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	)	

REPLY COMMENTS OF IHEARTCOMMUNICATIONS, INC.

May 29, 2019

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I. INTRODUCTION AND SUMMARY

iHeartCommunications, Inc. ("iHeartMedia" or "iHeart") respectfully submits these Reply Comments in response to the Federal Communications Commission's ("FCC") Notice of Proposed Rulemaking in the 2018 Quadrennial Review.[1] Subsequent to its filing of Comments in this proceeding, on May 1, 2019, iHeart emerged from bankruptcy, having completed its restructuring and dramatically reducing its debt burden. iHeart is prepared to compete vigorously under whatever local radio ownership rules the Commission establishes in this Quadrennial Review. We continue to believe that the targeted reform we recommended in our Comments – namely, the elimination of the local ownership rules for AM stations to address the critical competitive disparity between AM and FM radio stations, and the rejection of the overly aggressive NAB proposal regarding ownership limits on FM stations due to the harm it could cause to the AM band – would be best for broadcast radio as a whole and best serve the public interest, taking into account the touchstones of competition, localism and diversity. Moreover, based on the record compiled to date in this proceeding, Commission and judicial precedents,

[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").

and well-established principles of administrative law, eliminating the local ownership limits on AM stations, while rejecting the overly aggressive proposal of the National Association of Broadcasters ("NAB") regarding local ownership limits for FM stations, is an approach that should be sustainable in the inevitable appeal that will follow a Commission determination.

The Comments and ex parte filings received thus far by the Commission reflect sharply divergent views, including within the radio broadcast industry itself, about the relevant market, the state of competition, the potential remedies for competitive challenges faced by broadcast radio, and the risks of implementing reforms to the current local radio ownership rules. On the one hand, our nation's largest religious broadcaster, the largest African American-owned broadcaster, smaller broadcasters, and a broad array of civil rights and other advocacy associations committed to greater diversity of ownership, and music industry commenters agree, for varying reasons, that the relevant market remains broadcast radio and that retention of existing local ownership limits best serves the public interest.[2] At the opposite end of the spectrum, the NAB and some supporting radio broadcasters view the relevant market as far broader, encompassing satellite radio and Internet-based digital platforms ranging from Pandora and Spotify to Facebook and Google, and regard the elimination of all local radio ownership rules except for FM stations in the top 75 markets where limits would be dramatically eased but not entirely eliminated as necessary to enable broadcast radio to address this broader competitive threat. iHeart, the nation's largest broadcast radio licensee, agrees with many commenters within

[2] Additional commenters limited their comments to retaining rules and didn't speak on market definition. *See* Comments of Crawford Broadcasting Company at 1-2; Comments of Bristol County Broadcasting, Inc at 1; and Comments of King City Communications Corporation at 1-2.

and outside the radio broadcast industry, that the relevant market is broadcast radio, as the Commission has repeatedly determined.

The record here, consistent with all past Commission Quadrennial Review decisions establishes that the relevant market is broadcast radio. Other audio media, while competing in a broad ecosystem, are not substitutable for broadcast radio based upon localism, affordability, accessibility, trustworthiness of content, audience listening and advertising approaches and revenue. Instead, they are complementary. The theory of the market advanced by the NAB represents a radical departure from established competition law.

There is broad agreement among commenters that the competitive disadvantages faced by AM in relation to FM stations is cause for concern. The NAB recognizes the competitive disparity, but its proposal would exacerbate it, posing a grave risk of transforming the concern into a genuine crisis for broadcast radio as a whole, as well as for the American public.

The BIA Study upon which the NAB relies to justify its proposal is lacking in many respects. It does not quantify the proposal's impact on advertising revenue despite the fact that competition for advertising revenue with other inhabitants of the audio ecosystem is at the core of the NAB's competition concerns.

Analysis of the Comments in this proceeding reveals that iHeart's proposal is a reasonable compromise, providing targeted, pro-competitive reform of the local radio ownership rules. It minimizes the potential risks feared by opponents of any rules change. It buttresses rather than undermines the Commission's ongoing AM Revitalization proceeding and its recent Incubator Order. Most importantly, it avoids the virtually certain harm to competition and the broader public interest that would occur were the Commission to adopt the entirety of the NAB's proposal.

II. THE BROADCAST RADIO MARKET IS THE RELEVANT MARKET FOR DETERMINING THE NEED FOR MODIFICATION OF THE LOCAL RADIO OWNERSHIP RULES

A. The Record is Replete with Support for iHeart's View that Broadcast Radio is the Relevant Market

In its Comments, iHeart provided abundant evidence of the reasons why broadcast radio is the relevant market because other audio media are not substitutable for it when measured by its unique, trusted and free content, localism, audience reach and stability, and its resilience in advertising revenue relative to other traditional media.[3] Many commenters concur.

For example, Urban One, Inc., the largest African-American owned radio broadcasting group focused on the non-substitutability of other audio services for broadcast radio. It concluded, based upon its local audiences and local advertising revenue that,

> …those 21st century forms of media complement and provide opportunities to expand revenue streams and audiences in addition to those enjoyed through radio broadcasting, rather than directly compete with what Urban One's stations offer to advertisers and listeners.[4]

In a joint filing, a coalition of minority ownership advocates and public interest groups also asserted the non-substitutability of other non-broadcast media, focusing on the indispensability of broadcast radio to minority communities:

> The free nature of radio and local television broadcasting continues to make the service a relevant utility for communities of color. This is especially true for families who are low income and/or on the wrong side of the digital divide.[5]

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[3] iHeartMedia Comments at 8-12.

[4] Urban One Comments at 4-5, ¶¶ 8-10.

[5] Joint 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 Washingtontech, LLC at 9. *See, also,* Free Press Comments at 11-13.

The music industry commenters also embrace the Commission's previous conclusions in the most recently concluded Quadrennial Review and reconsideration thereof that the relevant market remains broadcast radio, citing localism and the "unique" position of broadcast radio under the copyright laws.[6]

This broad cross-section of Comments reflects the continuing acceptance of the Commission's consistent conclusion since the inception of the statutorily mandated broadcast regulation review that broadcast radio is the relevant market. In its 2014 Quadrennial Review Order, released less than three years ago, the Commission reaffirmed its determination that the relevant market is broadcast radio:

> Broadcast radio stations provide free, over-the-air programming tailored to the needs of the stations' local markets. In contrast, Internet radio requires either a fixed or mobile broadband connection, and satellite radio requires a monthly subscription to access programming. Neither of these sources is as universally and freely available as broadcast radio, and neither typically provides programming tailored to the needs and interests of specific local markets."[7]

In reaching this conclusion, the Commission also relied on audience reach of broadcast radio, constantly over 90 percent for the past decade.[8] The Commission expressly rejected the NAB's contention that it should consider audio non-broadcast media as meaningful competitors to broadcast radio for purposes of defining the relevant market.[9] In reconsidering the 2010/2014

[6] Joint Comments of musicFirst Coalition and Future of Music Coalition ("Music Industry Comments") at 8-10.

[7] *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 ¶ 90.

[8] Id. at ¶ 91.

[9] Id. at ¶¶ 92-93.

Quadrennial Review Order, less than 18 months ago, the Commission did not alter its view of the relevant market for the local radio ownership rules.[10]

B. The Commission Should Reject the NAB's Radical Redefinition of the Relevant Market

In its Comments, the NAB argues that the Commission adopt a dramatically different and vastly broader definition of the relevant market than it has done in all of its previous Quadrennial Reviews. The NAB asserts that the relevant market must now include, "at the least, terrestrial radio broadcasters, satellite radio providers, and providers of audio programming over the internet and to mobile devices."[11] Of course, this includes SiriusXM/Pandora, Apple, Amazon, Spotify and YouTube. The NAB, however, goes well beyond the market definition it expressly proffers to urge that the Commission consider also the competitive impact of digital devices such as smartphones and smart speakers on media consumption.[12] Indeed, in its Comments, the NAB fuses the digital advertising market and the audio ecosystem in a protracted discussion of competition for advertising revenue from Facebook and Google.[13] In short, the NAB advances a novel theory of a relevant market for purposes of competition law, perhaps best described in the NAB's own words as "a sea of competition."[14]

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[10] *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 ¶ 86.

[11] NAB Comments at 6-7.

[12] Id. at 13-16.

[13] Id. at 22-26.

[14] Id. at 9.

In doing so, the NAB blurs impermissibly the well-established line between complementary services and substitutable services. Spotify and Pandora certainly do not compete with the totality of what broadcast radio offers from a consumer's vantage point, a full array of music plus local news, information, traffic, weather and sports. Similarly, Sirius/XM does not compete with broadcast radio for local, community-based news and information. Facebook does not characterize its offerings as news or journalism but as social media. When viewed through the prism of the FCC's jurisdiction, that broadcasters are licensed to serve in the public interest, it is precisely in the core areas of local news, information and public safety functions that these other media and platforms are not substitutable with broadcast radio. Were the Commission to adopt the NAB's unprecedented definition of a market, its determination likely would not survive judicial review.

Although the NPRM in this proceeding expressly invited commenters to address the question of whether non-broadcast audio services are substitutable for broadcast radio services,[15] the NAB all but ignores the fundamental principle that a relevant market for products or services must be determined by reference to substitutability.[16] In its Comments, the NAB does not address the free nature of broadcast radio by contrast with the costs of non-broadcast audio subscription services or Internet-based services requiring costly devices and/or Internet access. It does not address the universal accessibility of broadcast radio in contrast to lack of access to Internet-based services in many rural and poor urban areas. It does not address the role broadcast radio plays in our nation's public safety and national security communications infrastructure. It

[15] NPRM at ¶ 22.

[16] *See* iHeartMedia Comments at 9-12. *See also*, E.I. United States v. E.I.DuPont de Nemours & Co., 353 U.S. 586, 592-595 (1957); Federal Trade Commission v. Sysco Corporation, 113 F. Supp. 3d 1, 24-48 (D.D.C. 2015) (Court provided comprehensive history and analysis of the importance of the relevant market in determining competition).

does not address the fact that listeners turn to broadcast radio – especially AM radio – in particularly high numbers in time of natural disaster or terrorism. Surprisingly, the NAB Comments minimize the import of localism as an indispensable and distinguishing characteristic of broadcast radio: "[t]he local or non-local character of the content on other outlets is irrelevant to their competitive impact on local broadcast stations…"[17] Having ignored or discounted these critical aspects of substitutability and how broadcast radio serves the public interest, many of which were relied upon by the Commission in previous Quadrennial Reviews, the NAB's rationale for its notion of the market rests on audience listening and advertising revenue. Its justification is flawed in those respects as well.

The NAB explores in great detail the fragmented nature of audience listening but relegates to footnotes or passing observation facts that have been instrumental in concluding that the relevant market is broadcast radio. For example, in its 2014 Quadrennial Review, the Commission noted the importance of audience reach, consistently exceeding 90 percent, to its determination of the relevant market.[18] In its Comments in this Quadrennial Review, the NAB acknowledges that, according to Nielsen, 92 percent of adults listened to broadcast radio during an average week for the third quarter of 2018,[19] but the NAB apparently no longer deems this fact material. Regarding competition from satellite radio, the NAB deems it worthy only of a footnote that 78 percent of in-car listening in pre-2006 model cars is to broadcast radio, and that number still stands at 59 percent in 2015-2018 model cars.[20]

[17] NAB Comments at 19.

[18] 2010/2014 Quadrennial Review Order at ¶ 91.

[19] NAB Comments at 8, n.17.

[20] Id. at 11, n.37.

The NAB's more detailed analysis of audience listening, embodying the results of the BIA Study, *Local Radio Station Viability in the New Media Marketplace* - Attachment A to its Comments ("BIA Study"), utilizes two metrics, weekly time spent listening to AM/FM radio and Average Quarter Hour Persons, or AQH, reflecting the average number of persons listening to a particular station for at least five minutes during a 15-minute period. The common element of the NAB's analysis is that it groups AM and FM radio listening together, resulting in a bleaker picture of broadcast radio's competitive position. By contrast, iHeart, also using Nielsen data, breaks down into AM and FM components both AQH and another widely relied upon audience listening metric, unduplicated Weekly Cume, reflecting the total number of different persons listening to a station for at least five minutes during a daypart in a week.[21] iHeart's analysis demonstrates that it is the competitive weakness of AM stations relative to FM stations that is the cause for most of the total decline. Indeed, unduplicated Weekly Cume, for FM stations actually increased from 2010 to 2018.[22] In fact, the BIA Study relied upon by the NAB also demonstrates that the sharp decline in AM listening is responsible for most of the decline in total broadcast radio listening.[23]

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[21] iHeartMedia Comments at 15-17.

[22] Id. at 16.

[23] BIA Study at 17-18, focusing on AM audience share rather than total broadcast radio audience share.

Finally, the NAB relies heavily on competition to broadcast radio for advertising revenue offered by all forms of advertising, ranging from newspapers and direct mail to the digital advertising of Google and Facebook, an analysis covering 30 different marketing and advertising platforms,[24] to argue for its concept of relevant market. The NAB's reliance on advertising revenue as a principal ground for its position is misplaced for two fundamental reasons. First, it conflates the advertising market and the appropriate services market. Second, even within a hypothetical advertising market, digital platforms such as Facebook and Google are not substitutes for broadcast radio, but rather are complementary to it.

The Commission's Quadrennial Review does not deal with the regulation of advertising; it deals with the appropriate regulatory treatment of broadcast radio. The central question posed by the NPRM is whether non-broadcast audio media are substitutable for broadcast radio.[25] Social media such as Facebook and search engines such as Google indisputably are major players in the advertising market and even more so in the digital advertising market, but the services they provide and the functions they perform for users are certainly not substitutable for those offered by broadcast radio. Users do not rely upon them for local news, community information, weather, traffic and sports. Users do not rely upon them for critically needed information in times of emergency or natural disaster. They are not an integral part of our nation's public safety and national security communications infrastructure. In speaking of the

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[24] NAB Comments at 23. The NAB also cites the BIA Study upon which it relies that depicts 16 different ad platforms. BIA Study at 10-12.

[25] NPRM at ¶ 22.

place of Facebook and Google in the economy, it is invariably in reference to the advertising market and more often to the digital advertising market.[26]

Even when viewed through the lens of advertising, Facebook and Google are not substitutable for broadcast radio. Indeed, there is a widespread view among advertisers and academics that micro-targeted digital advertising platforms such as Facebook and Google are complementary to mass-targeted broadcasting within the advertising market, not substitutable.[27] These experts often use the well-established model of an advertising funnel with the wide, top end being most useful for branding and reach, the narrower center part ideally being for display, and the narrowest, lowest end reserved for the last touch to the consumer. In this model, over-the-air broadcasting is viewed as best suited for the top-end of the funnel, establishing broad-based brand awareness and wide audience reach, while digital advertising, especially via Facebook and Google utilizing the vast trove of individual data collected from users, being used at the narrowest, lower end of the funnel, as a major means for targeting individual consumers.[28] This more granular analysis underscores the fundamental difference between one-to-many broadcast radio ads, which are aimed at broad populations in a locality, region or across the nation, and the micro-targeted ads that pop up on one's smartphone or computer designed to

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[26] *See, e.g.,* Caroline Cakebread, "Google and Facebook Dominate Digital Advertising", Business Insider (December 7, 2017); Daniel Liberto, "Facebook, Google Digital Ad Market Share Drops as Amazon Climbs", Investopedia (March 20, 2018).

[27] *See, e.g.,* Remarks of Mark Lieberman, President and CEO, Viamedia, Inc.; Remarks of Kenneth C. Wilbur, Associate Professor of Marketing, University of California, San Diego; Remarks of Wendy Moe, Dean of Master's Programs and Dean's Professor of Marketing, Robert H. Smith School of Business, University of Maryland, public forum on "Competition in Television and Digital Advertising," May 2-3, 2019, Washington, DC. Remarks and additional information at https://www.justice.gov/atr/public-workshop-competition-television-and-digital-advertising.

[28] *See, e.g.,* Athey, Susan, "Advertising Overview: Issues, Challenges and Opportunities" (available at: https://www.justice.gov/atr/page/file/1160661/download#Susan%20Athey), at 10.

impact individuals on a one-to-one basis. Indeed, digital platforms are frequently the recipients of promotion initiated on broadcast platforms (*i.e.,* promotion on radio drives online search), again demonstrating the complementary relationship that exists, and reinforces the fact that advertisers often seek a mix of media or platforms to meet the comprehensive objectives of an advertising campaign. The ultimate point being, advertising platforms are not viewed by those who use them simply as a "soup," but rather as distinct, complementary tools to achieve a specific target and purpose. Yet, in its Comments, that is exactly what the NAB does, although choosing the metaphor of "a sea of competition" rather than a soup.

The landmark decision in United States v. Microsoft, 253 F.2d 34 (D.C. Cir. 2001) is highly instructive as to why the NAB's overly broad market redefinition advocacy is unsustainable. In that case, one of Microsoft's principal grounds for appeal of the trial court's finding that it had violated antitrust law was that the lower court had defined the relevant market too narrowly, limiting it to the licensing of all Intel-compatible PC operating systems worldwide. On appeal, the United States Court of Appeals for the District of Columbia Circuit rejected Microsoft's assertions that the relevant market should have included three additional groups of products: "non-Intel compatible operating systems (primarily Apple's Macintosh operating system, Mac OS, operating systems for non-PC devices (such as handheld computers and portal websites), and 'middleware' products, which are not operating systems at all."[29] Affirming the continuing applicability of the Supreme Court's decision in the DuPont case to markets featuring new technology, indeed, digital technology, the court applied the traditional test that a relevant market must include all products [or services], "reasonably interchangeable by consumers for the

[29] 253 F.3d at 52.

same purposes."[30] The court stated that general assertions that products competed with Microsoft's products or that they had the potential to do so in the future were insufficient.[31] Thus, the court refused to accept precisely the types of broad assertions of market definition that the NAB offers here.

In sum, the NAB's advocacy for an overbroad redefinition of the relevant market for purposes of this proceeding is not supported by the record, taken as a whole, an unbroken line of Commission decisions in Quadrennial Reviews, or competition theory and jurisprudence. Were the Commission to adopt the NAB's approach to the relevant market, it would likely not be sustained on appeal.

III. IHEART'S STRATEGIC AND TARGETED REFORM PROPOSAL TO ELIMINATE OWNERSHIP LIMITS ON AM STATIONS IS REASONABLE, SUSTAINABLE AND SERVES THE PUBLIC INTEREST

Comments opposing any change to the local radio ownership limits in this Quadrennial Review focus upon the potential adverse impact of consolidation upon competition, localism and diversity. In many instances, these comments reiterate long held concerns expressed repeatedly in previous Quadrennial Reviews by public interest groups[32] and advocates of greater diversity of ownership, including some African-American and Hispanic broadcasters and their representative organizations.[33] In addition, the music industry commenters and performing artists

[30] Id.

[31] Id. at 52-54.

[32] *See, e.g.,* Free Press Comments at 10-11.

[33] *See, e.g.*, National Association of Black Owned Broadcasters ("NABOB") Comments at 5-6.

have expressed related concerns, focused more on viewpoint and gender-based diversity expressed through music.[34]

As iHeart stated in its Comments, we place the highest priority on localism, as evidenced by the dramatic spike in listening to our local stations in times of emergency or duress.[35] Such reliance by residents of the communities we serve is not an accident, nor does it arise instantaneously. It is the product of years and, in many instances, decades of sustained investment and resources necessary to develop the relationship between our local stations and their audiences that is the source of this bond of trust.

Similarly, iHeart historically has been and continues to be sensitive to insufficient diversity of ownership in broadcast radio. A number, but by no means all, of iHeart's marketplace and regulatory initiatives to increase the number of minority and women-owned broadcast stations are summarized in our Comments.[36] iHeart is committed to increasing the participation of minorities and women in radio broadcasting going forward, as reflected in our concerns about the adverse impact the NAB's FM reform proposal could have upon the Commission's 2018 Incubator Order.[37]

Although iHeart understands the past basis for the concerns expressed by opponents of any relaxation of local radio ownership limits, iHeart invites them to reassess their position in light of the stress that many AM stations in markets large and small, all across the nation, are now enduring. The sharp decline in audience listening and advertising revenue experienced by

[34] *See, e.g.*, Music Industry Comments at 19-37. Music industry commenters acknowledge that their concerns are very much related to their dissatisfaction with copyright law, which is outside the Commission's jurisdiction. Music Industry Comments at 4.

[35] iHeartMedia Comments at 20-24.

[36] Id. at 33-35.

[37] Id. at 35.

AM stations relative to FM stations threatens the ability of broadcast radio as a whole to serve the very public interests of competition, localism and diversity that these commenters seek to advance. It is precisely this change in the circumstances in the relevant broadcast radio market that impels iHeart to urge the Commission to eliminate the local ownership limits on AM radio stations, or, at a minimum, lift the AM subcaps. iHeart believes that such targeted regulatory relaxation would advance rather than encumber the localism and diversity objectives we share.

As described in detail in iHeart's Comments,[38] and corroborated by the BIA Study,[39] AM audience listening when measured by unduplicated Weekly Cume, reflecting numbers of listeners, dropped by approximately 25 percent during the period 2010-2018. The decline was even more dramatic, approximately 40 percent, when measured by Average Quarter Hour Persons, reflecting intensity of listening. The BIA Study, taking a longer perspective, concluded that in the 22 years subsequent to enactment of the 1996 Telecommunications Act, AM audience share decreased by 50 percent.[40] Moreover, the BIA Study noted that, "[i]n 2006, there were 145 AM stations in 130 different radio markets ranked in the top 5 in audience share. By 2018, the number of these highly rated AM stations had dropped to 115 stations in 100 different markets."[41]

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[38] Id. at 15-17.

[39] BIA Study at 17-18.

[40] Id. at 18.

[41] Id.

The relative competitive weakness of AM stations is confirmed by analysis of advertising revenue. Although iHeart, in its Comments, used a different set of BIA data than did the NAB in assessing the estimated advertising revenue of AM and FM stations, and used a different methodology in determining the competitive disparity between AM and FM stations when measured by advertising revenue, an "apples to apples" comparison of the two data sets reveals no meaningful variation.[42] The BIA Study states: "In 2010 half of the markets had AM stations collectively accounting for only 14.0 percent or less of the market's total revenues, while by 2018, half of the markets had AM stations collectively accounting for only 11.6 percent or less,"[43] a decline of 2.4 percentage points. iHeart, using its data set but emulating the median market methodology in the BIA Study, determined that estimated advertising revenues for AM stations had dropped from 14.3 percent in 2010 to 11.8 percent in 2018, a decline of 2.5 percentage points. In essence, iHeart and the NAB are on the same page regarding the relative

[42] A comparison of the advertising revenue data in the BIA Study, relied upon by the NAB in its Comments, and the advertising revenue data in iHeartMedia's Comments would appear to indicate a very significant difference. An instructive dialogue with BIA following submission of the Comments reveals that a clear explanation exists for the divergence. More importantly, it reveals essential agreement between the NAB and iHeart regarding the fundamental conclusion that the AM band is indisputably weaker than the FM band when measured by advertising revenue and cannot be reasonably viewed as a harmful competitive threat were the local radio ownership limits on AM stations eliminated. In the first instance, it is critical to note that the BIA data are only estimated advertising revenues; they do not represent actual advertising revenues, in contrast to Miller-Kaplan reports that track actual advertising revenues. iHeart used the data set that it acquired contractually from BIA, from the BIA Media Access Pro Online Radio Analyzer and Ratings Database, as the basis for the data it cited in its Comments. That data set does not have revenue estimates for all the stations located in non-Nielsen Audio (previously Arbitron) markets. The BIA Study used a different BIA data set that estimated the revenue for these non-Nielsen Audio market stations as a group and therefore showed much higher estimated advertising revenues. Further discussion revealed that these higher revenue estimates in the BIA Study relied upon by the NAB also were based upon discussion with radio station owners, anecdotal evidence and a variety of other more subjective factors.

[43] BIA Study at 16.

competitive position of AM and FM radio stations in the current broadcast radio marketplace when measured by estimated advertising revenue: the AM band is significantly weaker than the FM band, and the competitive disparity between them is increasing at an alarming rate.

From a competition perspective, the implications of the state of AM radio for this proceeding are clear: eliminating the AM ownership caps, or certainly lifting the AM subcaps, would not cause harm to competition. If the current limits on FM radio station ownership were retained, the only reasonably foreseeable impact that lifting the AM ownership limits would have is to create the potential for narrowing the gap between AM and FM radio stations. As the ratio of AM to FM advertising revenue now stands at nearly 1:5,[44] even common ownership of a large cluster of AM stations in a market would not cause harm to competition as a whole.[45] The conclusion is the same based on the BIA Study: "[i]n 39 markets, AM stations collectively garner 5.0 percent or less in total over-the-air advertising revenue. In another 68 markets, AM stations earn between 5-10 percent of total over-the-air advertising revenue."[46]

The very weakness of the AM band relative to FM, however, is a reason that opponents of lifting the ownership limits on AM radio stations should be concerned. As iHeart emphasized in its Comments, the AM band is the locus of a substantial majority of the All News formats

[44] iHeartMedia Comments at 17.

[45] Music industry commenters raise the specter of common ownership of all AM stations in one market as an intolerable consequence of eliminating all ownership limits on AM stations. Music Industry Comments at 7. This implausible example, a classic use of "parade of horribles" advocacy, ignores the role of the Department of Justice in merger review. The DOJ's criteria for permitted consolidation in a local market, including application of the HHI index, would prevent anything approaching such a result. Analysis of the DOJ's recent approval of the Entercom/CBS transaction, requiring a significant number of divestitures before the deal could proceed, further evidences the existence of independent safeguards against excessive concentration.

[46] BIA Study at 17.

across the nation and all but one of the Spanish language All News formats.[47] The priority that AM stations place upon localism is evidenced convincingly by the fact that listeners faced with local emergencies turn reflexively to their AM dial to obtain what literally could be life-saving information.[48] Moreover, in its Incubator Order, the Commission has determined that broadcast radio holds the most immediate promise for expanded minority and women media ownership.[49] As AM stations are comparatively more affordable than FM stations, they are far more likely to be a gateway, if somewhat narrow, for minority and women-ownership of radio broadcast properties. Notwithstanding the Commission's efforts to ameliorate the situation through its AM Revitalization proceeding, the continuing slide of AM stations is an ominous trend when viewed through the public interest lens that these organizations and broadcasters care about deeply and that we share.

In short, more harm is likely to result from failing to ease the AM radio limits than there is risk of harm in lifting them. Although not guaranteed, lifting the AM limits could create opportunities for greater viewpoint diversity through podcast-like formats and new digital applications and greater ownership diversity through bold initiatives into radio broadcasting by minority and women owners with access to major sources of capital.[50] iHeart hopes that this proceeding might afford an occasion for a constructive dialogue among commenters about the risk-reward calculus associated with raising the local ownership limits on AM stations.

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[47] iHeartMedia Comments at 25.

[48] Id. at 20-24.

[49] *See In the Matter of Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services,* Report and order, 33 FCC Rcd 7911, MB Docket No, 17-289 (2018) ("Incubator Order"), at ¶ 7.

[50] iHeartMedia Comments at 27.

IV. THE RECORD, TAKEN AS A WHOLE, DEMONSTRATES THAT THE NAB'S OVERLY AGGRESSIVE FM LOCAL RADIO OWNERSHIP PROPOSAL ATTEMPTS TO ADDRESS A COMPETITION PROBLEM BEYOND THE RELEVANT MARKET AND WOULD BE INEFFECTIVE IN DOING SO

The NAB's proposal to eliminate the local ownership limits on FM stations in all markets below the top 75 and permit common ownership of eight FM stations (up to ten with Incubator-related waivers) in the top 75 markets is designed to address a competition problem in a market consisting of broadcast radio, non-broadcast audio services such as satellite radio, and digital media platforms such as Facebook and Google. It makes no pretense of attempting to remedy competition problems within the relevant broadcast radio market. For the reasons discussed in detail in Section II above and in its Comments,[51] iHeart contends that the NAB's prescription is not a solution for the competitive disparity between AM and FM stations, the only relevant market, but actually worsens that competition problem. Moreover, even assuming for the sake of argument that it might be proper to consider the broader audio ecosystem, there is a disconnect between the NAB's solution that rests on cost efficiencies and economies of scale flowing from increasing the number of stations under common ownership in a market and what might be sufficient to enable broadcasters to meet the larger competitive challenge posed by digital media giants.

Many commenters share iHeart's view that the relevant market is broadcast radio and radio broadcasters simply do not compete in the same market as Internet-based platforms such as Facebook and Google. In its Comments, NABOB quotes at length from an August 2, 2018, article by Eric Rhoads, a recognized expert in the radio and network radio business, owner, operator and programmer for 30 years, and Chairman of Radio Ink:

[51] iHeartMedia Comments at 8-12.

> The FCC is made up of very smart people who, hopefully, understand that giving more radio stations is not going to solve the Google, Facebook, Instagram, Snapchat problem. I dare say that ship has sailed and that radio's ability to compete with the Internet isn't going to be impacted one ounce by having more stations per owner…. The only similarity between Google/Facebook and radio is that we are all in the advertising business. That's where it stops. Their approach to advertising is so utterly different that no one is going to spend more in radio because Company A or Company B has more stations.[52]

In its Comments, the Multicultural Media, Telecom and Internet Council (MMTC) quotes at length from Ronald Gordon and Ed Cherry's op-ed in the July 25, 2018, edition of Radio World:

> How would buying an additional four or five stations in a market allow a broadcaster to take on Google or Facebook? Individually, these big tech companies dwarf the annual revenues of the entire radio industry combined. How exactly would gutting the radio ownership rules drive advertising money away from tech and into radio industry's pocket? To the advertiser, what difference does it make who owns the station? Horizontal deregulation just shuffles the deck in favor of the big guys; it does nothing to improve radio's ability to compete with big tech."[53]

Other broadcasters supportive of the NAB proposal make the same point as the NAB that non-broadcast audio and digital platforms compete for audiences and advertising revenue in a fragmented marketplace.[54] They rely heavily on a study by Borrell Associates, "documenting the commanding position of digital advertising giants in today's local advertising marketplace."[55] Like the NAB, they conflate the advertising market with the audio services market and even

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[52] NABOB Comments at 11.

[53] MMTC Comments at 7-8.

[54] *See, e.g.*, Joint Comments of Connoisseur Media, LLC, Townsquare Media, Inc., Mid-West Family Broadcasting, Midwest Communications, Inc., Frandsen Family Stations, Cherry Creek Media, Neuhoff Communications, Eagle Communications, Inc., Patrick Communications, LLC, and Legend Communications, LLC at 16-20.

[55] Id. at 5 (the Borrell study is Attachment B to the Joint Comments of Connoisseur Media, et al.).

within the advertising market fail to differentiate among the different purposes and inherent capabilities of broadcast radio advertising and digital media advertising. As described in Section II above, broadcast radio focuses on the top of the advertising funnel, reflecting its strengths in reach and branding. In essence, this strength of broadcast radio reflects the fundamental nature of the medium; it distributes content on a one-to-many basis. Digital media, such as Facebook and Google, are sought by advertisers because they focus on the bottom end of the advertising funnel where the vast amount of individualized data they collect from users gives them direct and often instantaneous impact on a one-to-one basis with prospective purchasers. Moreover, digital platforms are the recipients of promotion from broadcast radio, further illustrating their complementary relationship. These fundamental differences between broadcast radio and digital media in advertising utility, discussed in detail in Section II above, are why broadcast radio and digital platforms are not substitutable even from an advertising perspective, much less from a holistic perspective.

As so much of the focus of the NAB and its broadcaster supporters is on competition for advertising revenue, one would expect that its justification for lifting the ownership caps would address specifically how its proposal would strengthen broadcasters' ability to recapture lost advertising revenue to digital competitors. Therefore, it is revealing that the BIA Study relied upon so heavily by the NAB to support its contention that radical reform of the ownership limits is necessary to compete for advertising revenue against Google and Facebook does not even attempt to quantify the purported impact of the changes it proposes on broadcast radio advertising revenue: "To err on the conservative side, however, we do not assume in our financial models below any increase in revenue per station resulting from the proposed combinations…"[56] Although the BIA Study characterizes its reluctance to assess the impact of increased common ownership as "conservative," it also may be understood as an implicit admission that there is no evidentiary basis for concluding that lifting the ownership limits will enhance the broadcast radio industry's ability to compete against digital platforms for advertising revenue.

In fact, power ratio studies performed by iHeart provide further strong evidence that more stations in a cluster does not increase a radio broadcaster's ability to attract additional advertising revenue in that market. Power ratios are an accepted industry measure of how a radio station is converting its ratings into advertising revenue. The power ratio is calculated by dividing a station's share of the total ad revenue in a market by the station's overall audience share. The higher the power ratio, the better the station is performing against expectations based upon audience share. For example, a power ratio of 1.0 would indicate that a station is performing consistent with expectations, whereas a station with a power ratio of 0.75 would be underperforming.

iHeart examined stations it licenses in twenty-nine markets where common ownership of five FM stations is allowed under current law, compared to twenty-five markets where only four FM stations under common ownership is allowed. In the 29 markets where iHeart licenses five FM stations, the average power ratio decline between the top performing FM station and the least performing FM station was approximately 57 percent. However, that same measurement in markets where iHeart owns only four FM stations yielded a decline of only 42 percent. Market-wide, the results suggest a better average power ratio performance where iHeart licenses four stations as opposed to five. In fact, the markets in which iHeart licenses five FM stations

[56] BIA Study at 27.

exhibited a 0.15 comparative power ratio dilution compared to those markets where only four FM stations are licensed.

This power ratio study is compelling evidence that adding a sixth, seventh or eighth FM station to a cluster in a top 75 market, as NAB proposes, will do little to nothing to enable radio broadcasters to compete more effectively for advertising dollars. This confirms the long-held view that station rank within a market and pricing are the dominant factors in attracting local advertising dollars,[57] and demonstrates the disconnect between the remedy advocated by the NAB and the competition problem, albeit not in the relevant market, that it seeks to ameliorate.

Having failed to link its proposed remedy directly to enhanced ability to attract advertising dollars, the NAB falls back on the contention that allowing more consolidation will create cost efficiencies and economies of scale that will free up more resources to compete with non-broadcast media and digital platforms. Yet, even here the BIA Study upon which the NAB relies suffers from obvious inadequacies. For example, it fails to consider the costs necessarily incurred in the acquisition of new stations and their integration into existing operations. Based on its extensive experience, iHeart is very familiar with such expenses, including legal fees, due diligence, and financing. Such costs also could include new construction or expansion of facilities, additional management personnel, and relocation and moving expenses. Such omissions from the net impact of consolidation are equivalent to a balance sheet showing only assets and no liabilities. They overstate the net benefits of the efficiencies and economies of scale that would flow from increasing the limits on FM stations or eliminating them altogether.

[57] *See, generally*, iHeartMedia Comments at 11.

The BIA Study examines the extent to which AM stations are at a significant, indeed, distressing competitive disadvantage relative to FM stations.[58] Its conclusions mirror those reached by iHeart. The BIA Study also recognizes that FM stations constrained by the current local radio ownership rules are far more numerous than AM stations and therefore the effect of eliminating or significantly relaxing those rules likely will be disproportionately felt in the FM band.[59] However, the BIA Study fails to analyze the differential ramifications of that outcome. Had it done so, it should have concluded, as has iHeart and other commenters, most notably Salem Media Group and Crawford Broadcasting Company, that the NAB's proposal regarding FM stations would lead to a further weakening of the AM band and the possibility of mass migration from AM to FM.

V. ADOPTION OF THE OVERLY AGGRESSIVE NAB PROPOSAL FOR FM STATIONS WOULD HARM COMPETITION IN THE RELEVANT BROADCAST RADIO MARKET AND WOULD NOT BE IN THE PUBLIC INTEREST

Many commenters express profound concern about the negative effect of adoption of the NAB proposal on the public interest.[60] A subset of these commenters join iHeart in focusing on the harm to AM radio stations[61] and the consequent harm to competition in the broadcast radio market, localism and diversity were the NAB proposal on FM station ownership reform accepted by the Commission.

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[58] BIA Study at 15-18.

[59] Id. at 19-20.

[60] *See, e.g.,* Free Press Comments at 11-13; NABOB Comments at 1; and Urban One Comments at 10-11 (describing the NAB proposal as a "non-starter").

[61] *See* iHeartMedia Comments at 29-36.

Salem Media Group, the nation's largest religious broadcast radio group, opposes any deregulation of local radio ownership limits. Its rationale focuses squarely on the likely harmful impact on AM stations:

> Salem believes that a devaluation of the AM Band could result if the Commission were to deregulate subcap limits. This is because the possible resulting migration of leading radio brands to the FM Band could accelerate a departure of the AM audience. Moreover, because the AM signal is far more amenable to wide area coverage, a policy decision that encourages station owners to consolidate their holdings in the FM Band could leave many listeners disenfranchised, potentially eradicate certain formats, and increase risk in times of crisis.[62]

Salem's Comments delve into multiple major markets where sharp shifts in audience listening away from leading AM stations to sister FM stations have occurred. Salem describes the implications:

> If the AM Band continues to be a 'less traveled' destination for listeners, diminishment would certainly result for popular AM brands. Should this occur, the AM band, instead of being a treasury of quality news and religious talk, sports and ethnic programming, will lose its audience appeal. The final result could be an asset devaluation of companies with sizeable AM radio station ownership.[63]

Crawford Broadcasting Company articulates the same deep concern about the ramifications of removal of the FM subcaps on AM stations. Crawford observes that,

> [I]t is only the existing subcaps holding some licensees back from acquiring many more FM signals. We have no doubt that if the subcaps are removed, existing independently-owned FM stations will in short order be sold to larger groups that will move lucrative talk formats from existing AM outlets to those FM stations.[64]

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[62] Salem Media Group Comments at 4.

[63] Id. at 6.

[64] Crawford Broadcasting Company Comments at 2.

Crawford then describes the foreseeable, indeed, probable consequences:

> The result will be much to the detriment of AM Radio. With a drop in demand and an increase in supply, the value of AM stations will significantly drop, in many cases to less than the value of the land on which their antenna sites are built. That will in turn lead to stations going dark. In short, we believe that removal or easing of FM subcaps will do far more harm to AM Radio than all the good the Commission has so far achieved in its AM Revitalization efforts. This will be a tremendous loss, one that could well start the short countdown to the end of AM Radio as a viable medium.[65]

In Reply Comments, Crawford reiterates these concerns, explicitly agreeing with iHeart about the risk of harm to AM radio that likely would result from adoption of the NAB proposal regarding ownership limits on FM stations.[66]

The MMTC also embraced the views of iHeart regarding the potentially devastating impact that adoption of the NAB's proposal regarding FM ownership could have on AM stations. Quoting from the writings of African American broadcaster, Glenn Cherry, and Latino broadcaster, Ronald Gordon, the MMTC explained that greater FM common ownership would eviscerate "AM station asset value and marketability, and even repair-ability."[67]

In sum, there is abundant support in the record of this proceeding for the position expressed at length in iHeart's Comments that the risk of harm to AM radio and all of its public interest benefits, specifically advancing localism, diversity and national security, militate against adoption of the NAB's overly aggressive proposal regarding FM ownership limits.

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[65] Id.

[66] Crawford Broadcasting Company Reply Comments at 1-2.

[67] MMTC Comments at 8. The MMTC also concurred with iHeart that adoption of the NAB proposal regarding FM stations would "spell the end of the Incubator program before it has a chance to succeed." Id. at 9.

VI. CONCLUSION

iHeartMedia believes that the record in this proceeding, taken as a whole, warrants targeted reform of the local radio ownership rules. The Commission can achieve that result by eliminating the limits on common ownership of AM stations or, at a minimum, removing the AM subcaps. Doing so has the potential to ease the concerning competitive imbalance between the AM and FM band in the relevant broadcast radio market and, in the process, advance the interests of localism and diversity. At the same time, mindful of the imperative of doing no harm, the Commission can ensure that reform of these rules will be in the public interest by rejecting the exceedingly aggressive NAB proposal regarding limits on FM station ownership. iHeart looks forward to working with the Commission and all stakeholders to achieve modernization of the local radio ownership rules that reflect relevant marketplace realities without diminishing the important role that broadcast radio plays in the everyday lives of Americans.

Respectfully submitted,

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