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

In the Matter of	)	
	)	
2018 Quadrennial Regulatory Review—Review of	)	MB Docket No. 18-349
The Commission's Broadcast Ownership Rules and	)	
Other Rules Adopted Pursuant to Section 202 of	)	
The Telecommunications Act of 1996	)	

<u>COMMENTS OF IHEARTCOMMUNICATIONS, INC.</u>

April 29, 2019

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I. INTRODUCTION AND SUMMARY

iHeartCommunications, Inc., as debtor in possession ("iHeartMedia" or "iHeart"), respectfully submits these Comments in response to the Federal Communications Commission's Notice of Proposed Rulemaking in the 2018 Quadrennial Review.[1] iHeart requests that the Commission modify its local radio ownership rules by eliminating the limitations on common ownership of AM radio stations within a market. iHeart would prefer the Commission retain the current limits on FM radio stations, and therefore opposes strongly the extraordinarily aggressive FM radio ownership proposals of the National Association of Broadcasters (NAB) in this proceeding.[2] As more than 90 percent of Americans listen to free, over-the-air, broadcast radio each week and rely upon it for local news and information, especially in times of emergency, the overriding imperative for the Commission in this proceeding should be to do no harm. The more

[1] *2018 Quadrennial Regulatory Review,* Notice of Proposed Rulemaking, FCC 18-179, MB Docket No. 18-349 (rel. Dec. 13, 2018) ("2018 Quadrennial Review NPRM" or "NPRM"). The scope of iHeart's Comments is limited to the local radio ownership rules.

[2] Letter from Rick Kaplan et al., Legal and Regulatory Affairs, NAB, to Michelle Carey, Chief, Media Bureau, FCC, (June 15, 2018) ("NAB Proposal").

focused change that iHeart suggests should enhance competition within the relevant market, broadcast radio; avoid the harm to broadcast radio as a whole, especially potentially disastrous consequences for AM radio, that would foreseeably result from overly aggressive changes to the FM rules; and best serve the public interest in localism and diversity, as well as addressing the needs of the Federal Emergency Management Agency (FEMA).

iHeart is the licensee of 848 broadcast radio stations in large, medium and small markets, urban and rural, all across America. Like other broadcast radio licensees, our stations provide a unique combination of local news, community information, weather, traffic, sports and entertainment to the communities we serve. In times of emergency, our dedicated staff works round the clock to provide time-critical information, assistance, local connectivity, and the support so necessary to those in harm's way. In short, broadcast radio is non-substitutable with other audio services; it is the only audio medium that serves as a reliable, "always there" companion and local informer for Americans nationwide.

iHeart's operational experience underscores the especially critical role AM stations fulfill in discharging broadcast radio's public interest obligations. Close to 30 percent of the stations we license operate in the AM radio band. AM stations play a vital role in FEMA's nationwide public safety and national security communications infrastructure, in compliance with federal law.[3] AM stations play an outsized role in times of local and regional crisis as well, evidenced by dramatic spikes in audience listenership surrounding natural and man-made catastrophes.

The mix of AM and FM stations operated by iHeart yields a wealth of quantitative data about audience listening and advertising revenues, as well as qualitative insights into advertising patterns, practices and decision-making, all critical to understanding the competitive dynamics

[3] Integrated Public Alert and Warning System Modernization Act of 2015, Pub.L. 114-143, 130 Stat. 327-333 (2015).

between stations in the AM and FM band and the allocation of advertising dollars between broadcast radio as a whole and other media. The recommendations in these Comments are grounded in our historical experience, consistent with the Commission's stated objective that its determinations in this proceeding be data-driven.

iHeart is a leader in embracing innovation and new technologies, recognizing the necessity to compete with ever-evolving digital and Internet-based platforms. Our popular streaming service, iHeartRadio, enables our listeners to access thousands of local radio stations, as well as custom stations, on-demand, and podcasts virtually anywhere, at any time and on any device. We have invested in new technologies and data-based solutions to enhance the effectiveness of our advertising partners. We understand the realities of the competitive pressures created by high-tech giants like Google, Facebook and Amazon and what measures can and cannot be useful to address those challenges.

Informed by our marketplace experience, iHeart believes that the 23-year-old current local radio ownership rules should be modified in a strategic and targeted manner. Under the 1996 Act, "[t]he Commission shall repeal or modify any regulation it determines to be no longer in the public interest."[4] In applying this test, the Commission has consistently considered the state of competition in local radio markets, localism and viewpoint diversity, as well as the policy goal of promoting minority and female ownership.[5]

It is beyond dispute that the audio ecosystem in which free, over-the-air, local radio broadcasting currently operates and competes has changed dramatically since the 1996 Act. The

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[4] Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) ("1996 Act"); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) ("Appropriations Act") (amending Sections 202(c) and 202(h) of the 1996 Act), Sec. 202(h).

[5] NPRM at ¶ 9.

introduction of satellite radio and Internet-based music streaming services, and the transformation of advertising effectuated by the use of personally identifiable information obtained by social media and other on-line services profiting from local advertising have put substantial pressure on local broadcast radio listening and advertising revenues.

At the same time, as the Commission itself recognizes, more than 90 percent of Americans continue to listen to broadcast radio each week.[6] Additionally, when measured by metrics of audience listening and advertising revenue, FM radio stations show much greater resilience to marketplace changes than do AM stations, which have suffered significant declines in both categories.[7] While numbers of AM stations continue to have strong listenership and revenues, the erosion in the vitality of the AM band as a whole as compared to the FM band has continued and in some cases even accelerated in the past several years, notwithstanding the Commission's praiseworthy initiatives under its AM Revitalization proceeding.[8] The consequences of further deterioration in the financial strength of AM radio stations could be very serious, including diminished resources to invest in local community-centric programming, content, talent and innovation.

In light of these marketplace realities, iHeart urges that, in adopting rule changes in this proceeding, the Commission be guided by three broad principles:

(1) Do no harm, in particular do not precipitate further deterioration of the AM band or undermine the financial incentives for incubating stations embedded in the Incubator Order;

(2) Provide meaningful regulatory flexibility to remedy specific marketplace problems that might be eased by targeted changes in the ownership limits; and

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[6] Id. at ¶ 3.

[7] *See* II.C., infra.

[8] *In the Matter of the Revitalization of the AM Radio Service*, MB Docket No. 13-249, First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry (released October 23, 2015) ("AM Revitalization FNPRM").

(3) Refrain from overly broad and aggressive rules changes that could harm local radio stations' ability to meet the public interest needs of the 90 percent of Americans who rely on it.

Applying these principles, iHeart respectfully proposes that the Commission change its local radio ownership limits in a highly strategic and targeted fashion, specifically by removing limits on common ownership of AM stations. Such targeted reform should improve market valuations of economically struggling AM stations, with benefits for jobs, programming, facilities and community services.

Based on these same principles, iHeart urges the Commission to reject the NAB proposal with respect to FM ownership, which would exacerbate the competitive disparity between AM and FM stations. Doing so will avert the very real threat of a mass divestiture of AM stations in favor of FM station purchases and the consequent devaluation of AM assets and attendant listener flight from the AM band.

Finally, iHeart is concerned with the impact of the NAB proposal on the successful implementation of the Commission's 2018 Incubator Order,[9] which holds important potential to achieve meaningful progress toward increased ownership diversity in broadcast radio. The financial incentives essential to that program's success would be significantly undermined by NAB's proposal as it relates to FM ownership limits.

II. MODIFYING THE CURRENT LOCAL RADIO OWNERSHIP RULES IN A STRATEGIC AND TARGETED MANNER BEST SERVES THE PUBLIC INTEREST

A. Any Modifications to the Local Radio Ownership Rules Must Not Undermine Important Efforts Already Underway in Other Relevant FCC Proceedings

In conducting its Quadrennial Review, the Commission is required by Section 202(h) of the Telecommunications Act of 1996, to "determine whether any of such rules are necessary in

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[9] *In the Matter of Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, 33 FCC Rcd 7911, MB Docket No. 17-289 (2018) ("Incubator Order").

the public interest as the result of competition…(and to) repeal or modify any regulation it determines to be no longer in the public interest." In the NPRM, the Commission summarized its findings and conclusions in its 2010/2014 Quadrennial Review Order that the local radio ownership rules continued to serve the public interest, noting that they continued to promote competition, diversity and localism, as well as being consistent with its goal of promoting minority and female broadcast ownership.[10] In reaching that conclusion regarding competition, the Commission determined that the broadcast radio listening market remained the relevant product market for purposes of the local radio ownership rules.[11]

In its Reconsideration of the 2010/2014 Quadrennial Review Order, the Commission denied requests to modify or relax the ownership limitations in the Local Radio Ownership Rule.[12] In repealing the Newspaper/Broadcast Cross-Ownership Rule and the Radio/Television Cross-Ownership Rule, the Commission relied, in part, on the continued constraints imposed by the local television and radio ownership rules to justify its decision: "In addition, the local ownership limits for television and radio, while primarily intended to promote competition, will continue to prevent an undue concentration of broadcast facilities, thereby preserving opportunities for diverse local ownership…"[13] Modifying the local radio rules – which have

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[10] NPRM at ¶ 12; *see also 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.,* Second Report and Order, 31 FCC Rcd 9864 ("2010/2014 Quadrennial Review Order") (2016) at ¶¶ 82, 87.

[11] Id. at ¶ 17.

[12] *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 et al.*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802 (2017) ("2010/2014 Quadrennial Review Order on Reconsideration") at ¶ 62, n.193.

[13] Id. at ¶ 62.

served essentially as guardrails for the Commission in these other proceedings – should not be done without recognizing the impacts on those earlier decisions.

In addition to the Commission's most recent decisions dealing with the local radio ownership limits, two other recent Commission proceedings are highly relevant to its decision-making process regarding local radio ownership limits.

In its AM Revitalization proceeding, the Commission recognized the public interest imperative of assisting AM broadcasters: "AM radio has traditionally served as a vital source of news and information, as well as a critical lifeline in times of emergencies and man-made or natural disasters….Given the erosion in AM listenership and the above-noted technical challenges to our oldest broadcast service, the Commission initiated this proceeding to propose rule changes designed to improve the AM service."[14] During this proceeding, the Commission has adopted multiple rules to enhance the AM service. The full benefits of these positive changes have yet to fully take hold in the AM marketplace.

Additionally, in its Incubator Order, following more than two decades of starts and stops, the Commission finally adopted an incubator program offering increased possibilities for small businesses and new entrants, creating opportunities for greater diversity of ownership through participation of women and minority-owned enterprises. Notably, the Commission recognized that providing the necessary financial incentives for broadcasters acting as incubating entities is indispensable to the success of the program:

> [W]e find that the record demonstrates a waiver of the Local Radio Ownership Rule is <u>the</u> benefit within our authority that will best provide a sufficient incentive for established broadcasters to participate in our incubator program….We conclude that the requirements we adopt herein regarding the

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[14] AM Revitalization FNPRM at ¶ 3.

> use of reward waivers will help ensure that they do not work against our local radio ownership limits…"[15] (Emphasis added).

The specific Incubator rules, in pertinent part, allow an incubating broadcaster to obtain a waiver of the local radio ownership limits for one station in the same or a comparable market but prohibits multiple waivers in any one market.[16]

As the Commission considers potential modification of the local radio ownership rules, iHeartMedia respectfully implores the Commission to be cognizant of the interrelationships – and interdependencies – of these proceedings and how they collectively impact the ability of the broadcast radio industry as a whole to serve the public interest. Above all else, the Commission should strive to do no harm, and must be very careful to ensure that any change to the local radio ownership rules not undermine the progress being made on AM revitalization and broadcast ownership diversity.

B. The Broadcast Radio Market Is The Proper Market For Determining The Need For Modification Of The Local Radio Ownership Rules

The NPRM poses the correct question: in defining the relevant market, are non-broadcast audio platforms substitutable for free, over-the air, local broadcast radio?[17] In its 2010/2014 Quadrennial Review Order, the Commission determined that "alternative sources of audio

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[15] Incubator Order at ¶ 61. We note the Incubator Order has been appealed to the United States Court of Appeals for the Third Circuit where the court will review the Commission's determination to allow an incubating broadcaster to obtain a waiver of the local radio ownership rules in a market outside the market of the incubated entity. See Multicultural Media, Telecom and Internet Council and National Association of Black Owned Broadcasters v. Federal Communications Commission, Nos. 18-3335, 18-1092, 18-1669, 18-1670, 18-1671 (3rd Cir. filed Aug. 31, 2018).

[16] Id. at ¶ 70.

[17] NPRM at ¶ 22.

programming are not currently meaningful substitutes for broadcast radio stations in local markets."[18] That determination remains valid today.

In conducting quadrennial reviews, the Commission is required to determine whether broadcast regulations are necessary in the public interest "as the result of competition."[19] Substitutability or interchangeability of a product has long been the established benchmark for determining the relevant product market in assessing the state of competition.[20] Whether one assesses the substitutability of other audio media for broadcast radio in terms of the nature of the service, consumer demand or advertiser demand, the result is the same: Other non-broadcast audio services are not substitutable for broadcast radio.

1. Broadcast Radio Embodies A Unique Combination of Characteristics That Make It Non-Substitutable

Broadcast radio is free to the consumer. This characteristic differentiates broadcast radio from other sources of audio programming, such as satellite radio, that are subscription services and require monthly payment for the service itself. A corollary is that the equipment necessary to access the free service is very inexpensive and is essentially a one-time purchase, lasting for many years, often a decade or more. Highlighting its accessibility, it is possible to purchase an AM/FM alarm clock or portable radio for $20 or less. An AM/FM car radio is offered as standard, original equipment included in the price of every automobile. By contrast, although some Internet-based services may be free, access to the service requires a computer or mobile phone – hardware that costs anywhere from several hundred to one thousand dollars. It also generally requires a subscription to a fixed or wireless broadband Internet service, which runs on

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[18] 2010/2014 Quadrennial Review Order at ¶ 94.

[19] 1996 Act, Sec. 202(h).

[20] *See* Brown Shoe Co. v. United States, 370 U.S. 294, 325-26 (1962); United States v. E.I. DuPont de Nemours & Co., 353 U.S.586, 592-595 (1957).

average $50 or more per month. This differential in pricing alone makes alternative non-broadcast audio services non-substitutable. There are, however, additional reasons.

Broadcast radio is local. The essence of a broadcast radio station's mission is to serve its community of license. By definition, its programming offerings are tailored to that locality. Consumers rely on broadcast radio precisely to find out what is going on where they live, whether it be the weather, traffic, information about community events or local news. As discussed in greater detail below in the context of the special, public interest value of AM radio stations, people turn to broadcast radio in times of emergency, natural or man-made disaster as their first lifeline, precisely because of its local focus and its ease of access and usage.

By contrast, non-broadcast audio services are designed largely to reach national audiences; a local focus, if present at all, is secondary. In the case of local broadcast programming streamed over the Internet, the service remains first and foremost a broadcast service, which is secondarily distributed over the Internet.

Broadcast radio provides a completely different listening experience from other audio services. Broadcast radio provides the listener community and companionship. Broadcast radio is a DJ telling you about a new song and why she likes it; it is a group of personalities riding with you in the car, entertaining and informing you on the way to and from work; it is a voice you know providing critical updates in times of emergency; it is members of the same community who show up to cover a local food drive or festival. Consumers listen to radio for a completely different experience than they receive from other platforms like satellite radio, music streaming services, podcasts, etc. These platforms offer listeners a means of escape from the world. Conversely, consumers listen to radio to engage in the world around them.

The non-substitutability of alternative non-broadcast radio sources is corroborated by quantitative analysis of consumer demand as measured by audience listening. The 2018 third quarter Nielsen data measuring multiple audience listening metrics demonstrate that broadcast radio reaches 92 percent of American adults over the age of 18, more than twice the next platform.[21] That figure has been stable for more than a decade.[22] The Commission has relied upon that metric in successive Quadrennial Reviews as one of the bases for concluding that the appropriate market is broadcast radio.[23] That fact has not changed, nor should the market determination upon which it partially rests.

Within the context of market definition, the NPRM seeks comment about the impact of non-broadcast radio services, especially Internet-based, dominant digital advertisers Facebook, Google and Amazon, on broadcast radio advertising.[24] The purchasing decisions of advertisers for time on broadcast radio take into account a broad range of factors, including AM or FM band, quantitative (Nielsen) and qualitative (Scarborough) ratings, radio station ranking in the market, audience demographics, delivery, pricing and return on investment. Advertisers have had many decades of experience with broadcast radio and the considerations that go into placement of advertising on the broadcast radio platform are well established. Although broadcasters are innovating in the field of analytics and working closely with advertisers to develop new tools to enhance audience measurement, they are refinements of existing metrics and techniques. By contrast, the ability of Internet-based search engines and social media platforms such as Google and Facebook to use the massive amounts of personal data that they collect from individuals to enable advertisers to micro-target potential customers is the primary driver of advertising purchasing decisions on those platforms. In short, the basic advertising considerations for

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[21] Nielsen Total Audience Report (2018 Q3).

[22] 2010/2014 Quadrennial Review Order at ¶ 91.

[23] Id.

[24] NPRM at ¶ 22.

broadcast radio and Internet-based platforms are not the same. At this time, advertisers do not view these platforms as interchangeable, but rather as separate and distinct means of delivering customers. Thus, they are not substitutable from an advertising perspective.

Of course, Internet-based advertising has had some negative impact on broadcast advertising revenues, as well as on other traditional media such as newspapers.[25] However, such competitive pressures across platforms within the audio ecosystem are not determinative of what is the relevant market. For example, when assessing whether there is a competition concern within the commercial airline carrier industry, the market is treated as the airline market, not the transportation market, even though trains, ships and automobiles compete with airlines for traveling consumers.[26] The same logic applies here. The relevant market is the broadcast radio market.

2. Defining the Market As Broadcast Radio is Necessary to Harmonize Commission and Department of Justice Views of the Relevant Market

Finally, iHeart's support for defining the market as broadcast radio, as the Commission has repeatedly concluded in prior Quadrennial Reviews, is buttressed by the approach taken by the Department of Justice. In reviewing the most recent significant merger in the broadcast radio industry, the Department of Justice required divestiture of station assets in the acquisition of

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[25] *See, e.g.,* Vranica, Suzanne, and Jack Marshall, "Plummeting Newspaper Ad Revenue Sparks New Wave of Changes." *WSJ.com*, 20 Oct. 2016, www.wsj.com/articles/plummeting-newspaper-ad-revenue-sparks-new-wave-of-changes-1476955801.

[26] *See*, United States v. Alaska Air Group and Virgin America, Inc., Competitive Impact Statement at 6-7, Civ. No. 02377, (D.DC) (Dec. 6, 2016); *See also,* Telecor Communications, Inc. v. Southwestern Bell Telephone Co., 305 F.3d (10th Cir. 2002), cert.denied, 538 U.S. 1031 (2003) (Court held that the relevant market was the pay phone market as opposed to the pay phone/cell phone market); Lucas Auto Engineering, Inc. v. Bridgestone/Firestone, Inc., 275 F. 3d 762 (9th Cir. 2001) (Court held that the relevant market was original equipment major brand vintage tires as opposed to all vintage tires.)

CBS Radio by Entercom Communications Corporation.[27] In its competitive impact statement preceding entry of the Final Judgment, the Department of Justice determined that competition in local and national advertising in local radio markets (DMAs) would be harmed absent divestiture of certain local radio stations competing head to head in those markets.[28] In short, the Department of Justice used the local broadcast radio market as the benchmark for market definition.

Both the Department of Justice and the Commission have jurisdiction to approve mergers and acquisitions involving the transfer of broadcast licenses. The authority of the DOJ resides in the Clayton Act. The authority of the Commission resides in Section 310(d) of the Communications Act, requiring a finding that the transfer of licenses incident to a merger is in the public interest, convenience and necessity. The Antitrust Division of the Department of Justice is the recognized dominant government agency dealing with issues of competition. The definition of the relevant market is a core responsibility of the Antitrust Division. It would promote regulatory chaos were the Commission to adopt a different market definition for purposes of the local radio ownership rules. Were the Commission to determine in this proceeding that the relevant market is the audio services market, as the NAB contends, it is difficult to conceive of any circumstances in which the Commission would reject or even condition any radio station merger on competition grounds. It would essentially surrender this part of its jurisdiction to the Department of Justice. That result is inconsistent with the statutory scheme established by the Congress and with the Commission's interest as a regulator.

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[27] The Commission specifically sought comment on the relevance of the Department of Justice approach to this Quadrennial Review. *See* NPRM at ¶ 21.

[28] United States v. Entercom Communications Corp. and CBS Corp., Competitive Impact Statement, Civ. Docket No. 17-2268 (D. D.C) (Nov. 1, 2017).

C. The Growing Competitive Disparity Between AM and FM Radio Stations Requires Modification of the Local Radio Ownership Rules

A quantitative analysis of the relative competitive strengths of AM and FM radio stations from 2010 to 2018 tells a tale of two bands.[29] By virtually every relevant metric, AM stations, considered as a whole, are struggling, and their decline relative to FM stations is progressively steeper. But for the high ranking of a number of AM stations in several of the largest markets in the United States, the downward trajectory of AM stations would be even more pronounced.[30]

Using a very broad measure of the status of AM and FM stations, the continued operation of stations in their respective bands, the number of AM stations on the air has declined while the number of FM stations has grown. As of the end of 2010, there were 4,762 AM radio stations operating.[31] By the end of 2018, that number had decreased to 4,619, a loss of 143 AM stations.[32] By contrast, at the end of 2010, there were 6,526 FM stations (excluding FM educational stations).[33] By the end of 2018, there were 6,754 FM stations, a net gain of 228 FM stations.[34] A more granular assessment of the relative competitive positions of AM and FM

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[29] iHeart has analyzed data covering the period 2010-21018 to provide the most complete and accurate picture of the broadcast radio marketplace and the broader audio services ecosystem, including trend lines. This approach also reflects the fact that the 2010/2014 Quadrennial Review continues to be under judicial review in the United States Court of Appeals for the Third Circuit.

[30] Based on Nielsen ratings as of April 17, 2019, only ten of the top 50 markets have at least one AM station ranked in the top 5 in that market (Chicago, San Francisco, Atlanta, Detroit, Puerto Rico, Sacramento, Cincinnati, Columbus, San Jose and Milwaukee). Twenty-three of the top 50 markets do not have a single top-10 ranking AM station. *See* Nielsen Topline Ratings (April 17, 2019) at https://tlr.nielsen.com/tlr/public/market.do?method=loadAllMarket.

[31] *See* News Release, FCC, Broadcast Station Totals as of December 31, 2010 (February 11, 2011).

[32] *See* News Release, FCC, Broadcast Station Totals as of December 31, 2018 (January 2, 2019).

[33] *See* News Release, FCC, Broadcast Station Totals as of December 31, 2010 (February 11, 2011).

[34] *See* News Release, FCC, Broadcast Station Totals as of December 31, 2018 (January 2, 2019).

radio stations illuminates the reasons why increasing numbers of AM radio stations are going dark while FM stations are increasing in number.

In the broadcast radio market, audience listening, and advertising revenue are the most important indicia of the financial strength of stations and the level of competition within the market. The quantitative data for both criteria demonstrates a large and increasing competitive gap between AM and FM radio stations in the eight years since 2010, especially in the past four years. The travails of AM radio stations are not news to the Commission. It is the reason that the Commission initiated its AM Revitalization proceeding, and has adopted discrete rules changes to enhance the competitive position of AM radio stations.[35] Today, the competitive imbalance between AM and FM radio stations has become so pronounced that the current limits on local ownership of AM stations can no longer be justified as serving the public interest.

The two most widely used metrics for determining audience listening are unduplicated Weekly Cume and Average Quarter Hour Persons (AQH). Weekly Cume reflects the total number of different persons listening to a station for at least five minutes during a daypart in a week. In other words, if for example, the Weekly Cume were 50 million, it would mean that there was an average of 50 million different persons listening each week during the hours of 6:00 am to 12:00 midnight. AQH reflects the average number of persons listening to a particular station for at least five minutes during a 15-minute period. An alternative to AQH in expressing listening volume is Total Listening Hours (TLH). Thus, Weekly Cume measures the number of <u>listeners</u>, while the AQH and TLH measure the amount of <u>listening</u>.

[35] *See In the Matter of Revitalization of the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221 (2013) ("AM Revitalization NPRM") at ¶ 2. It should be noted that in the AM Revitalization proceeding, a large group of radio broadcasters, including iHeartMedia, opposes changing the nighttime, critical hours and daytime interference protection standards as unhelpful to the objective of strengthening AM radio.

A review of these metrics based upon Nielsen ratings further confirms this tale of two bands. In 2010, the Weekly Cume for AM radio stations was 71.0 million. Recent data for 2018 show that number declining to 54.2 million, a distressing drop of approximately 25 percent over an eight-year period.[36] In marked contrast, the average Weekly Cume for FM radio stations rose from 226.7 million in 2010 to 231.1 million in 2018. The divergence is stark. As shown in Figure 1, AM listenership has declined both in terms of number of people reached (Cume Rating represents the percentage of the population reached by AM Radio each week) and in its share of total listening vs. FM Stations.

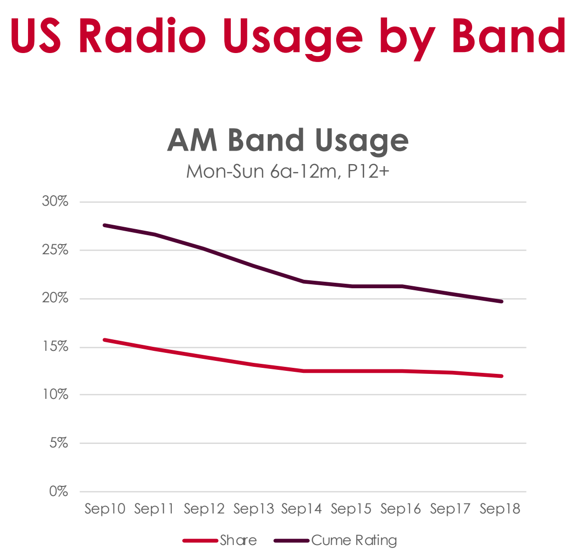

Figure 1

A slightly different pattern but fundamentally similar trend emerges from an analysis of AQH. For AM radio stations, the average AQH in 2010 was 4.3 million. In 2018, it had dropped dramatically to 2.6 million. Expressed in monthly TLH, listening dropped from 2.3 billion to

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[36] Nielsen RADAR Trender Report, RADAR 106 (September 2010) and RADAR 138 (September 2018). A change in the methodology used by Nielsen occurred in 2012 and may affect the raw numbers, but that same change applied equally to AM and FM radio measurements and therefore would not have skewed the comparative trends.

1.4 billion, a decline of almost 40 percent. Although the AQH for FM radio stations also dropped over the same period, from 22.9 million in 2010 to 19.4 million in 2018, that decline was less than half of the decrease on the AM Band.[37]

Comparative advertising revenue for AM and FM radio stations during the 2010-2018 period parallels the audience listening trends. Utilizing BIA data, in 2010, total radio advertising revenue was approximately $10.5 billion.[38] Of that total, more than $2.1 billion was earned by AM stations, and more than $8.3 billion was earned by FM stations, a 1:4 ratio.[39] In 2018, total radio advertising was $9.7 billion, a decline from 2010.[40] While FM radio station revenues were down slightly less than 4 percent from their 2010 amount, AM radio station revenues dropped more than 21 percent from 2010, to $1.7 billion.[41] The relative declines resulted in a ratio of AM ad revenue to FM ad revenue of nearly 1:5, from 1:4 in 2010.

The total advertising revenue data, however, understate significantly the differences between AM and FM radio stations when analyzed by market grouping. As shown in Figure 2, in 2010, AM advertising revenue accounted for approximately 20 percent of total advertising revenue. At the same time, due to the presence of several high-ranking AM stations in some of the largest markets, for the top 25 markets, AM revenue accounted for roughly 24 percent of the total in those markets. That share dropped to approximately 18 percent in markets 26-75 and then dived to approximately 14 percent in markets below market 75.[42]

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[37] Id.

[38] BIA Media Access Pro Q1 2019 data.

[39] Id.

[40] Id.

[41] Id.

[42] Id.

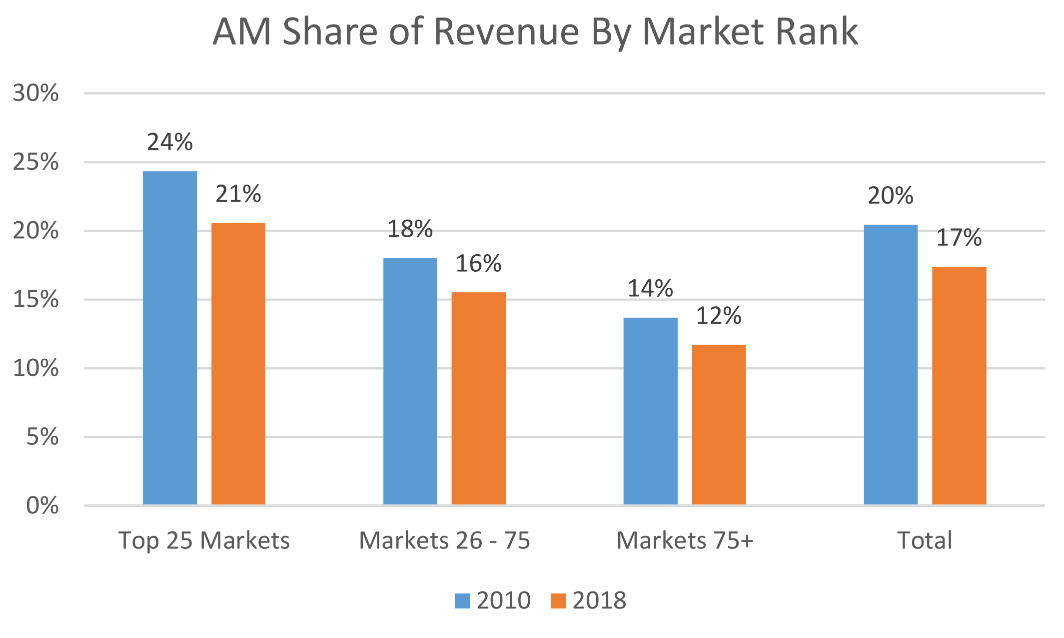

Figure 2

Viewed solely from a competition perspective, there is abundant reason to modify the local radio ownership rules for the purpose of promoting increased competition between AM and FM stations. Although there is no clear evidence of a causal relationship between the existing local radio ownership rules and the growing competitive imbalance between AM and FM radio stations in the broadcast radio market, there is a correlation. The reality is that the state of competition in the broadcast radio market is deteriorating under the current rules. The status quo is not consistent with the public interest. The importance of the Commission modifying its local radio ownership rules to address this competition concern is heightened by the special role that AM radio stations play in serving the public interest.

D. Preserving A Robust AM Radio Band Is Essential to The Public Interest

1. AM Radio Is An Integral Component of Our Country's Public Safety and National Security Communications Infrastructure

In its Comments submitted to the Commission in response to the Second Further Notice of Proposed Rulemaking in the AM Revitalization proceeding, the Department of Homeland

Security's Federal Emergency Management System succinctly summarized the unique institutional role that AM radio stations play in ensuring national security:

> There exists only one means by which FEMA can fulfill its Congressionally-mandated responsibility to ensure that FEMA can deliver a message from the President to the American people under all circumstances during overnight hours, that is through the cooperative use of the privately-owned Class A AM broadcast stations in the Primary Entry Point (PEP) program.[43]

FEMA's filing reviews the history of the PEP program, quoting from a 1995 Presidential memorandum stating that, "the Primary Entry Point (PEP) system is the cornerstone for the national level EAS (Emergency Alert System.)"[44] FEMA goes on to point out that State EAS plans are interdependent with the PEPs.[45]

There are currently 25 Class A AM radio stations participating in the PEP program. As FEMA notes in its Comments,

> All of the most recently added PEP broadcast station facilities have fully [High-Altitude Electromagnetic Pulse]-protected backup facilities. FEMA is in the process of installing second generation HEMP-protected back-up facilities at the legacy PEP stations, complete with chemical and biological agent protection for shelter occupants, in keeping with All-Hazards PEP performance requirements. To date, eleven of the twenty-five Class A AM stations in the PEP program have received either first- or second-generation HEMP-protected back-up facilities.[46]

FEMA is making these investments - at an average cost of $1.5 million per facility – to ensure their continued operation in the event of a catastrophic event. Recently, WLW-AM in Cincinnati, Ohio, one of the nation's longest-serving radio stations, became the second PEP facility in the nation to be specially hardened by FEMA to ensure continuity of Presidential-level

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[43] Comments of FEMA on Second Further Notice of Proposed Rulemaking in MB 13-249, at 1.

[44] Id. at 3.

[45] Id. at 4.

[46] Id. at 3.

emergency broadcast services notwithstanding attack by biological, chemical, HEMP, radiological or other means.[47]

Rectifying the competitive imbalance between AM and FM radio stations will help ensure the continued robustness and reliability of stations that are vital to local communities' and our country's public safety and national security. At a minimum, the Commission must exercise extraordinary care to avoid harming this emergency communications infrastructure by regulatory actions in the Quadrennial Review proceeding that would weaken AM stations.

2. Audience Listening To AM Radio Stations Spikes Dramatically Higher When Disaster Strikes

In numerous instances in the past decade, whether leading up to, during or following natural disasters or man-made calamities, iHeartMedia AM radio stations have experienced dramatic spikes in audience listening when compared to other media, including FM radio stations in the same market. This empirical evidence confirms the conclusion that the one of the primary reasons people tune to radio is because they believe it is a trusted source of information.[48]

During the electricity blackout that kept citizens in San Diego, California (and areas throughout the Southwest) in the dark for approximately 25 hours on September 8-9, 2011, ratings on NewsRadio 600 KOGO rose almost ten times the average. In 90 minutes alone, KOGO listening increased by 40x. In fact, at its peak, KOGO reached a 54 share, meaning *more than half of local radio listeners at that time were listening to KOGO*. Although radio station listening in the same market increased generally during the relevant time period, it was far less substantial than in the case of KOGO. Figure 3 illustrates the spike:

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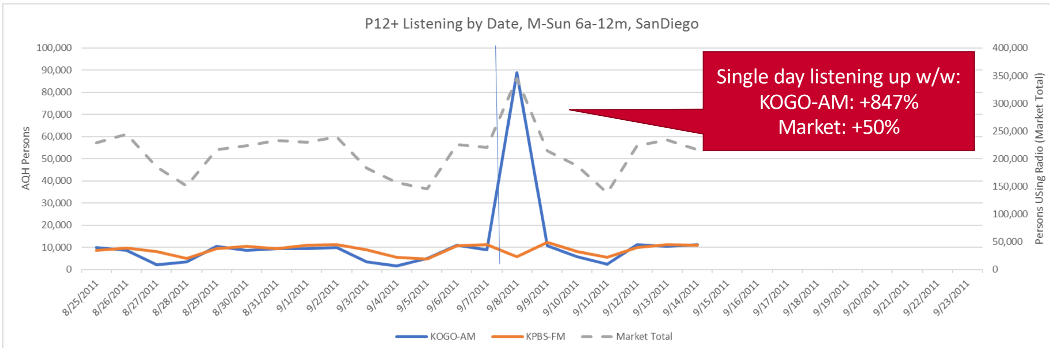
[47] *See* FEMA Press Release, "FEMA Completes Important Upgrade to Cincinnati's WLW-AM, Highlights Broadcast Radio's Critical Role in Nation's Emergency Alert and Warning System" (October 24, 2018), appended hereto as Appendix A.

[48] Inside Radio, "Survey: Radio Seen As Most Trusted Medium" (Jan. 7, 2019).

San Diego: Southwest Blackout 9/8/2011

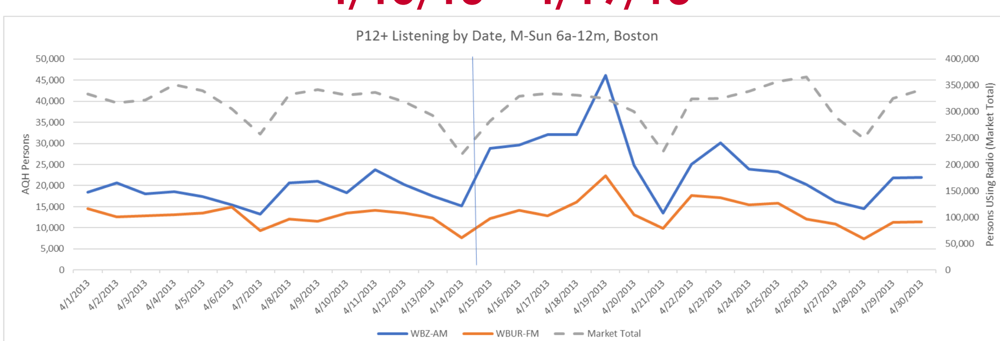


P12+ AQH Listening, Mon-Sun 6a-12m	Sep. 8-14 vs. Sep. 1-7, 2011
KOGO-AM	+187%
KPBS-FM	+1%
Market Total	+11%

Figure 3

A similar phenomenon occurred in the hours and days immediately following the Boston marathon bombing in April 2013. In that instance, as shown in Figure 4, listenership on WBZ-AM jumped 50 percent. Over the same time period, total radio market listening actually declined by two percent.

Boston: Marathon Bombing and Manhunt 4/15/13 – 4/19/13

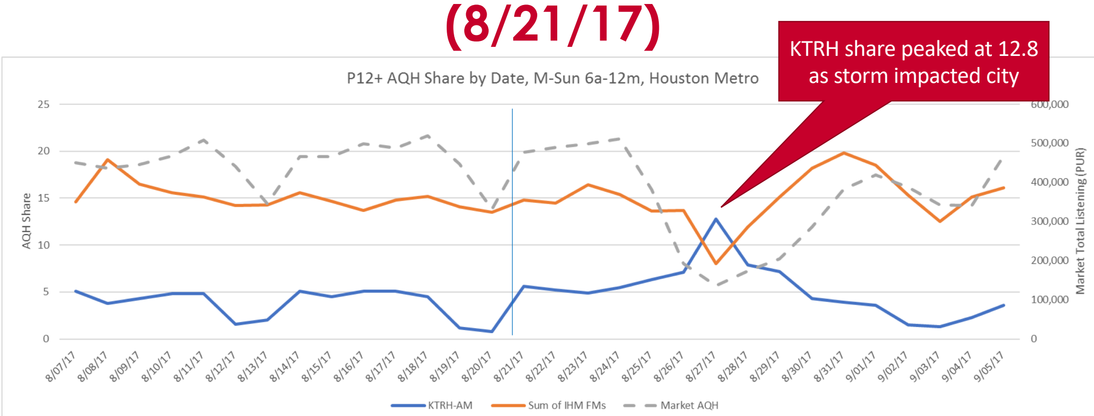


P12+ AQH Listening, Mon-Sun 6a-12m	Apr. 15-21 vs. Apr. 8-14, 2013
WBZ-AM	+52%
WBUR-FM	+19%
Market Total	-2%

Figure 4

Finally, when Hurricane Harvey struck Houston in August 2017, through the storm, KTRH provided information to Houstonians -- with or without power or TV – and outperformed the rest of the radio market (see Figure 5). Share grew with the storm, peaking at 12.8 share. Additionally, KTRH AQH listening was up 7x over the previous Sunday (see Figure 6).

Houston: Hurricane Harvey Buildup (8/21/17)



P12+ AQH Share, Mon-Sun 6a-12m	Aug 21-27 vs. Aug 14-20, 2017
KTRH-AM	+2.1pp (+50.3%)
iHM FMs (KODA/KQBT/KTBZ)	-0.2pp (-1.3%)

Figure 5

Houston: While TV use swelled all week, listeners counted on KTRH as radio alternative

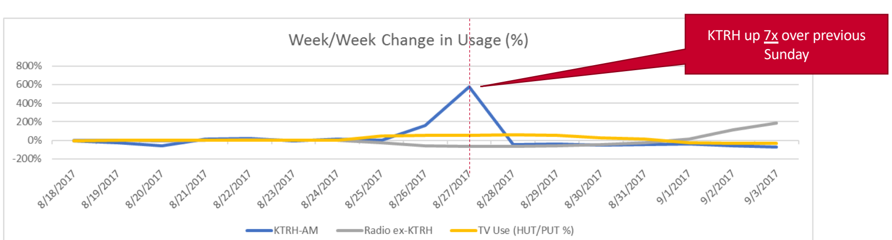


Figure 6

The critically important role that local radio plays in serving communities is never more evident than during local and regional emergencies, when broadcast radio is often the only available source of local emergency information. In those times of crisis – as we did during last year's Hurricanes Florence and Michael and the tragic California wildfires, when other media sources were often not able to operate – iHeart works around the clock to help our neighbors and communities by doing what radio does best: provide the critical information, local connectivity, always-available support and companionship that is so important – and uniquely "radio" – before, during, and after disasters strike.[49] In fact, because of our investments in emergency resources and preparedness and the tireless dedication of our nationwide Emergency Operations Team, local on-air talent, and other dedicated employees - who time and again put aside their own needs to keep our stations operating in the face of severe weather and other emergencies, there have been occasions when a local iHeart station (or stations) was for a period of time the only news and information source in operation during times of disaster and crisis.[50]

The unique importance of radio – and AM radio in particular – to communities during emergencies is not lost on the Commission, nor on elected representatives serving those

[49] As an example, in 2018, As Hurricane Florence made landfall, and in response to potentially significant flooding forecasted for the areas around Myrtle Beach, iHeart moved our Myrtle Beach station employees, including local on-air talent, to our Florence, SC, stations, where they continued to provide nonstop, wall-to-wall coverage from our Florence, SC studios using internet connectivity through our Emergency Operations Center in Cincinnati over WYNA-FM, WGTR-FM and WWXM-FM (Myrtle Beach, SC) and WZTF-FM and WRZE-FM (Florence, SC). This included iHeart's Myrtle Beach stations Gator 107.9's Gator Morning Show team, James Bierley and Adam Dellinger, and Rock 107 FM's Mad Max Show host, Greg Frederick (aka Mad Max); and Florence stations 103-X's Andrew Fisher and Kimberly Basso (aka Mattie) and Denis Davis. Each of these talented individuals – in addition to the other dedicated employees in the stations – put their personal circumstances and needs aside to ensure the communities impacted by Hurricane Florence, including Myrtle Beach, continued to receive important information – even entertainment – from familiar, local, trusted individuals.

[50] Notably, enactment of the Securing Access to Networks in Disasters Act, or "SANDy Act" (Div. P of Sec. 302 of Pub.L. 114-141), was been demonstrably effective in ensuring access of iHeart's Emergency Response Teams to necessary facilities, equipment and other resources during Florence and subsequent events.

communities. As FCC Chairman Pai noted on KTRH's *Houston's Morning News with Bob Frantz and Shara Fryer* during the immediate aftermath of Hurricane Harvey:

> I've long said AM radio (and radio generally) is such an important part of the media landscape, and no more so than in emergencies. When the towers go down and when the hurricanes hit, the people tune into the radio in really high numbers.[51]

Similarly, recently, Representative Mark Amodei, a member of the House Appropriations Committee's Subcommittee overseeing the FCC, made an impassioned appeal that the Commission, in focusing on spectrum needs for new wireless technologies, be sure to protect the ever-resilient broadcast services to ensure they are reliably available to serve populations during disasters. In response, Commissioner Rosenworcel stated:

> When the power goes out and your phones are hard to charge, we have to be mindful that a radio with batteries—which feels awfully old school—may be one of the most important things we all have around. We have to remind ourselves in this digital world that there are some analog technologies that can continue to help keep us safe and we have to make sure our systems protect them.[52]

As shown above, of all radio services, *it is AM radio stations* that continue to serve as the beacons to which communities turn when disaster strikes. It is essential that the Commission exercise extreme caution in this proceeding to ensure, however unintentionally, no harm comes to these stations as a result of ownership deregulation.

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[51] Radio Interview with FCC Chairman Ajit Pai, KTRH-AM, *Houston's Morning News with Bob Frantz and Shara Fryer* (Sept. 7, 2017).

[52] "Is the FCC Asking for Too Little Money?" Inside Radio (April 4, 2019), quoting Commissioner Jessica Rosenworcel's oral testimony before the House Committee on Appropriations Subcommittee on Financial Services and General Government at its April 3, 2019 hearing on the FCC's Fiscal Year 2020 Budget Request. *See* http://www.insideradio.com/free/is-the-fcc-asking-for-too-little-money/article_92333aa0-56a0-11e9-943a-d70d6dbd25b4.html.

3. AM Radio Stations Host A Preponderance Of News And Information Programming

One of the most important public interest functions that radio serves is to provide local news and information to its communities of license. In analyzing the formats of radio stations, a vast majority of All News formatted stations are AM stations. Out of a total of 835 All News stations nationwide, 506 or 61 percent of them are AM radio stations. In the top 75 markets, that proportion rises to 63 percent.[53] The concentration of news and information is even stronger in the area of business news. Fully 94 percent of All Business News formatted stations across the country are in the AM Band.[54] A slightly smaller percentage, 92 percent, are AM stations in the top 75 markets.

The numbers are even higher for Spanish language All News formats – all but one out of 70 or 99 percent of such stations are on the AM Band.[55] This data point is especially relevant to public interest considerations because it impacts diversity, the accessibility of local news and information to the Spanish speaking population so critical to their successful integration into American society.

The concentration of All News formats in AM stations helps explain the audience listening spikes for AM stations in times of emergency. They are the habitual trusted sources of local news and information for millions of listeners.

The competitive imbalance between AM and FM radio stations and the singularly public interest role played by AM radio stations within the broadcast radio market warrant meaningful modification to the local radio ownership rules. The question confronting the Commission is how

[53] BIA Media Access Pro (April 2018)

[54] Id.

[55] Id.

best to change the rules without doing harm to the broadcast radio market and the listening public—American consumers.

III. ELIMINATING THE LOCAL OWNERSHIP LIMITS ON AM RADIO STATIONS IS IN THE PUBLIC INTEREST

The test for determining whether local radio ownership rules should be retained, modified or repealed is whether they are necessary in the public interest.[56] The historical justification for local ownership limits on radio stations has rested largely on concerns about concentration and resultant adverse impacts on opportunities for new and diverse entry into radio broadcasting.[57] As demonstrated by the increasingly steep declines in audience listening to AM stations and the continuing erosion of advertiser revenue experienced by AM stations, especially when compared to FM stations,[58] market forces are now sufficient safeguards to constrain any realistic threat of excessive concentration in the AM Band.

Corroboration of the strength of these marketplace forces is found in the ratio of FM to AM stations in local markets under current law. Current law permits common ownership of up to eight local commercial radio stations, no more than five of which may be in one service, in markets with 45 or more commercial radio stations.[59] A 2018 analysis of the ownership patterns among the largest radio group owners reveals that in every market in which eight stations are commonly owned, five of them are FM stations and three of them are AM stations.[60] In the largest markets, eight group owners are at the five station subcap limit on the FM band. This is

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[56] *See* discussion II.A, supra.

[57] *See* 2010/2014 Quadrennial Review Order at ¶ 82.

[58] See discussion II.C, supra.

[59] 1996 Act, Sec. 202(b).

[60] BIA Media Access Pro (April 2018).

not an accident. It is a ubiquitous trend that shows no sign of reversal. Similar patterns are evident in midsize and small markets where the total local ownership limits are lower and the service specific subcaps are correspondingly lower.[61]

This reality also means that the limits on local AM radio station ownership that once were viewed by some as necessary to facilitate opportunities for new entrants, especially women and minority-owned enterprises, simply cannot reasonably be viewed that way in today's market conditions. On the other hand, eliminating ownership limits on AM stations may actually create new broadcast acquisition strategies for women and minorities, significantly expanding ownership diversity in the future. Let us hypothesize that a minority-owned company with substantial access to capital wishes to put together a station grouping in a large urban market such as Baltimore or Cleveland (as examples), offering multiple formats and genres with both broad and niche appeal. As AM stations are comparatively more affordable than FM stations, the new entrant looks to the AM Band. Under current law, that new entrant could not own more than four AM stations in that market, limiting its ability to fulfill a business plan that could spell the difference between success and failure. In that scenario, the limits on AM radio station ownership are artificially preventing potential aggregation of a meaningful group of AM stations under common ownership of a new entrant that could provide notable ownership diversity.

In addition to enhancing opportunities for new entrants with attendant ownership diversity benefits, removing AM station ownership restrictions would create greater opportunities for innovation, which in turn can attract more listenership to the AM band. For example, iHeartMedia has recently changed the format for WSAN-AM in Allentown, PA to all

[61] Id.

podcast content.[62] The dramatic growth in popularity of podcasts is one of the most striking developments in the audio landscape since the last Quadrennial Review. Podcasting creates unlimited opportunities for an array of short- and long-form programs, including more in-depth analysis, on an almost infinite array of subjects. Repurposing this highly popular content for use by, and to attract listenership on, AM stations may well yield substantial public interest dividends, both for listeners as well as the vitality of the AM band.

In sum, a quantitative, data driven analysis of the radio marketplace today reveals that the likelihood of harm to competition, diversity and localism is very low should the local ownership limits on AM stations be removed. On the other hand, the potential benefits of allowing greater common ownership of AM stations, while necessarily speculative because they depend on so many variables associated with management decisions, could be substantial. At a minimum, they create space for new business strategies that might stem the erosion of listening audience and advertising revenue now being experienced by so many AM stations. Given the vital role AM stations play in our public safety and national security infrastructure and as trusted and relied upon sources for local news and community-based information, especially in times of natural disaster or terrorist crisis, even incremental improvement in the economic vitality of AM radio stations would be a net positive from a public interest perspective.

[62] See Radio Ink, iHeart Dedicates AM Signal to Podcasts (Mar. 13, 2019), available at https://radioink.com/2019/03/13/iheart-dedicates-am-signal-to-podcasts/

IV. ADOPTION OF OVERLY AGGRESSIVE FM OWNERSHIP REFORMS, SUCH AS THOSE PROPOSED BY NAB, WOULD EXACERBATE THE COMPETITION PROBLEM IN THE BROADCAST RADIO MARKET AND HARM THE PUBLIC INTEREST

A. Adoption of Overly Aggressive FM Ownership Reforms In the NAB Proposal Would Harm Competition

For all of the reasons stated above, iHeartMedia concurs with that aspect of NAB's proposal calling for the removal of local ownership limits on AM radio stations. iHeartMedia parts company with the NAB, however, with regard to its proposed treatment of FM stations. The reason is fundamental. Adoption of such an overly aggressive proposal as NAB's carries the unacceptable risk of, however unintentionally, turning a competition concern into a competition crisis, characterized by accelerated migration of audiences and advertising revenues from the AM to the FM band, and resulting in plummeting valuation of AM stations. Above all else, regulators, like physicians, should do no harm. Adoption of the FM radio component of NAB's proposal could cause grave harm to AM radio, and to radio broadcasting as a whole.

NAB proposes to allow common ownership of up to eight FM stations in the top 75 markets, and to further increase that number to 10 FM stations through waivers granted under a modified Incubator program. In all remaining markets, there would be no ownership limits on FM stations. The foreseeable result of adoption of that proposal emerges rapidly from an examination of the data. Eight major group owners are now at the five-station limit for FM stations in major markets under current regulations. Were that five-station limit lifted to eight or 10 stations, the foreseeable response would be that most, if not all, of those group owners would acquire more FM stations in those markets, quite possibly as many as the proposed new limits would allow. The same pattern of FM station acquisition could be anticipated in markets below the top 75 markets, where there would be no limits at all on common ownership of FM markets.

One potential scenario under that local market reconfiguration would be a series of station swaps, resulting in group owners adding higher ranked stations in key strategic markets, as well as increasing the number of stations within the group. As noted above, although there are myriad factors that go into advertising purchasing decisions in a particular market, two of the principal elements are station rank and pricing, and the higher ranked stations within a market tend to draw more advertising placement interest. Moreover, having a larger number of stations within a group may afford a group owner more flexibility to create attractive pricing packages. Thus, if ongoing market trends influenced an owner's approach toward such station swaps, thereby dictating the prioritization of additional FM station acquisitions over that of lower-ranked AM stations, the foreseeable impact would be to further increase the revenue disparity between AM and FM stations in the market. Based upon an analysis of market forces already at work, a parallel, if not more dramatic, impact would be manifested in audience listening to AM and FM stations in the market. In essence, the proposal put forward by NAB carries the real risk of turbocharging current marketplace forces that place AM stations at a competitive disadvantage relative to their FM counterparts.

The analysis of the decline of AM relative to FM stations presented in II.C. above demonstrates that the competition concern within the broadcast radio market already is serious without exacerbating it through adoption of the NAB FM ownership proposal. To review the highlights, audience listening to AM stations when measured by Weekly Cume dropped approximately 25 percent since 2010. When measured by AQH, the decline was even more dramatic, almost 40 percent.[63] Similarly, between 2010 and 2018, advertising revenues for all AM stations declined by more than 21 percent while advertising revenues for FM stations fell by

[63] *See* II.C, supra.

less than 4 percent.[64] These trends have been accelerating in the past two years, notwithstanding the Commission seeing the important public interest benefits of AM radio and resultantly adopting a number of initiatives supported by a broad consensus within the broadcast radio industry to revitalize the AM service.

In evaluating the NAB proposal for FM station ownership, iHeartMedia respectfully suggests that the Commission utilize established principles of risk assessment. Used widely in business and industry, risk assessment requires decision makers to analyze four key elements in choosing whether or not to make a specific determination or which option to select among multiple options: risk, uncertainty, probability and consequences.[65] Governmental agencies also use risk assessment in making regulatory decisions.[66]

What are the risks were the Commission to adopt the FM component of the NAB proposal? They are very serious. In some cases, they are virtually certain. In others, they are probable. The consequences of the most serious risks, in terms of harm to the public interest, are unacceptable. The further erosion of AM radio audience listening and advertising revenues is virtually certain. The pattern of AM stations ceasing to operate that already is evident certainly will continue, probably at a faster rate. The confluence of these two phenomena will increase dramatically the competitive gap between AM and FM stations. The pent-up demand among some broadcast radio owners for changes that would shift their station portfolios even more

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[64] *See* II.C, supra.

[65] For a comprehensive discussion of various risk assessment methodologies, see G. Koller, Risk Assessment and Decision Making In Business and Industry – A Practical Guide – Second edition, Chapman and Hall/CRC (2005); See also, V. Covello and J. Mumpower, Risk Analysis and Risk Management: An Historical Perspective, pp. 103-120 (1985).

[66] See, R. Hahn, Risks, Costs and Lives Saved: Getting Better Results from Regulation, Chapter 6, Oxford University Press (1996); C. Hood, H. Rothstein, R. Baldwin: Understanding Risk Regulation Regimes (2001).

toward FM will be accommodated by the regulatory change. Such a shift necessarily would require a corresponding shift in investment of capital, resources, time and talent away from AM stations to FM stations. The ripple effect of these business decisions could well create an unvirtuous cycle, accelerating the decline of competition between AM and FM stations, ultimately forming a wave that would swamp AM broadcasting. As the trend lines worsen, it becomes increasingly probable that a herd mentality might take hold, driving the mass migration from the AM Band and the plummeting of AM station valuations. In that eventuality, the fundamental structure of broadcast radio as it has existed for more than half of a century would be altered. As described in IV.B below, the detrimental, consequential harm to the public interest would be unacceptable.

The FM component of the NAB's proposal represents a prescription for the wrong market. It seeks to address the competitive challenges facing radio broadcasters from other audio platforms such as satellite broadcasting, digital music services such as Pandora and Spotify, and social media such as Facebook.[67] As discussed in detail above in II.B. above, although radio broadcasters unquestionably face competitive pressures from these non-broadcast sources within the digital ecosystem, the relevant market remains the broadcast radio market, not a market encompassing all audio and digital platforms. When applied to the relevant market, the radio broadcast market, the NAB prescription, however unintentionally, likely will cause great harm to competition. It will reverse such progress as may have been made in strengthening the AM service as a result of the Commission's proactive efforts in the AM Revitalization proceeding.

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[67] *See* NPRM at ¶¶ 13 and 18.

B. Adoption of the FM Ownership Modifications in the NAB Proposal Would Harm the Competitive Position of AM Radio, Undercutting the Critical Public Interest Role It Serves

As discussed in detail in II.D. above, AM radio stations serve the public interest in a number of ways that are especially important. As a vital component of America's public safety and national security communications infrastructure, AM radio stations are quite literally on the front line protecting the citizens of this country. The public's heightened reliance on AM radio stations in their local communities in times of emergency, such as hurricanes, tornadoes, blackouts or terrorist attacks, reflects the dedication of AM radio stations to the principles of localism and public service. The reason people in peril tune to their AM radio stations is because they trust the information they will receive. The local connection of AM radio stations to the communities they serve, often built up over many decades, is the foundation of that trust. It is enhanced by the extent of local news and information programming offered by AM radio stations that help Americans all across our nation navigate their daily routines and challenges from the mundane – i.e., weather and traffic – to the extraordinary, i.e., a Presidential visit to their city or town. Were AM radio service to be further weakened by adoption of the NAB proposal, it would necessarily negatively impact the ability of AM radio stations to serve this special, local public service role.

C. Adoption of Overly Aggressive Reforms Will Undermine the Goal of Increasing Diversity

iHeartMedia has been a leader in creating new opportunities for women and minority-owned entities to enter radio broadcasting, and has collaborated closely with the Multicultural Media, Telecom and Internet Council (MMTC) and other groups for many years toward this goal. In 2000, for example, iHeart merged with AMFM, Inc., ultimately resulting in a divestment of forty stations to small and minority-owned business enterprises – an action that then-

Chairman William Kennard noted at the time *boosted the number of minority owned stations by 26 percent*.[68]

Less than one year ago, after more than two decades of failed efforts, the Commission adopted the Incubator program, which it designed to become an effective and constitutionally sustainable means to increase small business and minority and women-owned enterprises' participation in broadcasting. Adoption of the FM component of the NAB proposal would undermine the economic foundation of the Incubator program before it ever has a chance to succeed. In formulating the Incubator program, the Commission unequivocally and repeatedly recognized the centrality of a sufficient financial incentive for the incubating entity to invest the time and resources to incubate a new entrant.[69] The Commission elucidated its rationale for adopting a waiver of the local radio ownership rules as the best financial incentive for incumbent broadcasters to incubate a small business or new entrant:

> We expect that implementing an incubator program focused on the radio market will also motivate the participation of incumbent broadcasters, who are the key to success of the program....*[W]e anticipate that the inducement of a waiver of the Commission's Local Radio Ownership Rule will provide sufficient incentive for incumbent broadcasters to participate in the*

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[68] *See* Shareholders of AMFM, Inc., 15 FCC Rcd 16062, 16105 (2000) (Statement of Chairman William E. Kennard). *See also*, Bill McConnell, The Greening of the MMTC, Broadcasting & Cable, Sept. 9, 2002. Additionally, in successive Quadrennial Reviews, iHeart has worked together with organizations whose principal purpose is to advance minority and women-owned broadcast businesses to forge and then promote incubator programs. For example, in the 2006 Quadrennial Review, iHeart expressly supported an incubator program to "provide incentives for existing broadcasters to share their talent, experience, and financial resources, while at the same time promoting new entry." 2006 Quadrennial Regulatory Review, Reply Comments of Clear Channel Communications, Inc, at 56 (January 16, 2007). In the 2010 Quadrennial Review, iHeart reaffirmed and expanded upon its advocacy for an incubator program, informing the Commission of its donation of six radio stations and related equipment to the Minority Media and Telecommunications Council, demonstrating marketplace activity consistent with its advocacy. 2010 Quadrennial Review, Reply Comments of Clear Channel Communications, Inc.at 5-7.

[69] Incubator Order at ¶¶ 9, 13.

> *program*….In reaching this conclusion, we note that the local radio numerical limits and the AM/FM service caps have remained unchanged since they were prescribed by Congress over 20 years ago in the Telecommunications Act of 1996. Thus, the existing Local Radio Ownership Rule has restricted the ability of incumbent broadcasters to grow larger in any given market for over two decades….Accordingly, given the longstanding strictures remaining on radio ownership, *we believe a waiver of the Local Radio Ownership Rule will provide an effective incentive for incumbent broadcasters to incubate either new entities seeking entry into the broadcasting industry or small broadcasters.*[70] [Emphasis added]

This lengthy excerpt from the Commission's Incubator Order makes clear that the Incubator program and the existing local radio ownership rules are intertwined and interdependent.

Adoption of the FM component of the NAB proposal would destroy that indispensable financial incentive. By increasing the number of FM stations that could be owned in the top 75 markets from five to eight and removing entirely the ownership limits on FM stations in all remaining markets, the NAB proposal makes the financial incentive for incubating a new entrant or existing small broadcaster far less meaningful. In markets below the top 75 markets, it eliminates the financial incentive altogether because no waiver will be needed as there will no longer be local ownership limits in those markets. In the top 75 markets, as a practical matter, the acquisition cost of three additional FM stations will be sufficiently substantial and the time, resources and effort to absorb those stations will be sufficiently great that the inclination of incumbent radio broadcasters to incubate new entrants or small businesses will likely be tiny to nil. The NAB answer, to allow up to two additional waivers in exchange for incubating two small entities, therefore likely will prove chimerical. Harm to ownership diversity and, derivatively, viewpoint diversity, a byproduct of the NAB proposal were it to be adopted, is contrary to the public interest.

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[70] Id. at ¶ 13.

V. CONCLUSION

In fulfilling its statutorily mandated role to modify the local radio ownership rules where they no longer serve the public interest, the Commission should be acutely aware of the imperative of doing no harm. Under the current local radio ownership rules, an undeniable competitive imbalance has developed between AM and FM radio stations in the broadcast radio market. Were the Commission to adopt the FM radio component of the NAB proposal, it would exacerbate the competition concern, risk turning it into a competition crisis, and harm localism and diversity. By rejecting the extraordinarily aggressive approach of the NAB Proposal with respect to FM radio ownership, and eliminating the local radio ownership limits on AM radio stations, the Commission could ameliorate this competition concern, thereby helping to preserve the vital roles and services that AM radio stations perform, and strengthening the capability of broadcast radio as a whole to serve the public interest.

Respectfully submitted,

iHeartCommunications, Inc.,
as debtor in possession

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April 29, 2019

APPENDIX A

October 24, 2018
RV-NR-2018-017
FEMA Media Contact: Dan Shulman, 312-408-4427
iHeartMedia Contact: Jennifer Savage, 419-351-5145

News Release

FEMA Completes Important Upgrade to Cincinnati's WLW-AM, Highlights Broadcast Radio's Critical Role in Nation's Emergency Alert and Warning System

CHICAGO –The Federal Emergency Management Agency (FEMA), in coordination with iHeartMedia, today announced it has completed an important radio station modernization project at iHeartMedia's NewsRadio 700 WLW-AM in Cincinnati, Ohio to improve alert and warning capabilities so critical when disasters threaten public safety.

As directed by Congress in the Integrated Public Alert and Warning System (IPAWS) Modernization Act of 2015, FEMA, which manages IPAWS, has launched an effort to upgrade Primary Entry Point (PEP) stations. They provide critical emergency warning capability to communities across the country. PEPs are private or commercial radio broadcast stations that participate with FEMA to provide emergency alert and warning information to the public before, during and after incidents and disasters. They are specially designed and hardened to withstand various natural and man-made events to ensure continuity of operations.

"In coordination with our partners at iHeartMedia, we've increased WLW's resiliency to continue operating under all conditions, be they natural disasters, acts of terrorism or other man-made events," said Antwane Johnson, FEMA's IPAWS director. "These stations communicate critical safety information to the public in the event of an emergency, serving an important role in our nation's public safety and national security communications infrastructure."

"AM radio plays an important role as a source for news and vital information for local communities across America and is a lifeline during these times of emergencies," said DJ Hodge, Cincinnati Market President for iHeartMedia. "Indeed, for communities in and around – and even hundreds of miles beyond – Cincinnati, NewsRadio 700 WLW-AM is a beacon during critical situations, and significant investment continues to be made to ensure its resiliency. iHeart is proud to partner with FEMA on these important PEP upgrades and salutes and shares the agency's longstanding commitment to protecting the public during emergencies."

Currently, 77 PEPs serve 90 percent of the U.S. population. WLW-AM is the second station in the country to complete the upgrade, which includes increased sheltering capabilities, expanded broadcast capacity, and sustainable power generation for all types of hazardous events. For more information about IPAWS, or the PEP modernization effort, go to FEMA's website at https://www.fema.gov/integrated-public-alert-warning-system. To learn more about iHeartMedia and Cincinnati's WLW-AM station, visit 700wlw.iheart.com.

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