Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
The State of Competition	)	GN Docket No. 20-60
In the Communications Marketplace	)	
	)	
	)	
	)	

REPLY COMMENTS OF MUSICFIRST COALITION AND FUTURE OF MUSIC COALITION

via electronic filing

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I. COMPETITION BETWEEN AM/FM COMPETITORS IN LOCAL MARKETS MUST BE ANALYZED THROUGH THE LENS OF THE FCC'S PUBLIC INTEREST OBLIGATIONS IN PROMOTING DIVERSITY, COMPETITION AND LOCALISM

As advocates for music creators and music fans, the musicFIRST Coalition and Future of Music Coalition ("FMC") respectfully submit these Reply Comments. Because AM/FM radio stations in the U.S. are largely programmed using recorded music as a primary draw of audiences (and therefore advertising revenue),[1] and musicFIRST and FMC advocate for the recording artists and copyright owners of such recorded music content, we are keen observers of the AM/FM radio industry. The National Association of Broadcasters ("NAB") asserts that because competition for advertising revenue and audience has by some measures increased between various audio delivery platforms in the U.S., it follows that the solution applicable to the entire AM/FM radio industry's competitive struggles with non-broadcast platforms is for the Commission to loosen and/or eliminate its current numerical limits on the number of AM/FM radio stations that one entity can own in a given U.S. market ("Local Radio Station Ownership Caps").[2] We refute this assertion, in part because it ignores the Commission's public interest obligations[3] to serve AM/FM radio listeners with respect to promoting diversity, localism, and competition in all applicable forms, which lie at the bedrock of the rationale for the Commission's low cost grants of spectrum. Deregulatory actions by the Commission have been found to result in permanent and irreversible media consolidation[4] resulting in harms to localism, diversity and intramodal local competition between broadcast radio stations.[5] The NAB's Initial Comments do

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[1] *See Closing the AM/FM Radio Royalty Loophole*, SOUND EXCHANGE (last visited May 19, 2020), https://bit.ly/2zNgSpt; *Senator Blackburn, Rep. Nadler Lead Bipartisan Effort to Modernize Music Copyright Law and Empower Musicians*, MARSHA BLACKBURN U.S. SENATE (Nov. 21, 2019), https://bit.ly/2zM0zsR.

[2] *See* In the Matter of 2020 Communications Marketplace Report, Comments of National Association of Broadcasters, GN Docket No. 20-60, at 23-24 (Apr. 27, 2020) (Hereinafter "NAB Comments (GN Docket No. 20-60)").

[3] *See Prometheus Radio Project (IV) v. FCC*, 939 F.3d 567, 580-582 (3d Cir. 2019).

[4] *See Prometheus Radio Project (I) v. FCC*, 373 F.3d 372, 450 (3d Cir. 2004).

[5] *See, e.g., id.*

not recognize the commission's public interest obligations with respect to diversity, localism and competition in all of its forms, and instead focuses almost exclusively on economic concerns of only a portion of its AM/FM radio station-owning members.

II. EMPIRICAL EVIDENCE SHOWS THAT SMALLER AM/FM CLUSTERS WOULD BE DISADVANTAGED AGAINST LARGER LOCAL AM/FM COMPETITORS IF CURRENT OWNERSHIP RESTRICTIONS ARE FURTHER LOOSENED

Because the membership of the NAB consists of both giant vertically integrated media companies and smaller independent broadcasters,[6] it would be reasonable for readers of the NAB's Initial Comments to assume that it is arguing on behalf of its entire membership. However, as this Reply Comment will show, loosening current ownership restrictions could potentially provide economic benefit to only a subset of AM/FM broadcasters. The NAB's Initial Comments imply that allowing further deregulation of AM/FM radio stations ownership at local market levels would benefit the entire AM/FM broadcasting industry. In fact, any benefits that result would accrue only to those particular owners of AM/FM radio stations that engage in purchases/sales of AM/FM radio stations that result in clusters of radio stations that are larger than current Local Radio Station Ownership Caps allow. This is why a plethora of owners of commercial small and medium AM/FM radio station local clusters have objected to the NAB's proposal[7] that the Commission loosen the Local Radio Station Ownership Caps.

Each such broadcasting company who objected to the NAB's proposal has specifically asserted that if the Commission were to relax these caps, then in each geographic market where such ownership consolidation subsequently occurs, those remaining local AM/FM radio

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[6] *See* Brief for National Association of Broadcasters and Radio-Television Digital News Association as Amici Curiae Supporting Respondents, *Federal Communications Commission v. Fox-ABC*, No. 10-1293, at 1 (2011), (https://bit.ly/3cafR8s) ("NAB serves and represents the American broadcasting industry, advocating before Congress, the Federal Communications Commission, and the courts on behalf of its members. The vast majority of NAB's members are not large entities; they are local, independent stations.").

[7] *See 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*, Notice of Proposed Rulemaking, FCC 18-179 (2018); *see also* Letter from Rick Kaplan et al., Legal and Regulatory Affairs, NAB, to Michelle Carey, Chief, Media Bureau, FCC, at 1-4 (filed June 15, 2018) (NAB June 15, 2018 Letter).

stations --who simply want to remain in business locally rather than cashing out and selling their stations to a local behemoth cluster-- will then be further disadvantaged in local (intramodal) competition with newly consolidated super-sized station clusters wielding outsized local market share.[8] Each of these AM/FM radio broadcasters, who collectively have hundreds of years of local AM/FM radio broadcast experience among them,[9] have formally advised the Commission in the last year that they oppose loosening the Local Radio Station Ownership Caps.[10] In commentaries filed with the Commission in 2019, each such broadcasting company has drawn on its own considerable experience observing consolidation of AM/FM radio station ownership at local market levels.[11] Each of those broadcasting companies specifically explained that the

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[8] *See generally*, *2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Salem Media Group**, **Taxi Productions, Inc**., **Sarkes Tarzian**, **Mount Wilson FM Broadcasters, Inc**., **Crawford Broadcasting Company**; Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One, Inc**., **King City Communications Corporation**, **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD**.; Ex Parte Notice by **National Association of Black Owned Broadcasters, Inc**. (filed May 31, 2019); Ex Parte Letter of **CRC Broadcasting Corp., Inc**. (filed May 14, 2019); Ex Parte Letter of **Urban One** (filed May 30, 2019).

[9] *See, e.g., 2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Taxi Productions, Inc.** at 1 and **Sarkes Tarzian** at 1-2; Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One** at 1, **Crawford Broadcasting Company** at 3, **Mount Wilson FM Broadcasters, Inc.** at 2, **King City Communications Corporation** at 1, **CRC Broadcasting Company, Inc.** at 3, and **Salem Media Group** at 1.

[10] *See generally*, *2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Salem Media Group**, **Taxi Productions, Inc**., **Sarkes Tarzian**, **Mount Wilson FM Broadcasters, Inc**., **Crawford Broadcasting Company**; Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One, Inc**., **King City Communications Corporation**, **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD**.; Ex Parte Notice by **National Association of Black Owned Broadcasters, Inc**. (filed May 31, 2019); Ex Parte Letter of **CRC Broadcasting Corp., Inc**. (filed May 14, 2019); Ex Parte Letter of **Urban One** (filed May 30, 2019).

[11] *See 2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Taxi Productions, Inc.** at 2-3 (https://bit.ly/2AqPBJJ), **Sarkes Tarzian** at 2-4 (https://bit.ly/2WTbrwT), **Mount Wilson FM Broadcasters, Inc.** at 2-3 (https://bit.ly/2AiccYG), **Crawford Broadcasting Company** at 2 (https://bit.ly/2AhqM2D); **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD.** at 1-2 (https://bit.ly/2Z11al8), **Salem Media Group** at 2, 6 (https://bit.ly/2zCJql7); Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One** at 2-3 (https://bit.ly/2zvU7WW), **Mount Wilson FM Broadcasters, Inc.** at 2 (https://bit.ly/2WUKpVM), **King City Communications Corporation** at 1-2 (https://bit.ly/3brgDxq) and **Crawford Broadcasting Company** at 3 (https://bit.ly/3dHVT5S); Ex Parte Letter of **Urban One** at 1 (filed May 30, 2019) (https://bit.ly/2ySN7mW).

primary reason that it opposed loosening the current Local Radio Station Ownership Caps is that further consolidation of AM/FM radio within any given local market (allowing maxed out clusters of AM/FM radio stations to grow even larger than they already are) would result in such newly-grown clusters wielding oversized local market power in that applicable local market. According to those broadcasters objecting to the NAB proposal, this would make it even more difficult for remaining non-consolidated local commercial AM/FM stations to compete with such newly-oversized clusters for local audience and advertisers.[12] In other words, it would make it more difficult for remaining non-consolidated AM/FM stations to compete locally in intramodal competition.

The NAB's Initial Comments in this proceeding almost completely ignore the existence and importance of intramodal competition,[13] whereby smaller and medium-sized AM/FM clusters at local market levels must compete locally with larger AM/FM radio station clusters. These same smaller and medium-sized clusters must ***also compete with*** non-broadcast audio delivery platforms in intermodal competition.[14]

In its Initial Comments in this proceeding, arguing in favor of the Commission loosening the current Local Radio Station Ownership Caps, the NAB makes this conclusory statement:

> ***Owning more stations in local markets*** that air non-duplicative, diverse programming designed to attract the widest possible range of listeners ***will help stations grow their audiences and compete more effectively for ad market share***, including by improving their digital ad products. NAB therefore urges the Commission to recognize the breadth of the markets for audiences

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[12] *See 2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Taxi Productions, Inc.** at 2-3 (https://bit.ly/2AqPBJJ), **Sarkes Tarzian** at 2-4 (https://bit.ly/2WTbrwT), **Mount Wilson FM Broadcasters, Inc.** at 2-3 (https://bit.ly/2AiccYG), **Crawford Broadcasting Company** at 2 (https://bit.ly/2AhqM2D); **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD.** at 1-2 (https://bit.ly/2Z11al8), **Salem Media Group** at 2, 6 (https://bit.ly/2zCJql7); Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One** at 2-3 (https://bit.ly/2zvU7WW), **Mount Wilson FM Broadcasters, Inc.** at 2 (https://bit.ly/2WUKpVM), **King City Communications Corporation** at 1-2 (https://bit.ly/3brgDxq) and **Crawford Broadcasting Company** at 3 (https://bit.ly/3dHVT5S); Ex Parte Letter of **Urban One** at 1 (filed May 30, 2019) (https://bit.ly/2ySN7mW).

[13] *See generally,* NAB Comments (GN Docket No. 20-60), *supra* note 2.

[14] *Id*.

and advertising dollars in which radio broadcasters compete and to reform its local radio ownership rules accordingly. [15]

Here the NAB doesn't disclose in its Initial Comment that "owning more stations in local markets" can reasonably be expected to help ***only some*** "stations grow their audience and compete more effectively for ad market share."[16] Rather, reasonable readers may interpret the NAB's statement above as asserting that if the Commission were to lift current numerical limits on local radio station ownership, all AM/FM broadcasters would have the opportunity to economically benefit through economies of scale in an environment where radio station owners can "*help stations grow their audiences and compete more effectively for ad market share."*[17] However, not all local radio station owners have access to the capital that would be required to buy enough AM/FM radio stations to max out under the *present* Local Radio Station Ownership Caps, let alone buy more stations than those rules currently allow. This may be particularly true for minority and female broadcast owners and potential owners.[18]

Notably, in its assertion above, the NAB fails to specifically identify *with whom* such newly-consolidated super-sized clusters would be competing "more effectively for ad market share." In support of its proposition that loosening the Local Radio Station Ownership Caps would "help stations grow their audiences and compete more effectively for market share," the NAB cites declarations from only AM/FM broadcasters who would personally prefer to see the

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[15] *Id.* at 26 (emphasis added).

[16] *See id.*

[17] *See id.*

[18] *See generally, Prometheus Radio Project (III) v. FCC* , 824 F.3d 33, 43 (3d Cir. 2016); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Hispanic Media Coalition, Asian Americans Advancing Justice-Aajc, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communication Inc., and Washingtech, LLC, MB Docket No. 18-349, at 7, 8, 13 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Multicultural Media, Telecom and Internet Council, MB Docket No. 18-349, at 7-8 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of National Association of Black Owned Broadcasters, Inc., MB Docket No. 18-349, at 5 (Apr. 29, 2019).

Local Radio Station Caps loosened,[19] while omitting any mention of the many AM/FM broadcasters[20] who have stated on record that such action by the Commission would be against their self-interest with regard to competition in their local geographic markets.

With respect to those AM/FM radio station clusters that are currently maxed out under the Commission's present Local Radio Station Ownership Caps: if they were to add even more local AM/FM radio stations to their current clusters in the wake of further deregulation of AM/FM radio ownership in local markets, their newly-acquired increases in local market share necessarily must come *from somewhere*. All of the AM/FM radio station owners who commented against loosening current Local Radio Station Ownership Caps argued that if such further deregulation of local radio station ownership were allowed by the Commission, that ***their own*** locally-based commercial radio stations (or smaller clusters) would directly suffer as local new super-sized AM/FM clusters take ad market share ***from them***.[21] Since locally-situated AM/FM radio stations compete against each other and also against non-broadcast audio

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[19] *See* NAB Comments (GN Docket No. 20-60), *supra* note 2, at 26 & n. 109.

[20] *See generally, 2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Taxi Productions, Inc.** at 2-3 (https://bit.ly/2AqPBJJ), **Sarkes Tarzian** at 2-4 (https://bit.ly/2WTbrwT), **Mount Wilson FM Broadcasters, Inc.** at 2-3 (https://bit.ly/2AiccYG), **Crawford Broadcasting Company** at 2 (https://bit.ly/2AhqM2D); **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD.** at 1-2 (https://bit.ly/2Z11al8), **Salem Media Group** at 2, 6 (https://bit.ly/2zCJql7); Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One** at 2-3 (https://bit.ly/2zvU7WW), **Mount Wilson FM Broadcasters, Inc.** at 2 (https://bit.ly/2WUKpVM), **King City Communications Corporation** at 1-2 (https://bit.ly/3brgDxq) and **Crawford Broadcasting Company** at 3 (https://bit.ly/3dHVT5S); Ex Parte Letter of **Urban One** at 1 (filed May 30, 2019) (https://bit.ly/2ySN7mW).

[21] *See 2018 Quadrennial 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; Reply Comments filed between May 23 - 29, 2019 by each of the following AM/FM radio broadcast companies on its own behalf: **Taxi Productions, Inc.** at 2-3 (https://bit.ly/2AqPBJJ), **Sarkes Tarzian** at 2-4 (https://bit.ly/2WTbrwT), **Mount Wilson FM Broadcasters, Inc.** at 2-3 (https://bit.ly/2AiccYG), **Crawford Broadcasting Company** at 2 (https://bit.ly/2AhqM2D); **Bristol County Broadcasting, Inc./SNE Broadcasting, LTD.** at 1-2 (https://bit.ly/2Z11al8), **Salem Media Group** at 2, 6 (https://bit.ly/2zCJql7); Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies: **Urban One** at 2-3 (https://bit.ly/2zvU7WW), **Mount Wilson FM Broadcasters, Inc.** at 2 (https://bit.ly/2WUKpVM), **King City Communications Corporation** at 1-2 (https://bit.ly/3brgDxq) and **Crawford Broadcasting Company** at 3 (https://bit.ly/3dHVT5S); Ex Parte Letter of **Urban One** at 1 (filed May 30, 2019) (https://bit.ly/2ySN7mW).

delivery platforms such as streaming services and satellite radio,[22] the NAB here is inherently advocating ***against*** that subset of smaller AM/FM radio station clusters that would be competing 1) intramodally with the resulting new super-sized local AM/FM clusters, and 2) intermodally with non-broadcast audio delivery platforms.

The Multicultural Media, Telecom and Internet Council ("MMTC") demonstrated in its Initial Comments in the current Quadrennial Review that, to the extent that lifting local radio ownership caps and subcaps may allow broadcasters to take advantage of purported economies of scale (*i.e.*, reducing costs per station by spreading fixed costs across more co-owned stations in a single market), such benefits would necessarily apply only to relatively few AM/FM radio clusters. In particular, only those radio station owners who have already been able to acquire enough stations to bump up against the local ownership cap or FM subcaps (or those station owners desiring to cash out and exit the market) could potentially find any economic benefit in having the Commission's current ownership limits relaxed.[23] MMTC's 2018 analysis of Nielsen data regarding AM/FM ownership in the largest markets showed that there were only "19 station groups bumping up against the five-station subcap, two groups bumping up against the five station FM subcap, and two groups bumping up against the eight station cap."[24] MMTC aptly pointed out that "[a] benefit for these few companies would come entirely at the expense of others who remain but don't consolidate further under newly relaxed ownership limits."[25]

[22] *See, e.g., 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Reply Comments of Crawford Broadcasting Company, MB Docket No. 18-349, at 2 (May 23, 2019).

[23] *See* Comments of the Multicultural Media, Telecom and Internet Council, *supra* note 18, at 5.

[24] *See id.* at 5-6.

[25] *Id.* at 6.

III. COVID-RELATED DECREASES IN AM/FM REVENUE DO NOT JUSTIFY FURTHER LOCAL OWNERSHIP DEREGULATION

The NAB argues in its Initial Comments that COVID-19 can be expected to economically harm AM/FM radio stations in the U.S. "Thereby Making Reform of the Ownership Rules More Urgent Than Ever."[26] The NAB then makes this conclusory statement without any evidentiary support: "[c]learly the coronavirus pandemic has and will continue to severely exacerbate local stations' competitive stresses, thereby making reform of the FCC's outdated radio ownership rules even more urgent."[27] While musicFIRST and Future of Music do expect that the AM/FM radio industry in the U.S. will likely suffer a substantial temporary downturn in advertising revenues in the wake of COVID-19 related economic upheaval, we reject the NAB's overreaching conclusion that if the Commission were to loosen its current Local Radio Station Ownership Caps, such actions could be reasonably expected to mitigate this problem for the entire AM/FM industry.[28] Furthermore, it is unclear to what extent the downturn in radio broadcast advertising revenue at the outset of the COVID-19 pandemic will continue.[29]

After citing forecasts that AM/FM radio ad revenues can collectively be expected to be depressed in 2020,[30] the NAB asserts: "[p]rojections like these reconfirm that traditional media outlets such as radio, which were already losing money to digital ad platforms, are fighting an

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[26] *See generally*, NAB Comments (GN Docket No. 20-60), *supra* note 2, at 23-27.

[27] *See id.* at 25 (citing Public Notice, *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, FCC, GN Docket No. 20-60, DA 20-199 (Feb. 27, 2020) ("[S]eeking comment on whether regulation pose a barrier to 'competitive expansion of existing providers,'" but not citing support for the proposition that the economic effects expected in the wake of the coronavirus pandemic make reform of allegedly outdated radio ownership rules "even more urgent.").

[28] *See* NAB Comments (GN Docket No. 20-60), *supra* note 2, at 23-26.

[29] *See, e.g.,* Adam Jacobson, *March Madness: iHeart Q1 Crippled By COVID-19*, RADIO & TELEVISION BUS. REPORT (May 8, 2020), https://bit.ly/2AQkpDT (For example, on its most recent quarterly investor call, iHeart Media CEO Bob Pittman disclosed that "May bookings are slightly up over April and we see June better than May."); *see also* Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, MOTLEY FOOL COMM. (May 14, 2020), https://bit.ly/2XcMXie (Comments of Entercom CEO David Field: "While there are no guarantees on the trajectory of our national recovery in these unprecedented times, April certainly appears to be the bottom. May is a little better than April, and June is trending somewhat better than May.").

[30] *See* NAB Comments (GN Docket No. 20-60), *supra* note 2, at 24.

uphill battle -- especially given that the ***radio industry faces ownership restrictions*** its competitors do not."[31] The NAB here implies that the Commission's current limits on local radio station ownership potentially prevent "the radio industry,"[32] *i.e.*, ***as a whole***, from maximizing potential profits while all members of that industry also face potential increased (intermodal) competition from "digital ad platforms." Instead, the "ownership restrictions" that the NAB claims are faced by "the radio industry" actually restrict only those large AM/FM clusters that are already bumping up against current Local Radio Station Ownership Caps while those same ownership restrictions protect remaining local smaller clusters in local, intramodal, competition.

The NAB also implies that the only competitors to owners of AM/FM clusters are other non-broadcast audio delivery platforms:

> The COVID-19 outbreak has weakened **local radio stations' position vis-à-vis their marketplace competitors**, even though many Americans (about three in ten) say they have been listening to more radio since then [sic] outbreak. Unlike many of their competitors for audiences (e.g., satellite radio, popular streaming services), radio broadcasters earn zero subscription fees.[33]

The NAB also implies that because the entire AM/FM industry does not have an opportunity to earn subscription fees as compared to other audio delivery platforms, it follows that a deregulatory way to mitigate this difference would be to lift ownership restrictions governing AM/FM owners. However, this fails to acknowledge that in the U.S., AM/FM radio stations already enjoy a significant unfair competitive advantage over every other audio delivery platform because AM/FM radio is thus far exempt from the requirement that audio delivery platforms pay royalties to music creators for the use of sound recordings.[34] Large AM/FM radio

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[31] *Id.*

[32] *Id.*

[33] *Id.* at 24-25 (emphasis added).

[34] *See SoundExchange, Inc. v. Copyright Royalty Board*, 904 F.3d 41, 45 (DC Cir. 2018); Closing the AM/FM Radio Royalty Loophole, *supra* note 1; John Villasenor, *Why Artists Should Always Get Paid By Broadcasters Who Play Their Songs*, FORBES (July 2, 2012), https://bit.ly/2TiJ5Lw.

clusters already enjoy a competitive advantage over smaller counterparts by virtue of market share, while also holding an advantage over competing audio delivery platforms who pay for the privilege of using sound recordings.[35] Meanwhile those same smaller clusters must also compete against other non-broadcast audio delivery platforms for audience and advertising revenue.

IV. LOOSENING AM/FM STATION OWNERSHIP LIMITS WOULD DEVALUE AM RADIO PROPERTIES WHILE INCENTIVIZING IHEART MEDIA TO INCREASE THE SIZE OF ITS CLUSTERS IN AN ATTEMPT TO DOMINATE LOCAL MARKETS

While many smaller broadcasting companies have objected to the NAB's proposal, the largest AM/FM radio company in the U.S. also agrees that much of the NAB's proposal is flawed. Senior executives of iHeart Communications, Inc. ('iHeart"), owner of the largest number of AM/FM radio stations in the U.S.,[36] (and maxed out on the number of AM/FM radio stations that one can own in many local clusters under current ownership limits),[37] stated in 2019 that iHeart opposes the NAB's excessive[38] proposal,[39] because allowing such local deregulation "would devalue AM radio, have no positive benefit on radio ad revenues and it would expend political capital."[40] Nevertheless, if the Commission were to adopt the NAB proposal, iHeart may become the biggest buyer of AM/FM stations in the wake of any loosening

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[35] *See* In the Matter of Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming, Comments of MusicFirst Coalition and Future of Music Coalition, MB Docket No. 18-227, at 26-28 (Sept. 24, 2018), https://bit.ly/3e0Th3f.

[36] Geoff Herbet, *Could iHeart Layoffs be the Beginning of Local Radio's Endgame?*, CLEVELAND (Jan 29, 2020), https://bit.ly/3g4haZt.

[37] *See e.g., Cox Earmarks WSUN Tampa, WPYO Orlando For Spin-offs*, INSIDE RADIO (June 28, 2019), https://bit.ly/2ZdI2jl (iHeart "maxed out" in Tampa); *see generally, Investing in Radio 2019 Market Report, BIA Advisory Services* (2019) (Copy of report on file with Author).

[38] *iHeart Explains Why It Opposes NAB's Deregulation Proposal*, INSIDE RADIO (June 26, 2018), https://bit.ly/2XaQEGE.

[39] Letter from Rick Kaplan, *supra* note 7; *see also id.*

[40] *See* iHeart Explains Why It Opposes NAB's Deregulation Proposal, *supra* note 38.

of current limits on FM ownership.[41] In a 2019 email to employees, CEO and Chairman Bob Pittman and COO and President Rich Bressler stated:

> Finally, while we oppose this NAB proposal, if this measure passes at the FCC we may be forced to acquire more stations if this is the trend, and given our new capital structure we will potentially be the biggest buyer of additional stations. Division Presidents, Region Presidents, Market Presidents and Area Presidents, please be thinking about the stations in your markets that we might add to your portfolio.[42]

So even though iHeart opposes the NAB's proposal, in large part because such deregulatory action would result in devaluing iHeart's substantial number of AM properties,[43] if the proposal were nevertheless adopted by the Commission, iHeart could be expected to aggressively purchase FM stations.[44] This is because iHeart's leadership is committed to maximizing the size of its many clusters with the intent of being the dominant local competitor in those markets in which it owns radio stations.[45] But at whose expense?

V. EMPIRICAL EVIDENCE SUGGESTS FURTHER OWNERSHIP DEREGULATION AT AM/FM WOULD HARM MINORITY AND FEMALE BROADCASTERS AS WELL AS MULTICULTURAL AUDIENCES, BUT STUDIES ARE NEEDED TO ASSESS IMPACTS OF LOOSENING LOCAL OWNERSHIP LIMITS

MMTC aptly noted that those AM/FM broadcasting companies who would be disadvantaged in intramodal competition with newly outsized AM/FM clusters include "nearly all of the nation's minority, women and aspiring broadcasters."[46] In other words, MMTC has shown that at least in the largest U.S. markets, any potential economic upside to relaxing the Local Radio Station Ownership Caps would apply to relatively few AM/FM radio station owners and

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[41] *See id.*

[42] *See id.*

[43] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Reply Comments of the National Association of Broadcasters, MB Docket No. 18-349, at 20 (May 29, 2019).

[44] *See* iHeart Explains Why It Opposes NAB's Deregulation Proposal, *supra* note 38.

[45] *See id.*

[46] Comments of the Multicultural Media, Telecom and Internet Council, *supra* note 18, at 6.

disproportionately harm minority and female broadcast owners. As the Third Circuit Court of Appeals has made clear, when taking any kind of deregulatory action affecting broadcast media ownership, the Commission must show that it has adequately considered how sweeping rule changes such as those proposed by the NAB would have an effect on ownership of broadcast media by women and minorities.[47] Thus the Commission must conduct meaningful studies on this topic before it can even consider taking any of the actions requested by the NAB.

Urban One, which targets "Black Americans and urban consumers in the United States" at its 54 broadcast stations nationwide, and whose workforce and audience are the hallmarks of diversity and inclusion,[48] filed comments in the current Quadrennial Review, noting that there would be a substantial downside suffered by minority and female owners of local AM/FM stations who must then try to compete against the enormity and potential misuse of new super-clusters' market share.[49] Urban One believes that removing all or most radio ownership limitations would drive many smaller broadcasters, many of whom are minority-owned, out of the radio broadcasting business.[50] Similarly, the National Association of Black Owned Broadcasters has noted that because entry is restricted by the licensing process and access to capital, normal free market principles don't really apply here, and deregulation would necessarily have the potential to economically benefit only the largest clusters at the expense of smaller clusters disproportionately representing minority broadcasters.[51]

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[47] *See Prometheus Radio Project (IV)*, 939 F.3d at 573; *see also* Letter from The Leadership Conference on Civil and Human Rights, to Chairman Pai and FCC Commissioners, MB Docket No. 18-349, at 6-9 (Sept. 5, 2019), https://bit.ly/2X9bYw0.

[48] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Urban One, MB Docket No. 18-349, at 6 (Apr. 29, 2019)

[49] *Id.* at 7, 8, 13.

[50] *Id.* at 8.

[51] *See* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 18.

While the NAB and certain broadcasters who might financially benefit from implementing such a proposal have expressed enthusiasm for making the proposed deregulatory changes described above, musicFIRST and FMC, along with **all** of the public interest and civil rights groups in the Quadrennial Review docket,[52] as well as many radio broadcasting companies, have voiced strong opposition to all such proposed changes within the Commission's current Quadrennial Review in 2019. The NAB asserts in its Initial Comments in this proceeding that because advertising revenues for AM/FM radio stations nationwide are predicted to be in a demonstrable downturn in the wake of COVID-19,[53] it somehow follows that the entire AM/FM industry would benefit by the Commission swiftly adopting the NAB's proposal "to allow radio broadcasters to obtain greater economies of scale."[54] This is simply not true.

VI. A CASE STUDY OF LOS ANGELES RADIO SHOWS THAT LOOSENING LOCAL AM/FM OWNERSHIP LIMITS HAS POTENTIAL UPSIDE FOR VERY FEW STATIONS, BUT MAY HARM THE PUBLIC INTEREST IN LOCALISM, DIVERSITY AND LOCAL COMPETITION

An analysis of AM/FM radio in Los Angeles is informative with respect to potential costs and benefits associated with further deregulation of AM/FM ownership at local market levels. In 2018, only iHeart's AM/FM cluster in Los Angeles was bumping up against the eight-station cap relating to AM/FM combinations, while both iHeart and Entercom had the maximum number of FM properties allowed in the market (five each).[55] A review of updated data shows that those

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[52] *See generally, 2018 Quadrennial 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; Reply Comments filed between May 28 – Sept. 26, 2019 by each of the following AM/FM radio broadcast companies on its own behalf:* ***Free Press, Leadership Conference on Civil Rights, Open Markets Institute, NHMC*** *and* ***Multicultural Media, Telecom and Internet Council****; Comments filed April 29, 2019 by each of the following AM/FM radio broadcast companies:* ***National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communications Inc., and Washingtech, LLC.***

[53] *See* NAB Comments (GN Docket No. 20-60), *supra* note 2, at 23-24.

[54] *See id.* at 25-26.

[55] Comments of Multicultural Media, Telecom and Internet Council, supra note 18, at 6; *see generally Investing in Radio 2018 Market Report, BIA Advisory Services* (2018) (Copy of report on file with Author).

numbers remained the same in 2019.[56] So it follows that in the Los Angeles market, only iHeart and Entercom (and those selling their stations to iHeart or Entercom and thus exiting the market) could possibly benefit if the Local Radio Station Ownership Caps were loosened, since Entercom and iHeart are the only entities who are bumping up against ownership limits there. We've already established that iHeart's leadership has indicated that they don't want FM ownership caps to be loosened (but, if such restrictions were loosened, they would nevertheless feel compelled to buy more stations in order to maintain dominant market share). So that leaves Entercom as the sole owner of AM/FM stations in Los Angeles that both 1) has advocated for loosening the Local Radio Station Ownership Caps,[57] and 2) stands to benefit from "cost synergies" and "economies of scale" as a result of stretching costs across more AM/FM properties. In this context, the terms "synergies" and "economies of scale" generally refer to "reduction in force," *i.e.*, job loss,[58] and reduction of office space, (*i.e.*, elimination of physical presence in locally situated office/studio space).[59] Presently, all other AM/FM owners in Los Angeles besides Entercom and iHeart are not prohibited from purchasing at least one more FM station than they already own without exceeding the current Local Radio Station Ownership Caps. Accordingly, any such deregulatory actions would necessarily not benefit any Los Angeles stations except potentially Entercom, iHeart and those stations who want to sell to one

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[56] Investing in Radio 2019 Market Report*, supra* note 37, at 32-35.

[57] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Notice of Ex Parte Communication of Entercom, MB Docket No. 18-349 (Aug. 8, 2019); https://bit.ly/2X8e26b; *see also 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Notice of Ex Parte Communication of Entercom, MB Docket No. 18-349 (Aug. 8, 2019), https://bit.ly/2ZeTdsw.

[58] *See generally, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Mt. Wilson FM Broadcasters, Inc., MB Docket No. 09-182 (Mar. 5012), https://bit.ly/36cWLgc.

[59] *See* Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, *supra* note 29; *see also 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Joint Reply Comments of Broadcast Licensees, MB Docket No. 18-349, at 16 (May 29, 2019);

of those two conglomerates. Since iHeart has already gone on record in opposition to the NAB's proposal, that means that ***only Entercom -- and those who want to cash out and sell their station(s) to Entercom --have reason to want the Local Radio Station Caps loosened as it relates to the Los Angeles market***.

So how do owners of AM/FM radio stations in Los Angeles -- other than Entercom and iHeart-- feel about the NAB's proposal? At least four of them have already objected to it on record. For example, Mt. Wilson FM Broadcasting, Inc. ("Mt. Wilson"), which owns two commercial radio stations in Los Angeles, filed reply comments in 2019, vehemently opposing the NAB's proposal.[60] Mt. Wilson wrote, "[w]hile Mount Wilson agrees that digital devices have changed advertising markets, Mount Wilson disagrees with NAB's conclusion that the FCC's rules are overly restrictive."[61] Mt. Wilson continued:

> Despite the consolidation [of AM/FM radio in Los Angeles], Mount Wilson continues to compete in the Los Angeles market as a small operator. We are no strangers to change, and part of our success has been creativity and operating niche formats, including jazz and country music. Just this week, Entercom, which is already at its maximum number of FM stations in Los Angeles, began broadcasting on KCBS-FM HD 2 an out-of-market country station. Imagine the devastating impact if Entercom were to have four more FM stations.[62]

Mt. Wilson pointed out that its views against further local AM/FM consolidation are shared by public interest and civil rights groups, including the National Association of Black Owned Broadcasters ("NABOB") and the Leadership Conference on Civil & Human Rights, noting, "The reasons are clear: increased consolidation will have a negative impact on minority station owners and businesses, and such a move goes against the public interest."[63]

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[60] *See also 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Reply Comments of Mt. Wilson FM Broadcasters, Inc., MB Docket No. 18-349 (May 29, 2019).

[61] *See id.* at 1.

[62] *See id.* at 4.

[63] *See id.* at 2-3.

Taxi Productions, Inc., owner of Compton-based KJLH-FM for over 40 years ("Taxi"), stated in Reply Comments in 2019: "No one has shown that adding a few more stations to a conglomerate mix will make the difference between survival and going out of business for companies constrained by today's caps, but independent broadcasters like KJLH know that adding those stations could break the backs of small station owners."[64] Taxi noted that allowing a local competitor who is already maxed out under current ownership limits to add more radio stations to its cluster "so that it can squeeze independent owners more, will harm diversity of voices and locally based ownership of stations that are directly focused on the needs of the many local and diverse elements of the community."[65] Moreover, Taxi added:

> A relaxation of ownership caps will certainly not enhance the chances that more local voices will be heard. Lack of diversity and localism hurts the public. More growth by major market station groups appears to be a purely financial argument without consideration for the welfare of the community. Many local, independent, minority operators serve the local public much more effectively, day in and day out. Their survival is at least as important, and indeed is more so, than possibly enhancing the financial strength of large corporate operators.[66]

Salem Media Group ("Salem"), a Southern-California-based broadcasting company owning 115 AM/FM radio stations nationwide serving the Christian and conservative communities,[67] owns three stations in Los Angeles.[68] Salem opposes further relaxation of

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[64] *See also 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Reply Comments of Taxi Productions, Inc., MB Docket No. 18-349, at 2 (May 29, 2019).

[65] *See id.* at 3.

[66] *See id.* at 2.

[67] *See also 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Reply Comments of Salem Media Group, MB Docket No. 18-349, at 1 (May 29, 2019).

[68] *See* Salem Media Group, *https://salemmedia.com* (last visited Mat 26, 2020) (In Los Angeles, Salem owns an AM station that offers news, conservative & Christian talk, and two FM stations that provide Christian contemporary music and Christian talk, respectively.)

current limits on local AM/FM ownership,[69] in part because relaxing current AM/FM subcaps would "do little to counter the diffusion of radio's market position while doing much to undermine the Commission's progress toward AM Revitalization."[70]

Similarly, Crawford Broadcasting Company ("Crawford"), which owns 15 AM stations and 9 FM stations, has a Christian/Talk AM station in the Los Angeles market.[71] Crawford believes that further deregulating local AM/FM ownership is not a viable solution for the AM/FM radio industry, notwithstanding the fact that competition from other non-broadcast audio delivery platforms has increased.[72]

As of 2019, while Entercom and iHeart are each maxed out in Los Angeles with five FM properties, there are four companies that each own four FM properties in the market, each of which are either minority owned or minority-operated: Meruelo Media, Estrella Media (formerly Liberman Broadcasting),[73] Entravision, and Univision. Collectively, these owners of medium-sized clusters own sixteen FM stations in Los Angeles, thirteen of which are Spanish language in a nuanced variety of music, news and talk formats. Between these just-mentioned companies and two more companies, Lotus Broadcasting and MultiCultural Radio, such medium-sized broadcasters own eleven AM stations in the Los Angeles market, ***all*** of which are broadcast in

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[69] *See generally, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Salem Media Group, MB Docket No. 18-349 (Apr. 29, 2019); *see also* Reply Comments of Salem Media Group, *supra* note 67.

[70] *See* Reply Comments of Salem Media Group, *supra* note 67, at 2-3 ("Salem is not convinced, however, that NAB's proposal to further deregulate the local radio ownership rule would give radio more success in competing with digital and satellite audio services. Even if it benefited some, we believe that better commercial success for a few broadcast groups is a costly price to pay in view of the many broadcasters who might be forced out – but with fire sale prices on their station properties.").

[71] *See* Reply Comments of Crawford Broadcasting Company, *supra* note 22, at 1.

[72] *See id.* at 1 ("While broadcasters must, in many ways, work harder in this new landscape to attract and hold listeners and advertiser dollars, we do not believe that loosening or eliminating ownership caps would be beneficial. In particular, eliminating subcaps would, as we previously stated, have a serious detrimental effect on already struggling AM stations as existing AM programming would be moved to FM.").

[73] *See* LBI Media Rebrands As Estrella Media, INSIDE RADIO (Feb. 3, 2020), https://bit.ly/2WYpLp4.

either Spanish or Asian languages.[74] Under the Commission's current ownership limits, none of these culturally significant broadcast companies would be prohibited from purchasing an FM station if they had access to applicable capital. But if the NAB's proposal were to be adopted, one could expect Entercom to purchase at least some of the FM stations previously mentioned, fire local talent in an effort to reduce costs[75] (i.e., enjoy "cost synergies"[76] a/k/a "economies of scale") and scale back locally-produced programming.[77]

Entercom has already been stretching its staff thin across its five FM stations in Los Angeles in recent years, and its stations and listeners have suffered for it.[78] Entercom purchased Los Angeles alternative rock FM station KROQ in an acquisition of CBS Radio in 2017, at which point Entercom immediately fired several staff in efforts to consolidate operations in its Los Angeles cluster.[79] KROQ Program Director Kevin Weatherly, who was credited with strong ratings and revenue success at KROQ in the 1990s and 2000s, expanded his duties in 2017 to oversee programming at newly acquired CBS Radio stations "Jack" and "Amp." Reports that Weatherly became "completely checked out" when it came to KROQ, as a result of having been given additional responsibilities at the other two Entercom stations in the Los Angeles cluster, were partially confirmed by Weatherly himself. "I don't completely disagree

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[74] Investing in Radio 2019 Market Report, *supra* note 37.

[75] *See, e.g.,* Lance Venta, *Ongoing List of Those Affected by Entercom's Massive Cuts*, MUSIC RADIO INSIGHT (Apr. 7, 2020), https://bit.ly/3cKE7Pg; Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, *supra* note 29.

[76] *See* Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, *supra* note 29.

[77] *See, e.g., See generally,* Shirley Halperin & Michael Schneider, *It's the End of the World Famous KROQ as We Know It: The Iconic Los Angeles Station is On Life Support -- And It Has Nothing To Do with Coronavirus*, VARIETY (May 19, 2020), https://bit.ly/36rSSEl; Jeff Blumenthal, *Philly Radio Station Drops DJ, Shuffles Lineup As Entercom Eliminates Nighttime Hosts*, PHILA. BUS. J. (Updated Feb 3, 2020), https://bit.ly/3gyth15; Bob Fernandez, *Philly-Based Entercom, Owner Of KYW, Warns Staff Of 'Significant' Cutbacks And Pay Cuts*, PHILA. INQUIRER (Apr. 2, 2020), https://bit.ly/3c3kYHn; Lance Venta, *Ongoing List Of Those Affected By Entercom's Massive Cuts*, RADIO INSIGHTS (Apr. 7, 2020), https://bit.ly/2TFTYYd.

[78] *See generally,* Halperin & Schneider, *supra* note 77; Samantha Hissong, *In a Crisis, Radio Should Be Bigger Than Ever — So Why Isn't It?*, ROLLING STONE (Apr. 21, 2020), https://bit.ly/3fYLrsF.

[79] *See* Halperin & Schneider, *supra* note 77.

with that," he told *Variety*, confiding that he had, at times, been spread too thin while running three radio stations simultaneously. [80] Localism on the station dissipated in what Weatherly referred to as "death by a thousand cuts," whereby when a station changes hands, the owners who take over care less about the unique culture of the station and what had previously made it special to its local listenership.[81] In February 2020, Weatherly exited Entercom's Los Angeles cluster after having run KROQ for 27 years, and stretching across three Entercom stations in his final two and a half years.[82] Weatherly's position was eliminated, and his duties were divvied up between current managers of other FM stations in Entercom's Los Angeles cluster. In other words, as stretched-thin as Weatherly was,[83] all responsibilities that had been shouldered by Weatherly were distributed to existing Entercom Los Angeles brand managers who already had substantial responsibilities. Weatherly's duties were split between veteran Los Angeles radio manager Ralph Stewart (who had already been running operations at Jack-FM and "94.7 The Wave") and Mike Kaplan, Entercom's national "Alternative Format Captain.[84] Kaplan's nickname at his former radio station was "Mike the Show Killer."[85]

A recent article in *Variety* chronicled the Entercom's recent firing of Kevin Ryder, professionally known just as "Kevin", host of "Kevin in the Morning with Allie & Jenson."[86] Kevin was half of KROQ's morning team "Kevin and Bean" for thirty years until 2019, when the co-host known professionally as "Bean" retired to London. Kevin then took over the show until he and

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[80] *Id.*

[81] *See* Hissong, *supra* note 78.

[82] Adam Jacobson, *Kevin Weatherly Out At Entercom; Kaplan, Stewart Step Up*, RADIO & TELEVISION BUS. REP. (Feb. 27, 2020), https://bit.ly/2LXh87T.

[83] *See* Halperin & Schneider, *supra* note 77.

[84] *See* Esther-Mireya Tejeda, *Entercom Announces Leadership Changes for Los Angeles Market*, ENTERCOM (Feb. 27, 2020), https://bit.ly/2TCwZxc.

[85] *See* Halperin & Schneider, *supra* note 77.

[86] *See id.*

his team were abruptly let go by Kaplan in March, 2020.[87] Entercom's decision to abruptly fire Kevin and his team resulted in a pronounced outcry among listeners on social media[88] and a dramatic drop in ratings from a 2.5 share in February 2020 to a 1.4 share in April 2020.[89] In other words, KROQ lost 44% of its entire listenership -- *throughout all dayparts* -- in the weeks following the decision to yank Kevin's morning show off the air.[90]

Entercom's KAMP 97.1 AMP contemporary hits radio (KAMP-FM) similarly dismissed morning show hosts Chris Booker and Chelsea Briggs in April 2020, citing budget cuts.[91] The station had also been purchased from CBS in 2017.

These firings followed earlier cuts by Entercom in Los Angeles. In April 2019, Entercom terminated the position of its midday host at its Los Angeles Urban AC FM station, KTWV "The Wave."[92] Entercom's decision to dismiss Talaya Trigueros (professionally known just as "Talaya"), resulted in the loss of an important and award-winning Latina voice[93] on a

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87 *See id.*

88 *See* Alex Groves, *Ouster of KROQ 106.7 FM's Morning Show Hosts Shakes LA Internet to its Core*, L.A. DAILY NEWS (Mar. 18, 2020), https://bit.ly/3eeQFih (describing how "#KROQ" was trending in the wake of Entercom pulling the show off the air, as Los Angeles radio listeners complained about their favorite morning show having been abruptly removed from KROQ's airwaves); *see also* Michael Schneider, *KROQ's Kevin Ryder Speaks Out on 'Cruel' Firings: 'I Was Really Livid*', VARIETY (Mar. 19, 2020), https://bit.ly/2ZzcMw0; KROQ Makes Changes and Angers Fans, L.A. LIST (May 21, 2020), https://bit.ly/3dbOuMc; *see also* Halperin & Schneider, *supra* note 77 ("Two months later, KROQ is still constantly deleting angry comments on its social media posts, many of which express anger at station management and owner Entercom....The abrupt departure of the show happened in the early days of the COVID-19 stay-at-home quarantine, leaving listeners who had formed a deep attachment over 30 years of "Kevin and Bean" without a familiar voice on the air.").

89 *See* Halperin & Schneider, *supra* note 77; *Los Angeles Nielsen Audio Ratings*, RADIO ONLINE (May 11, 2020), https://bit.ly/2Xq6AUl; *see also* Schneider, *supra* note 88.

90 *See* Halperin & Schneider, *supra* note 77; *see, e.g., 'Shame On You KROQ': Kevin Ryder Of 'Kevin & Bean' Fame Fired*, CBS L.A. (Mar. 18, 2020), https://cbsloc.al/2zr0drN; Margeaux Sippell, *Jimmy Kimmel Rips KROQ for Firing Kevin Ryder and Morning Team: 'Shame on You'*, WRAP (Mar. 18, 2020), https://bit.ly/3cZmaNl.

91 *See* Shirley Halperin, *Chris Booker Exits 97.1 AMP Radio, the Latest Casualty of Entercom Firings*, VARIETY (Apr. 2, 2020), https://bit.ly/3emyyqT.

92 *Talaya Trigueros Exits Middays At KTWV (94.7 The Wave)/Los Angeles*, ALL ACCESS (Apr. 19, 2019), https://bit.ly/2yCyx2K; *Talaya Trigueros Exits The Wave/L.A.*, RAMP MEDIA (Apr. 18, 2019), https://bit.ly/2ZIPZ0w.

93 *See NHMC Honors L.A. Media Professionals at 12th Local Impact Luncheon*, LATIN HEAT ENT. (Sept. 16, 2014), https://bit.ly/2ZDxcUy.

powerhouse English-language music station;[94] Los Angeles listeners found Talaya soothing and uplifting on The Wave for 31 years.[95] Rather than replacing Talaya, Entercom just extended the duration of the shifts of the remaining three weekday on air hosts at The Wave, from four hours each to six hours each.[96] The Wave was purchased by Entercom from CBS in 2017.

While Entercom has long claimed that loosening the Local Radio Station Ownership Caps would be in the public interest because it would allow it to reinvest financial resources into its audio products,[97] in fact, since the company acquired new AM/FM stations from CBS in 2017, it has focused instead on slashing costs, reducing force,[98] and notably, buying back its own stock.[99] While Entercom has invested in technology that the company has said has helped it weather the COVID-19 pandemic from a logistics standpoint, and has also invested in podcasting as an alternative audio medium,[100] recent financial disclosures by the company indicate no investment in local AM/FM programming or air talent and instead reflect major reductions in workforce in local AM/FM markets -- before and after the start of the pandemic.[101]

Even though iHeart has said it opposes adoption of the NAB's proposal, if the Commission were to deregulate, iHeart could be expected to buy more FM stations in Los

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[94] See *Investing in Radio 2019 Market Report*, *supra* note 57, at 33 (KTWV-FM has one of the strongest FM signals in the Los Angeles market at 58kW.).

[95] *See Talaya Trigueros Exits Middays At KTWV (94.7 The Wave)/Los Angeles*, *supra* note 92; *Talaya Trigueros Stepping Down After 30 Years*, RADIO INK (Apr. 18, 2019), https://bit.ly/3cckRcu ("She's been the Queen of Midday in Los Angeles for three decades, winning a slew of awards and ratings battles with 94.7 The Wave.").

[96] *See Show Schedule*, 9.47 THE WAVE (last visited May 27, 2020), https://bit.ly/2AiI1R2.

[97] *See e.g.,* Joint Reply Comments of Broadcast Licensees, *supra* note 59, at 19; *see also* Bob Fernandez, *Entercom-CBS Radio Merger Passes Another Milestone with Shareholder Vote*, PHILA. INQUIRER (Nov. 15, 2017), https://bit.ly/2XAF9qL.

[98] *See* Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, *supra* note 29.

[99] *See* Entercom Communications (ETM) Q3 2019 Earnings Call Transcript, MOTLEY FOOL COMM. (Sept. 30, 2019), https://bit.ly/2yDJqS1; Jeff Blumenthal, *Entercom slashes dividend by 78%*, PITTSBURGH BUS. J. (Aug. 12, 2019), https://bit.ly/2zCLREH; *Entercom Slashes Quarterly Dividend, Stock Slides 14% In After-Hours Trading*, INSIDE RADIO (Aug. 12, 2019), https://bit.ly/3eo4aMM.

[100] *See* Entercom Communications (ETM) Q1 2020 Earnings Call Transcript, *supra* note 29.

[101] *See generally, id.*; Entercom Communications (ETM) Q3 2019 Earnings Call Transcript, *supra* note 99.

Angeles just to spread costs over more properties and make sure that Entercom doesn't dominate iHeart's Los Angeles FM market share.[102] Moreover, as commenters as diverse as iHeart, Salem, Urban One, Hugh Hewitt, NABOB, and the Multicultural Media, Telecom and Internet Council have stated on record, one can reasonably expect that elimination of the AM/FM subcaps would result in devaluation of AM properties. In Los Angeles, that necessarily means economically harming already cash-strapped owners of AM stations that serve otherwise under-served ethnic populations.

In review, with respect to the Los Angeles AM/FM marketplace, only one giant conglomerate, Entercom, and those stations desiring to cash out and sell to Entercom, currently have reason to want the Commission to adopt the NAB's proposal to further deregulate local AM/FM ownership, while all other AM/FM broadcasters in Los Angeles either do not currently risk hitting ownership limits or have explicitly said that adoption of the proposal would be bad for competing stations and listeners alike. Moreover, in the wake of Entercom's recent layoffs and workload adjustments among its Los Angeles workforce, the Commission has no reason to believe that any economies of scale gained by Entercom will result in that company reinvesting dollars into locally produced programming that promotes localism and diverse viewpoints. Moreover, if the Commission were to hastily further deregulate AM/FM radio station ownership in response to the NAB's false assertion that such actions would provide relief to the entire U.S. AM/FM industry in the wake of COVID-19,[103] substantial irreversible economic harms can be expected to befall independent radio broadcasters (and smaller AM/FM clusters, regardless of ownership) who would then have to compete locally against enormous radio clusters within their local markets.

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[102] *See* iHeart Explains Why It Opposes NAB's Deregulation Proposal, *supra* note 38.

[103] *See* NAB Comments (GN Docket No. 20-60), *supra* note 2, at 25-26.

VII. RECOMMENDATIONS FOR METRICS FOR STUDYING INTRAMODAL COMPETITION IN BROADCAST RADIO

Upon the release of the 2018 Communications Marketplace Report, Commissioner Jessica Rosenworcel praised the efforts of FCC staff, while still noting a serious shortcoming:

> [T]his report doubles down on data we know is flawed, and in some cases just plain wrong. That's because we continue to rely on third parties to provide us with a lot of the information you'll find in this report. I think that—as the expert agency—we should be gathering this data ourselves or at the very least validating or qualifying it before we pass it along to Congress to inform their decision-making. As I've suggested elsewhere, this agency needs to be more creative about gathering data.[104]

We agree, Radio is a data-rich field, as companies invest extensive resources in gathering information about transactions, market share, revenues, advertisers, listener behavior, and programming choices. Unfortunately, much of this data is proprietary and unavailable for third-party analysis without expensive and restrictive subscriptions; even then, researchers and policymakers are limited in that they can only evaluate the industry on the industry's own terms. As a result, there are serious barriers to public understanding of the state of competition and the impact of the transformative changes in the broadcasting landscape.

The FCC can do much more to generate, analyze and usefully present data for policymakers and the public; it need not rely on nonprofit groups and trade organizations. The Commission could acquire data from commercial sources (while keeping in mind that industry data sets tend to be designed to tell a particular story), or it could request additional data from stations as part of their responsibilities as broadcast licensees and aggregate and usefully compile that information for the public in ways that help us understand the competitive landscape. The following suggestions are by no means a comprehensive research agenda, but represent some of the most basic steps toward a more complete picture.

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[104] Statement of Commissioner Jessica Rosenworcel, Concurring, In the Matter of Communications Marketplace Report he Status of Competition in the Market for the Delivery of Audio Programming, for the Communications Marketplace Report, MB Docket No. 18-227, at 75 (Dec. 26, 2018), https://bit.ly/3gqdpOl.

A. When Identifying AM/FM Stakeholders in its Upcoming Communications Marketplace Report, Such Listings Should Provide Key Data Including Local and National Market Share in Efforts to Assist Analysis of Intramodal Competition in AM/FM Radio.

In describing the state of broadcast radio, the previous iteration of the communications marketplace report simply lists several of the top owners of radio station groups[105] and their estimated annual revenues and number of affiliated stations, without also evaluating their respective market shares relative to each other and other competitors in the AM/FM marketplace. This is insufficient information for understanding the competitive landscape--it does not tell us much about these companies' market power compared to small clusters and independent stations. Comprehensive data on market share should be included, and should be calculated both in terms of a company's share of overall industry ad revenue and in terms of ratings/listenership. Market share should also be quantified at both the national level and at the level of local markets, since some radio stations compete for advertising dollars nationally, but all compete for listeners locally.[106]

B. The Commission Should Analyze Local and National Concentration Ratio Measures Over Time

An important index economists and advocates use to evaluate whether oligopoly dynamics exist and how concentration of ownership changes over time is concentration ratio (CR).[107] This figure is generated by comparing the market share of a given number of firms to the overall market size (eg. CR4 measures the market share of the top 4 firms). The Commission should calculate concentration ratio measures for commercial radio, both at the

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105 In the Matter of Communications Marketplace Report The Status of Competition in the Market for the Delivery of Audio Programming, for the Communications Marketplace Report, MB Docket No. 18-227, at 75 (Dec. 26, 2018), https://bit.ly/2XAUeJb.

106 For a proposed methodological template, *see* Future of Music Coalition, "False Premises False Promises," Figure 1-8 & Table 1-4 (2006), https://bit.ly/2AX3E9Y.

107 *Id.* at 41-42.

national level and local levels. For the report to be most meaningful to policymakers and to the public, it should employ historical data to evaluate how these measures may have changed over time, thus allowing for understanding of potential impacts of various policy interventions on the competitive marketplace. We recommend using multiple concentration ratio measures simultaneously (Previous FMC research has used CR2, CR4, and CR10.)[108]

C. Herfindahl-Hischman Index Locally and Nationally Over Time

Another important measure that the FCC used in the previous marketplace report– though curiously, not the audio marketplace section– is the Herfindahl-Hischman index, generated by calculating the sum of the squared market shares of every radio company.[109] This index is capable of capturing dynamics that concentration ratio measures alone may miss, helping us understand at a glance the relative sizes of the largest firms, not just their total market share. The Commission should use historical and contemporary data to calculate and track this metric directly on an ongoing basis. HHI should be measured both at the national level and with respect to individual local markets. And it too can be calculated two ways, using both revenue and listenership; both methods help us better understand different elements of marketplace dynamics. National trends about the state of local market concentration can be usefully observed by averaging HHIs across similarly tiered markets.[110]

VIII. CONCLUSION

History has taught observers of AM/FM radio that as further consolidation of AM/FM radio station ownership occurs at local market levels, locally produced content is a casualty. Unfortunately, such local programming and air talent are often not replaced at all, or in some

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[108] *See id.* at Figure 1-9.

[109] *Id.* at 42.

[110] Again, Future of Music 2006 provides a methodological template, using Arbitron (now Nielsen) markets to define local competitive markets, and grouping them in tiers of similarly situated markets to reveal trends among different types of geographical markets.

cases replaced by inauthentic voice-tracking (*i.e.*, where the air talent pretends to be local, but voices his/her program from another location, and inserts occasional information about the market in which the program is aired)[111] or syndicated programming that homogenizes content across a multitude of local markets.[112] Current numerical limits on the number of AM/FM radio stations that one entity can own in a given market remain necessary to promote diversity, localism, and competition.

Respectfully Submitted,

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[111] *See* Maria Sciullo, '*Voice-Tracking' Uses Technology Tricks to Substitute for On-Air Personalities*, PITTSBURGH POST GAZETTE (Oct. 19, 2013), https://bit.ly/2Tj6Ink; ROBERT L. HILLARD & MICHAEL C. KEITH, THE QUIETED VOICE: THE RISE AND DEMISE OF LOCALISM IN AMERICAN RADIO 19 (S. Ill. Univ. Press Carbondale, 1st ed. 2005).

[112] *See* Hissong, *supra* note 78; Media Programming: Factors Influencing the Availability of Independent Programming in Television and Programming Decisions in Radio, GAO-10-369 (Mar. 17, 2010), https://bit.ly/3emX3El; John Reian, *Terrestrial Radio is Losing Listeners — and the Industry War*, MINNPOST (Feb. 4, 2013), https://bit.ly/2Zhx9O6.

Schedule A

Table 1: Cap and Subcap Attainment by Radio Groups in the Top 10 Markets (2018)

Nielsen Rank (2018)	Market	Groups at the 8 Station Cap	Groups at 7 Stations (1 below Cap)	Groups at the 5 Station FM Subcap	Groups at 4 FM Stations (1 below Subcap)	Groups at the 5 Station AM Subcap	Groups at 4 AM Stations (1 below Subcap)
1	New York	0	1	1	3	0	0
2	Los Angeles	1	0	2	3	1	0
3	Chicago	0	3	3	1	0	1
4	San Francisco	0	3	2	2	0	2
5	Dallas – Ft. Worth	0	1	2	3	0	0
6	Houston – Galveston	0	0	0	3	0	0
7	Washington, D.C.	0	0	2	1	0	0
8	Atlanta	0	1	1	3	1	0
9	Philadelphia	0	1	1	2	0	0
10	Boston	1	0	3	0	0	0
Total	**---**	**2**	**10**	**19**	**24**	**2**	**3**

[113]

[113] Comments of Multicultural Media, Telecom and Internet Council, *supra* note 18, at 6.