**Before the**

**Federal Communications Commission**

**Washington, D.C. 20554**

In the matter of )

)

2018 Quadrennial Regulatory Review – ) MB Docket No. 18-349

Review of the Commission’s Broadcast )

Ownership Rules and Other Rules Adopted )

Pursuant to Section 202 of the )

Telecommunications Act of 1996 )

REPLY COMMENT OF THE

OPEN MARKETS INSTITUTE

Open Markets Institute

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May 29, 2019

**Introduction & Summary**

The Open Markets Institute works to address threats to our democracy, individual liberties, and our national security from today’s unprecedented levels of corporate concentration and monopoly power.

Launched as an independent organization in September 2017, Open Markets uses research and journalism to expose the dangers of monopolization, identifies changes in policy and law to address them, and educates policymakers, academics, movement groups, and other influential stakeholders to re-establish the competitive markets that long formed the bedrock of American democracy. We focus especially closely on the new and growing threats that online “platform monopolies” pose to the free exchange of news, information, and ideas. Our team possesses deep expertise in how monopoly power distorts outcomes in major markets, ranging from the technology sector to agriculture to pharmaceuticals to transportation.

Open Markets’ work across sectors gives us a unique frame of reference to evaluate issues of corporate concentration in radio and television. From IV Solution to smartphone operating systems and cell phone providers, fewer and fewer corporations control greater shares of the country’s markets.[[1]](#footnote-1) This hurts Americans in the goods that they buy, the services they receive, and the ability that they possess to participate in democratic life.

As the regulatory agency charged with oversight over radio, television, wire, satellite, and cable, the FCC has an essential role in ensuring a competitive marketplace that facilitates a diversity of opinions and viewpoints and ensures that all have access to the benefits of communications technologies.

In this proceeding, the Commission considers radically weakening local media ownership rules for television and radio and eliminating the dual network rule prohibiting a merger between or among the Big Four broadcast networks. The Commission should reject these proposals and leave the rules intact.

**Consolidation of Ownership Limits Consumer Choice**

Consolidation in ownership has limited communities’ access to diverse news viewpoints and entertainment choices.

The National Association of Broadcasters (NAB) argues that common ownership leads to “greater programming diversity.”[[2]](#footnote-2) NAB’s argument rests largely on studies that wrongly presume that format diversity is a meaningful proxy for viewpoint diversity or program diversity in entertainment programming.

An illustrative analogy is the market for soft drinks. Though there are many brands of soda in a grocery store aisle, Coca-Cola and Pepsi control approximately 70 percent of the soft-drink market. Alongside the Dr. Pepper Snapple Group, the top three companies in the soft drink market control 86 percent of the market.[[3]](#footnote-3) Simply put, consolidating ownership over television and radio media would only diminish the flow of information from diverse sources and hand it to a few powerful private actors.

**Deregulation would especially hurt smaller and rural communities**

NAB’s proposal would eliminate the local radio ownership rule entirely in all but the top seventy-five markets. This would make it legal for a single company to own every single commercial radio station in many communities, depriving listeners of viewpoint diversity, and creating a new potentially insurmountable barrier of entry for would-be broadcast competitors. Along with the removal of the main studio requirement, that single company might not even have a meaningful local presence in the actual community and would face no competitive pressure from other local stations that might drive more local content.

Outside monopolies could therefore control local stations. As a result, this would give a small set of station group owners enormous power to determine and influence what viewpoints and news local citizens receive on their airwaves.[[4]](#footnote-4)

**Competition from Digital Services and Digital Advertising is a Different Issue from Local Ownership Rules**

NAB claims that its deregulatory proposals are necessary because of new competition from digital audio and video services, and because advertising revenue increasingly is directed to digital channels.[[5]](#footnote-5) That an increasing number of consumers may also use and enjoy digital audio and video services is oblique to the question of whether the local ownership rules provide crucial protections for the public interest, and whether they promote competitive broadcast markets, localism, and diversity. Sector specific regulations exist because of concerns specific to the sector. Taxis, trains, and airlines all operate in the transportation sector, but each of these modes of transit is subject to different rules and often do not compete against one another in the same markets. Due to limited intermodal competition, Congress and policymakers have recognized the importance of maintaining decentralized market structures and promoting fair business practices within each mode of transportation.

In many settings, Open Markets Institute has expressed its deep concern about the troubling power of a handful of large technology firms, including Google and Facebook, and about the failure of federal regulators to exercise appropriate authority and oversight.[[6]](#footnote-6) But these concerns are not an excuse for weakening local media ownership rules. Indeed, as the Open Markets Institute has written, strong rules limiting the concentration of power over news and information has been a historical strength of America’s anti-monopoly approach to communications policy. In the aftermath of World War I, unlike European countries, which sought “to centralize communications and news under the control of the government[,] … Americans took a directly opposite path, working to ensure that the new wireless networks would be as decentralized and democratic as possible, composed of thousands of local stations that would be locally owned, locally directed, and locally funded…”[[7]](#footnote-7)

If the National Association of Broadcasters were truly concerned about the conduct of digital platforms, such as Facebook and Google, or the lack of robust public interest requirements for digital audio and video services, they have had opportunities to encourage Federal Trade Commission action against digital platform companies to stop their anticompetitive acquisitions and unfair business practices. For example, NAB could have filed comments outlining these concerns for the FTC’s recent series of hearings reviewing its approach to Competition Policy and Consumer Protection, during which issues of platform dominance in the advertising technology marketplace were discussed. They have failed to do so.

Arguments that use competition from digital also ignores the problems of communities that lack affordable internet access, itself, in part, a product of consolidation. In many communities, citizens don’t have competitive options for internet access. As numerous filers have mentioned in their work, these problems are felt especially deeply by communities of color and low-income communities.[[8]](#footnote-8)

The appropriate way to address problems of monopoly power and corporate concentration in one sector is not to allow additional concentration in other sectors and pave the way for more monopolies.

Nor should the Federal Communications Commission compound the concentration crisis across the country by eliminating the important public interest protections in the Local Radio and Local Television Ownership Rules or by encouraging a merger between or among any of the Big Four networks.

Instead, the Commission should abandon any further efforts to weaken existing public interest protections, invest the necessary resources to comprehensively assess the impacts of recent rule changes on minority ownership, playlist diversity, and availability of local news and entertainment content, and reassert its role as a defender of the public interest against concentrated corporate power.

Respectfully Submitted,

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1. Open Markets Institute, “America’s Concentration Crisis,” <https://concentrationcrisis.openmarketsinstitute.org/>. [↑](#footnote-ref-1)
2. See Rick Kaplan, Comment of the National Association of Broadcasters on 2018 Quadrennial Regulatory Review – Nov 20, 2018 (April 29, 2019), https://ecfsapi.fcc.gov/file/10429077016730/2018%20NAB%20Quadrennial%20Comments%20and%20Attachments.pdf, at 38-39. [↑](#footnote-ref-2)
3. Open Markets Institute, “Consumer Choice & Monopoly,” <https://openmarketsinstitute.org/explainer/consumer-choice-and-monopoly/>. [↑](#footnote-ref-3)
4. The danger of this concentration in control over what citizens see on their local news is exacerbated by the findings that 76 percent of Americans tend to have “a great deal” or “a fair amount” of trust in their local television news programming (Indira A.R. Lakshmanan, “Finally some good news: Trust in news is up, especially for local media,” Poynter, August 22, 2018, <https://www.poynter.org/ethics-trust/2018/finally-some-good-news-trust-in-news-is-up-especially-for-local-media/>.). [↑](#footnote-ref-4)
5. See Comment of NAB, *supra* note 2, e.g. at 7-9, 22. [↑](#footnote-ref-5)
6. See, e.g., Matt Stoller, “Democrats Need to Tame the Facebook Monster They Helped Create,” *Politico*, May 18, 2019, <https://www.politico.com/magazine/story/2019/05/18/democrats-facebook-stoller-226930>; Barry Lynn, “Google and Facebook are Strangling the Free Press to Death. Democracy is the Loser,” *The Guardian*, July 26, 2018, <https://www.theguardian.com/commentisfree/2018/jul/26/google-and-facebook-are-strangling-the-free-press-to-death-democracy-is-the-loser>. [↑](#footnote-ref-6)
7. Open Markets Institute, “America’s Free Press and Monopoly: The Historical Role of Competition Policy in Protecting Independent Journalism in America,” Discussion Paper for “Breaking the News: Free Speech & Democracy in the Age of Platform Monopoly,” June 12, 2018, 6, <https://openmarketsinstitute.org/academic-articles-and-papers/americas-free-press-monopoly/>. [↑](#footnote-ref-7)
8. Free Press, “Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption,” December 2016, <https://www.freepress.net/sites/default/files/legacy-policy/digital_denied_free_press_report_december_2016.pdf> (finding that low-income households and non-white households are less likely to have internet access). [↑](#footnote-ref-8)