall advertising market has remained flat since the Great Recession.[16] Therefore the impact of those market shifts on broadcasters – particularly those in smaller markets – is quite severe, calling the future of local broadcasting into doubt if the FCC fails to act.[17]

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[12] *See Communications Marketplace Report, et al.*, GN Docket No. 18-231, WT Docket No. 18-203, MB Docket Nos. 17-214 & 18-227, IB Docket No. 18-251, Report, 82, ¶ 161 (rel. Dec. 26, 2018) ("*2018 Communications Marketplace Report*"). *See also* Connoisseur Media, LLC *Ex Parte* Letter at 3, MB Docket No. 18-349 (Dec. 6, 2018) ("Connoisseur Media *Ex Parte* Letter") (discussing Paragraph 161 of the draft to the *2018 Communications Marketplace Report*).

[13] Connoisseur Media *Ex Parte* Letter at 1 (emphasis added) (citations omitted).

[14] NAB Sept. 14, 2018 Comments at 17-18.

[15] *Id.* at 17.

[16] *See id.* at 3.

[17] *Id.* at 3-4.

III. REMOVAL OF THE OWNERSHIP LIMITS FOR SMALLER AND UNDEFINED MARKET AREAS IS NECESSARY TO ENSURE COMPETITION IN THOSE BROADCAST MARKETS

Broadcasters face far more regulatory burdens than their new digital competitors – which has infringed upon their ability in compete in the current marketplace. As noted by Local Community Broadcasters:

> Local and regional Internet-based audio program service suppliers [] compete with radio broadcasters for advertising dollars, leveraging their dramatically lower operating and market entry costs, having no need for transmitters, towers, antennas or real property to house them, no public interest service obligations, no ownership restrictions, no programing obligations, virtually no content regulation, and no periodic renewals of license . . . .[18]

Thus, the broadcast marketplace has been rendered anticompetitive by technological innovations in spite of stagnant regulations.

The solution, however, is removal of the broadcast ownership limits to enable "local radio broadcasters [to] achiev[e] the scale and scope necessary to compete with new audio service providers . . . ."[19] NAB rightly asserts that "[t]he financial ability of radio stations[] . . . would be enhanced by *permitting local stations to take greater advantage of economies of scale*."[20] Ensuring such economies of scale is "particularly important for smaller broadcasters earning limited revenues."[21] Thus, enabling broadcasters in smaller markets to take advantage of economies of scale would ensure the viability of local broadcasting in the face of ever-increasing competition from new media sources.[22] Indeed, for broadcasters in smaller

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18 Comments of Local Community Broadcasters at 3, MB Docket No. 18-227 (Dec. 21, 2018).

19 *Id.* at 2.

20 NAB June 15, 2018 Letter at 3 (emphasis added).

21 *Id.* (citation omitted).

22 *See id.* 3-4.

markets – whose "revenues pale in comparison to top 50 markets" – "deregulation will bring even greater benefits to the end user/listener" by enabling these broadcasters to "attract and pay for strong local on-air talent, [and] to provide local news and information . . . ."[23] For this reason, the Commission should adopt the NAB's proposal of removing all broadcast ownership limits in Nielsen markets outside of the top 75 markets – especially in smaller and undefined markets such as those found in West Virginia.

CONCLUSION

For the foregoing reasons, WV Radio requests that the Commission revise the Local Radio Ownership Rule by removing radio station ownership limitations in smaller and undefined market areas. Doing so would ensure that broadcasters continue to thrive in an increasingly competitive marketplace while permitting the FCC to comply with the statutory mandate of Section 202(h) of the 1996 Act.

Respectfully submitted,

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Dated: April 15, 2019

[23] Comments of Dick Broadcasting Inc. at 1, MB Docket No. 18-349 (April 9, 2019).