

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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In the Matter of)	
)	
Elimination of Main Studio Rule)	MB Docket No. 17-106
)	

COMMENTS OF FREE PRESS

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EXECUTIVE SUMMARY

The Commission's proposal to eliminate the main studio rule poses a serious risk to local communities across the country. In particular, the tentative policies laid out in the Notice of Proposed Rulemaking (the “NPRM”) would disproportionately harm marginalized groups including people of color, low-income communities, and rural communities, members of which depend on local broadcast news for critical community information and emergency alerts. At a time when broadcast conglomerates like Sinclair are gobbling up more stations, the Commission’s proposal would allow these conglomerates to move even more resources away from struggling communities and further centralize broadcasting facilities and staff in wealthier metropolitan areas. Communities need the main studio rule to help preserve broadcast media’s local roots and to hold local stations accountable when they fail to serve the public interest. Taking away these protections would also leave many communities without sufficient backup systems for emergency communications, making them more vulnerable to tragic natural disasters like the 2002 Minot, North Dakota, train derailment and Hurricane Katrina. Contrary to the NPRM’s suggestions, technological development is not a reasonable replacement for physical main studios, and competitive market conditions alone will not protect communities if the main studio rule is eliminated. The Commission must abandon its dangerous and poorly-supported proposal.

DISCUSSION

Free Press respectfully submits these comments in response to the NPRM seeking comment on the Commission's proposal to eliminate the main studio rule that requires full-power television and radio broadcasters to maintain a staffed physical studio with program origination capacity in or near their communities of license.¹

Previously, the Commission has held that the main studio rule is critical to the equitable provision of broadcast service, an obligation established in the Communications Act of 1934.² In particular the Commission has stated that maintaining an accessible main studio promotes broadcast localism by encouraging station employees to participate in local communities and letting residents communicate with their broadcasters.³ This participation and communication was considered essential to ensuring that broadcast stations met their obligations to provide locally responsive coverage in the public interest.⁴

Contrary to the tentative conclusions laid out in the NPRM, the main studio rule is not outdated, because neither are these values of localism and community-engagement. The rule is still necessary to meet the obligations in Section 307(b) of the Communications Act. Broadcast service is not just about receiving a signal, but also about being able to produce and share local content over that signal. The inequitable distribution of main studios with production capacity must inevitably result in the inequitable distribution of broadcast service.

Technological developments, though an important avenue for improved station-community interaction, are neither good enough nor universally affordable enough to supplant a physical presence. Any attempt to replace the traditional functions of a main studio with new digital tools will leave the disconnected behind, primarily disadvantaging low-income people and communities of color.

¹ *In the Matter of Promoting the Availability of Diverse and Independent Sources of Video Programming*, MB Docket No. 17-106, Notice of Proposed Rulemaking, FCC 17-59 (rel. May 18, 2017) ("NPRM").

² *See Promulgation of Rules and Regulations Concerning the Origination Point of Programs of Standard and FM Broadcast Stations*, Report and Order, 43 FCC 570 (1950) ("1950 Main Studio R&O").

³ *Applications of the Tribune Company, Tampa, Florida, et al.*, 19 FCC 100, 148 (1954).

⁴ *In the Matter of Broadcast Localism*, MB Docket No. 04-233, Report on Broadcast Localism and Notice of Proposed Rulemaking, FCC 07-218 ¶ 2 (2008) ("2008 Broadcast Localism Report").

Potential cost-savings from making such moves and causing such harms are also an inadequate justification for eliminating the main studio rule. Instead of bolstering financially-strapped small and independent stations, the Commission’s proposal would primarily benefit larger broadcast conglomerates. Many big broadcasters have seen a major bump in revenue as a result of rising retransmission consent fees and political advertising dollars, but have largely chosen to invest that revenue into merger deals and buyouts instead of local programming.⁵ Competitive market conditions for in-depth local news coverage are all but nonexistent, and show no signs of pushing these broadcasters to improve local reporting.

As a result, marginalized communities have suffered as conglomerates take over the airwaves and locally produced content has declined both in quantity and quality. Allowing further consolidation of facilities in the name of unsupported “cost-savings” would disproportionately harm rural folks, low-income people and communities of color as broadcasters continue to concentrate resources in wealthier metropolitan areas. In emergency situations, the lack of a main studio poses a unique threat by rendering the emergency communications infrastructure more fragile and prone to failure.

I. Background

A. History of the main studio rule

The main studio rule is rooted in Section 307(b) of the Communications Act, which requires the Commission to “make such distribution of licenses, frequencies, hours of operation, and of power among the several States and communities as to provide for a fair, efficient, and equitable distribution of radio service to each of the same.”⁶ To carry out this mandate, the Commission established a distribution method whereby every broadcast station is assigned to a community of license with a primary obligation

⁵ *State of the News Media*, Mar. 26, 2014, <http://assets.pewresearch.org/wp-content/uploads/sites/13/2017/05/30142556/state-of-the-news-media-report-2014-final.pdf> (“2014 *State of the News Media*”).

⁶ 47 U.S.C. § 307(b).

to serve that community.⁷ Specifically, the Commission required every broadcast station to maintain its main studio in a location physically accessible to its community of license, and also required it to air locally responsive programming.⁸ In a series of decisions in the late 1980s and 1990s, the Commission loosened its main studio rule to allow broadcasters more flexibility in determining the location of their main studio.⁹ Today, the main studio rule requires AM, FM and television broadcast stations to maintain a fully-staffed studio with program origination capacity within or near their community of license.¹⁰

B. Value of local news

Despite technological developments and market upheaval in the news and media industry, local broadcast remains a critical information source for communities across the nation. In 2014, television still was the most frequently utilized medium for following the news, with 87 percent of Americans reporting that they use television to access news and information.¹¹ Perhaps more importantly, local television news watchers reported a high degree of trust in local television more than users of any other news source.¹² Approximately 56 percent of Americans also reported using radio broadcast for news.¹³ As recently as 2016, a 57 percent majority of Americans reported that they *often* get news and information from television-based newscasts, with the largest share, 46 percent, relying on local broadcast television.¹⁴

⁷ *Amendment of Sections 73.1125 and 73.1130 of the Commission's Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Report and Order, 2 FCC Rcd 3215 (1987) (“1987 Main Studio R&O”).

⁸ *Review of the Commission's Rules Regarding the Main Studio and Local Public Inspection Files of Broadcast Television and Radio Stations*, Report & Order, 13 FCC Rcd 15691, 15692 ¶ 2 (1998) (“1998 Review of the Commission's Rules R&O”); *2008 Broadcast Localism Report* ¶ 41.

⁹ 1987 Main Studio R&O at 3217-18; 1998 Review of the Commission's Rules R&O at 15693.

¹⁰ 47 C.F.R. § 73.1125(a)-(d).

¹¹ Media Insight Project, *The Personal News Cycle: How Americans choose to get their news*, Mar. 17, 2014, <https://www.americanpressinstitute.org/publications/reports/survey-research/how-americans-get-news/> (“Personal News Cycle”).

¹² *Id.*

¹³ *Id.*

¹⁴ Amy Mitchell, Jeffrey Gottfried, Michael Barthel and Elisa Shearer, *The Modern News Consumer: News attitudes and practices in the digital era* (Pew Research Center Report), July 7, 2016, <http://www.journalism.org/2016/07/07/pathways-to-news/> (“Modern News Consumer”).

In particular, traditionally marginalized groups including people of color and members of low-income households rely heavily on local broadcast news. A 2012 survey found that while only 17.8 percent of US households relied solely on broadcast television, 28 percent of Asian households, 23 percent of African-American households and 26 percent of Latino households were broadcast-only. Among Spanish-speaking homes, broadcast-only viewership rose to 33 percent. Overall, people of color then made up 44% of all broadcast-only homes in the US while making up only 37 percent of the population.¹⁵

Among families making less than \$30,000 a year, 26 percent of households report relying solely on broadcast television, compared to only 11 percent of households making \$75,000 or more annually.¹⁶ Evidence of these racial and income disparities in broadcast television reliance persists today.¹⁷

We see this national pattern replicated within local communities too. In Denver, Colorado, 60% of Hispanics reported closely following local news compared with only 43% of whites. In Macon, Georgia, 70% of blacks followed local news compared with 43% of whites.¹⁸ For members of these communities of color, specifically, and for the US population generally, local broadcast news continues to be an immensely valuable source of community information.

C. Broadcast consolidation

While public need and demand for broadcast news remains high, the industry has shifted dramatically as a result of massive consolidation. In the first eight months of 2013, 211 broadcast stations

¹⁵ National Association of Broadcasters, *Over-the-air TV Viewership Soars to 54 Million Americans*, June 18, 2012, <http://www.nab.org/documents/newsroom/pressRelease.asp?id=2761> (“NAB Press Release”); US Census Bureau, *Most Children Younger Than Age 1 are Minorities*, *Census Bureau Reports*, May 17, 2012, <https://www.census.gov/newsroom/releases/archives/population/cb12-90.html>.

¹⁶ NAB Press Release.

¹⁷ GfK, *One-Quarter of US Households Live Without Cable, Satellite TV Reception*, July 13, 2016, press release, <http://www.gfk.com/en-us/insights/press-release/one-quarter-of-us-households-live-without-cable-satellite-tv-reception-new-gfk-study/>

¹⁸ Pew Research Center, *Local News in a Digital Age*, Mar. 5, 2015, <http://www.journalism.org/2015/03/05/local-news-in-a-digital-age/> (“*Local News in a Digital Age*”).

changed hands, the highest level in more than a decade.¹⁹ Sinclair Broadcast Group led this wave of consolidation with a series of deals that nearly tripled the number of stations it owned and doubled its national audience within two years.²⁰ Far from slowing down, broadcasters are only expanding their efforts to consolidate: Already the largest owner of local television stations thanks to these earlier shopping sprees, Sinclair proposed earlier this year to purchase Tribune Media, which would bump its national audience reach up to an unprecedented 70 percent.²¹

Covert consolidation has exploded under the Commission's less-than-watchful eye. "Outsourcing agreements" such as joint service agreements ("JSAs") and shared service agreements ("SSAs") have allowed broadcasters to skirt media ownership limitations using shell companies that typically own stations in name only.²² For example Gannett announced its acquisition of Belo TV in 2013, almost doubling Gannett's broadcast portfolio. Gannett used SSAs with its newly created shell company Sander Media to sidestep the FCC's newspaper-broadcast cross-ownership rule and its prohibition on owning two top-four stations in a single market.²³ As of early 2014, JSAs existed in almost half of local TV markets nationwide.²⁴

Waves of consolidation have impacted local broadcast programming. In 2015, nearly one-quarter of local television stations did not produce any of their own local news, but relied exclusively on other stations and network packages.²⁵ Considering that locally produced newscasts typically offer a greater

¹⁹ S. Derek Turner, *Cease to Resist: How the FCC's Failure to Enforce Its Rules Created a New Wave of Media Consolidation*, at 11. (Free Press Report), Oct. 2013,

https://www.freepress.net/sites/default/files/resources/Cease_to_Resist_Oct._2013_0.pdf ("Cease to Resist").

²⁰ *Id* at 3.

²¹ Sydney Ember and Michael J. de la Merced, "Sinclair Unveils Tribune Deal, Raising Worries It Will Be Too Powerful," *New York Times*, May 8, 2017,

<https://www.nytimes.com/2017/05/08/business/media/sinclair-tribune-media-sale.html?smprod=nytcare-iphone&smid=nytcare-iphone-share>.

²² *Cease to Resist* at 4; *2014 State of the News Media* at 31.

²³ *Cease to Resist* at 5.

²⁴ *2014 State of the News Media* at 7.

²⁵ *Id* at 17.

number of perspectives than outsourced local news, especially perspectives from local sources, this shift is significant.²⁶

II. The Commission Offers Inadequate Reasoning to Justify Eliminating the Main Studio Rule

To faithfully uphold Section 307(b) of the Communications Act, the Commission must consider not only whether the main studio rule is necessary to ensure equitable distribution of broadcast reception service, but also transmission service. Eliminating the main studio rule would result in the removal of broadcast production and transmission facilities from a particular subset of communities, thus leading to unfair and inequitable distribution of broadcast service in violation of Section 307(b).

The Commission initially established the main studio rule to ensure that broadcast stations would be accessible to communities and would “meet their obligations to serve their communities of license as outlets for local self-expression.”²⁷ This drive for localism stemmed from Section 307(b) of the Communications Act, which promised “fair, efficient, and equitable distribution of radio service” to communities across the nation.²⁸

The Commission has long recognized that this “service” refers to two fundamental components of broadcasting: reception and transmission. As the Commission expressed in a 1950 Report & Order updating the main studio rule in response to failures of local programming:

"We have consistently held that the term ‘radio service’ as used in section 307(b) comprehends both transmission and reception service. Transmission service is the opportunity which a radio station provides for the development and expression of local interests, ideas, and talents and for the production of radio programs of special interest to a particular community. Reception service, on the other hand, is merely the presence in any area of a listenable radio signal. It is the location of the studio rather than the transmitter which is of particular significance in connection with transmission service. A station often provides service to areas at a considerable distance from its

²⁶ Lee Hood, “Taking the ‘Local’ out of Local News: Implications for an Informed Public,” 3 *Journalism and Mass Communication* 549, 558 (2013) (“Taking the ‘Local’ out of Local News”).

²⁷ *In re: Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, MB Docket No. 86-406, Notice of Proposed Rulemaking, FCC 86-454 (1986) (“1986 Main Studio NPRM”).

²⁸ 47 U.S.C. § 307(b).

transmitter, but a station cannot serve as a medium for local self expression unless it provides a reasonably accessible studio for the origin of local programs.”²⁹

In 1954 the Commission upheld this decision, noting that the availability of a local television facility is equally as important to the provision of service as the mere availability of a broadcast signal.³⁰

In 2003 the Commission reaffirmed its belief that “every community of appreciable size has a presumptive need for its own transmission service,”³¹ a sentiment echoed in a 2008 report on broadcast localism.³² The Supreme Court also stated earlier that “[f]airness to communities [in distributing radio service] is furthered by a recognition of local needs for a community radio mouthpiece.”³³

The Commission’s proposal to eliminate the main studio rule without addressing transmission capacity is arbitrary and capricious. Despite seismic industry shifts in technology, consolidation, and access, the immense importance of transmission capacity as a component of broadcast service has not changed. The Commission provides no explanation in the NPRM as to how this crucial element of broadcast service will be guaranteed if the main studio rule is eliminated and broadcasters are no longer required to maintain production-capable facilities within the communities they serve. The courts have held that “an agency rule will be arbitrary and capricious if the agency ... entirely fails to consider an important aspect of the problem,”³⁴ and by failing to address the transmission component of broadcast service the Commission has arbitrarily overlooked an essential aspect of the main studio rule built on several decades’ worth of agency precedent.

Moreover, the Commission has a statutory obligation to ensure that broadcast stations serve the public interest.³⁵ While the Commission has repeatedly loosened the main studio rule and expanded

²⁹ 1950 *Main Studio R&O*, 43 FCC at 571.

³⁰ *Applications of the Tribune Company, Tampa, Florida, et al.*, 19 FCC at 147.

³¹ *Pacific Broadcasting of Missouri LLC*, 18 FCC Red 2291, 2293 (2003) (quoting *Public Service Broadcasting of West Jordan, Inc.*, 97 F.C.C.2d 960, 962 (Rev. Bd. 1984)).

³² 2008 *Broadcast Localism Report* ¶ 5.

³³ *FCC v. Allentown Broadcasting Corp.*, 349 U.S. 358, 362 (1955).

³⁴ *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 32 (1983).

³⁵ 47 U.S.C. § 309(a).

exemptions for broadcasters, the core of the rule has remained fundamentally intact in an attempt to serve the public interest by promoting localism and community engagement. For example, in the 1986 rulemaking, the Commission proposed seriously modifying or eliminating the main station rule altogether, citing technological advances, cost-savings and the possibility of phone contact as reasons that the main studio rule was supposedly out of date -- much like the current NPRM.³⁶ After receiving public comments, however, the Commission decided to simply relax the existing location requirements and eliminate its rule requiring a minimum percentage of main studio program origination.³⁷ When petitioners complained that the main studio rule no longer served a valid function, the Commission rejected this reasoning and upheld the rule as critical to the public interest, stating that “the main studio is still expected to facilitate the key function of serving the needs and interests of the residents of the station’s community of license.”³⁸

Lacking empirical evidence and ignoring critical aspects of the issues at hand, the Commission has provided entirely insufficient reasoning for its decision to eliminate a rule it has repeatedly held to be fundamental to meeting its statutory obligations under Section 307(b) and Section 309(a) of the Communications Act.³⁹ This reasoning failure will expose communities to a myriad of harms, including diminished localism and increased emergency threat exposure (as discussed in more depth below).

III. Elimination of the Main Studio Rule Will Disproportionately Harm Low-Income Communities, Rural Communities, and Communities of Color

Eliminating main studio rule protections may allow big broadcasters to cut costs, but only at the expense of draining resources from underserved communities. Ignoring local communities’ information

³⁶ 1986 *Main Studio NPRM* at 537.

³⁷ 1987 *Main Studio R&O* at 3217-18.

³⁸ *In the Matter of Amendment of Sections 73.1125 and 73.1130 of the Commission’s Rules, the Main Studio and Program Origination Rules for Radio and Television Broadcast Stations*, Memorandum Opinion and Order, 3 FCC Rcd No. 17 (1988).

³⁹ 47 U.S.C. § 307(b); *Id.* § 309(a).

needs to improve the bottom line of broadcast conglomerates does not serve the public interest, and will actively and disproportionately harm rural and low-income households and communities of color.

The primary justification the Commission offers for its plan to eliminate the main studio rule is the potential cost-savings broadcasters are expected to reap after being released from their obligations to maintain a fully staffed local main studio with production capacity. Specifically, the NPRM suggests that by allowing stations to relocate facilities and relaxing staffing requirements, broadcasters will have more resources to spend on creating valuable programming and serving their communities -- a strange assumption when you consider that large broadcasters have been ramping up spending on mergers⁴⁰ while news programming salaries stagnate.⁴¹

However this logic ignores the obvious fact that eliminating the main studio rule would primarily benefit well-resourced media conglomerates. Erasing these crucial protections would allow broadcasters who own many stations to cut costs by consolidating their operations. Main studio facilities would not be relocated so much as they would disappear entirely, to be rolled into another studio potentially hundreds of miles away. Local staff would lose their jobs as broadcasters transition to one newsroom doing the job of two, or three, or four. And “local” reporters could be stationed at a great remove from events occurring in and around the community of license, perhaps skipping the trip or missing breaking news when it happens.

The Communications Act calls on the Commission to ensure that broadcasters serve the “public interest, convenience and necessity.”⁴² Rather than viewing this rule change exclusively from the perspective of broadcasters, the Commission must consider what these “cost-savings” will mean for communities: Fewer local businesses and fewer local jobs, along with less local content. As the broadcast

⁴⁰ Brian Stelter, “Political Ad Spending Spurs Local TV Mergers,” *New York Times*, Nov. 8, 2011, <http://www.nytimes.com/2011/11/09/business/media/political-ad-spending-helps-drive-a-consolidation-of-local-tv.html>

⁴¹ Bob Papper, *TV salaries fall, radio stagnant* (RTDNA/Hofstra University Annual Survey), July 1, 2013, http://www.rtdna.org/article/tv_salaries_fall_radio_stagnant

⁴² 47 U.S.C. § 309(a).

industry has consolidated, we've seen newsrooms full of local reporters lose their jobs as their owners shift towards jointly operated stations airing the same newscast across several channels.⁴³ In 2014, fully 86 percent of local television news stations did not employ a single statehouse reporter.⁴⁴ At a time when so many local journalists are struggling to find and keep their jobs, it is tremendously short-sighted to trumpet the savings broadcasters may accrue from laying off local staff.

Massive broadcast conglomerates don't need these cost-savings to provide quality local programming. Waves of consolidation have allowed these broadcasters to benefit from explosive growth in retransmission consent fees, political advertising dollars, and rising stock prices.⁴⁵ Media General reported a roughly six-fold increase in retransmission consent revenue between 2008 and 2012, while the 2012 presidential election marked a new high in political advertising with broadcasters raking in more than \$3 billion in revenue.⁴⁶ Retransmission consent fees in particular promise room for future growth, estimated to reach \$11.6 billion by 2022.⁴⁷

This is due in no small part to continuing merger efforts. Earlier this year, Sinclair announced a nearly \$4 billion deal to buy Tribune Media almost immediately after the Commission decided to rollback important media ownership limitations.⁴⁸ Broadcasters like Sinclair have experienced massive revenue and profit growth as a result of consolidation, and continue to see merger deals as lucrative opportunities. These conglomerates are sufficiently resourced to provide quality local programming should they choose to, but instead are directing these revenues to buyouts of competitors. Big broadcasters cannot plausibly

⁴³ *Cease to Resist* at 35.

⁴⁴ Pew Research Center, *America's Shifting Statehouse Press: Can New Players Compensate for Lost Legacy Reporters?*, July 10, 2014, http://www.journalism.org/files/2014/07/Americas-Shifting-Statehouse-Press_full_report.pdf

⁴⁵ *2014 State of the News Media* at 8-11.

⁴⁶ *Id.* at 9.

⁴⁷ Michael Balderston, "Report: U.S. Transmission Fees to Hit \$7.7B in 2016," *TVTechnology*, June 29, 2016, <http://www.tvtechnology.com/news/0002/report-us-retransmission-fees-to-hit-77b-in-2016/278929>

⁴⁸ "Pro-Trump Sinclair Network Set to Become Nation's Biggest Broadcaster as FCC Weakens Ownership Rules," *Democracy Now*, May 9, 2017, https://www.democracynow.org/2017/5/9/pro_trump_network_sinclair_set_to

claim that they need the additional cost-savings of shuttering main studios across the nation in order to survive or fulfill their public interest obligation to serve their communities.

In direct contrast, the small and under-resourced broadcast stations that would most greatly benefit from such savings are also the least likely to earn them. Independent broadcast stations and singletons generally can't and won't benefit from relocating their operations farther away from the communities they serve and thus increasing travel costs for reporting on community events. Nor are small stations outside of large ownership groups as likely to outsource their news operations while maintaining some semblance of producing the "valuable" local programming about which the NPRM speculates. Any small stations with exceptional circumstances already have the opportunity to apply for an exemption from the main studio rule by demonstrating that such an exemption would be in the public interest.⁴⁹

While independent stations would continue to struggle along without significant benefit from the elimination of the main studio rule, big broadcasters would likely continue historical patterns of transitioning resources away from low-income communities, rural areas, and communities of color, and redistributing those resources to white, wealthy, urban areas. Section 307(b) of the Communications Act, which provided the impetus for creating the main studio rule, was initially conceived as a response to broadcasters disproportionately concentrating stations around major metropolitan areas.⁵⁰ Weakening broadcast media concentration rules has resulted in these patterns continuing into the modern era, with greater proportions of broadcast jobs centralizing in cities like Los Angeles, New York, and Washington, DC.⁵¹

Dwindling local news coverage severely impacts vulnerable communities. As discussed above, people of color and low-income folks rely more heavily on broadcast news than the broader population.

⁴⁹ 47 C.F.R. § 73.1125(b)(2).

⁵⁰ 67 Cong. Rec. 5479 (1926) (Congressman Wallace White, Jr. stated that there existed "an unjustifiable grouping of stations within limited areas. There are within 50 miles of Chicago, 40 stations; of New York, 38; of Philadelphia, 22; of San Francisco, 22.")

⁵¹ Justin Fox, "The Geographic Concentration of the Media," *Bloomberg View*, Sept. 8, 2016, <https://www.bloomberg.com/view/articles/2016-09-08/the-geographic-concentration-of-the-media>

Consolidation and redistribution of programming resources away from marginalized communities will likely result in diminished local coverage, both in terms of quantity⁵² and quality.⁵³ Studies have shown that when communities receive less coverage of their political representatives they are less informed, less likely to engage in political activities, and -- perhaps most importantly -- their representatives are less likely to channel funding and constituent services to the community.⁵⁴ Lack of adequate local news drives down civic engagement and participation.⁵⁵

IV. Main Studio Staffing Requirements Are Necessary to Ensure All Communities Receive Timely Access to Emergency Information

Television and radio broadcasters play a critical role as “first informers” in an emergency, distributing potentially life-saving information to communities in trouble. As the National Association of Broadcasters wrote in 2011, “Despite great advances in communications ... local radio and television stations are, and will continue to be for the foreseeable future, irreplaceable as a means to inform the public.”⁵⁶

Eliminating the main studio rule would substantially inhibit broadcasters’ abilities to distribute timely emergency information, leaving some communities potentially stranded without sufficient information from what NAB deems an “irreplaceable” source during a crisis. The Commission’s suggestion of a fully-staffed phone line for community members to share emergency information with broadcast stations is helpful, but nowhere near sufficient to replace the value of a physical presence in emergency situations. Stations that maintain a local main studio don’t have to wait for a phone call to

⁵² 2014 *State of the News Media*.

⁵³ “Taking the ‘Local’ out of Local News” at 550-51.

⁵⁴ James M. Snyder, Jr. and David Stromberg, *Press Coverage and Political Accountability*, NBER Working Paper Series, Mar. 2008, <http://www.nber.org/papers/w13878.pdf>.

⁵⁵ Danny Hayes and Jennifer L. Lawless, “As Local News Goes, So Goes Citizen Engagement: Media, Knowledge, and Participation in US House Elections,” 77 *Journal of Politics* 447 (2015).

⁵⁶ National Association of Broadcasters Comments, PS Docket No. 11-60, PS Docket No. 10-92, EB Docket No. 06-119, at 2 (filed July 7, 2011).

begin sharing critical information regarding an emergency; they experience the crisis firsthand along with the community.

The 2002 train derailment in Minot, North Dakota, presents an instructive case study. Clear Channel (now iHeart Radio) owned six of the seven total radio stations in Minot and its station, KCJB-AM, was the designated local emergency broadcast radio station.⁵⁷ The Emergency Alert System (“EAS”) experienced technical failures and local authorities attempted to contact the station, but no one answered.⁵⁸ A local staff member from noncommercial station KHRT called 911 asking for information to broadcast, but was told to tune in to the official emergency broadcast on KCJB, which was still not operating.⁵⁹ All of Clear Channel’s stations continued broadcasting pre-packaged content until police managed to contact a member of KCJB staff, who then drove to the station to make an emergency announcement over the air.⁶⁰ The local television station was off air at the time of the spill, but emergency dispatchers were able to reach the news director at home and he hurried to the station to begin broadcasting warnings.⁶¹

While Clear Channel has since disputed claims that its radio station was unstaffed, this case still highlights the importance of a local presence for local broadcasting. For both radio and television, emergency broadcasts were only possible because local authorities were able to contact station employees and those local employees could drive to the studio to broadcast the alert. If KCJB had more local staff in the area, it’s possible that like KHRT, someone would have noticed the emergency and addressed the alert problem more quickly. In an emergency that claimed the life of one person and injured hundreds, it’s disturbing to imagine what might have happened had those stations not been required to maintain a local studio and local staff as backup for breakdowns in the EAS.

⁵⁷ Matthew Lasar, “Clear Channel still haunted by Minot toxic spill disaster,” *Arstechnica*, May 24, 2010, <https://arstechnica.com/tech-policy/2010/05/will-clear-channel-ever-live-down-the-minot-toxic-spill-disaster/>.

⁵⁸ *Id.*

⁵⁹ Eric Klinenberg, *Fighting for Air: The battle to control America’s media* (2007) (“*Fighting for Air*”).

⁶⁰ *Id.*; Lasar, “Clear Channel still haunted by Minot.”

⁶¹ *Fighting for Air*.

On the other hand, when Hurricane Katrina hit New Orleans, local talk radio station WWL was able to provide critical, timely, and life-saving information to the community in large part due to its staff and studio's physical presence in New Orleans. Emergency information was disseminated more quickly and more accurately by staff who were experiencing the storm firsthand. When their AM transmitter went down, WWL's news director and an engineer "[waded] through water waist deep, including a swamp filled with alligators and snakes... [and] restarted the transmitter by flipping the switch on the back-up generator."⁶² WWL's coverage became an invaluable resource for New Orleans residents struggling to survive in the wake of a failed national emergency response. Without a physical presence in the community, WWL's coverage would have suffered and its broadcasting capability would have been cut short without on-location staff willing to wade through floods to restart their transmitter.

Perhaps these are exceptional cases, but with emergency situations, exceptions are the rule. As Commissioner Clyburn rightly noted, broadcasters pushing for the elimination of the main studio rule are "advocating to absolve themselves from maintaining local roots in their community of license," despite the fact that those roots are integral to informing their communities during times of emergency.⁶³ If the main studio rule is scrapped, broadcasters who shut down main studios in smaller markets will inevitably be leaving the poor people, rural communities, and people of color who tend to rely on broadcast news more heavily less informed and less protected.

V. Technological Access Is Not a Sufficient Replacement for a Station's Physical Presence in the Community

The Commission cites no evidence to support its tentative conclusion that technological innovations render local broadcast studios "unnecessary as a means for viewers and listeners to communicate with or access their local stations and to carry out the other traditional functions they have

⁶² Rajini Vaidyanathan, "The Hurricane Station: WWL, the New Orleans radio station that fought to keep listeners alive during Hurricane Katrina," *BBC News*, Aug. 24, 2015, <http://www.bbc.co.uk/news/resources/idt-20ed5228-1f23-4906-9057-ffdd9d5272f2>.

⁶³ NPRM, Statement of Commissioner Mignon Clyburn.

served.”⁶⁴ Instead of relying on either quantitative or qualitative data regarding the importance of local stations for serving community needs, the Commission relies almost exclusively on theorizing that the availability of telephone, email, and social media communications are sufficient to allow communities to inspect the station’s public file and to provide feedback on programming.

During previous attempts to evaluate the Commission’s implementation of localism policies, Commissioners have held public forums in communities across the country, seeking to engage the public as well as the broadcasters before making sweeping changes to its rules.⁶⁵ Those efforts have reliably found that many communities feel disconnected from their local broadcast stations and do not feel sufficiently empowered to give feedback.⁶⁶ Without examining the relevant data regarding communities the Commission fails to consider all relevant factors, rendering the proposal arbitrary and capricious.⁶⁷

Not only is it irresponsible to draw this conclusion based on minimal empirical evidence, but the Commission’s theoretical logic is also full of holes.

Specifically, the NPRM only addresses how technology provides community members with adequate access to a broadcast station’s public file and an opportunity to offer feedback. While these are both critical functions performed by local broadcast stations and protected by the main studio rule, they are far from the only important metrics of a station’s responsiveness to community needs.

Even if we allow for the Commission’s assumption that telephone and internet contact provides sufficient opportunity for community members to view the public file and provide feedback, substantive community engagement cannot exist without a physical presence in the community. Local journalists cannot actively participate in the community they serve by phone, nor can community members actively participate in programming generation by email. By focusing exclusively on the public file and time-delayed feedback, the Commission is carving out a passive, reactionary role for both local broadcast

⁶⁴ NPRM ¶ 6.

⁶⁵ 2008 Broadcast Localism Report ¶ 8.

⁶⁶ *Id.* ¶ 14-15.

⁶⁷ See *Motor Vehicle v. State Farm*, 463 U.S. at 43.

stations and the communities they serve. This dramatically undersells the value communities have to offer stations in terms of real-time programming participation and the importance of journalists understanding and interacting with the community whose stories they propose to tell.

It is also important to acknowledge that while technological advances have indeed opened up new avenues for community-station communication since the main studio rule was conceived, not all communities are equitably equipped with this technology. Recent data suggests that home broadband adoption has plateaued in the past few years, with nearly 30 percent of households still disconnected at home.⁶⁸ The Commission is well aware of this: Chairman Ajit Pai has expressed an interest in making the digital divide a key focus of his chairmanship.⁶⁹ Despite this public commitment, the Commission's suggestion that the main studio rule be eliminated and replaced with selectively available digital communication tools demonstrates a complete disregard for the disconnected communities Chairman Pai purports to champion.

The digital divide also disproportionately impacts low-income families and people of color. Only 49 percent of households making \$20,000 per year or less have home internet access, compared to nearly 90 percent of households with incomes above \$100,000.⁷⁰ While 81 percent of white households subscribe to some type of home broadband, just 70 percent of Census self-identified "Hispanics" and 68 percent of Blacks subscribe.⁷¹ Importantly, Free Press research shows that this racial divide is not simply a function of income divide: Even when one accounts for differences in income, racial adoption gaps

⁶⁸ S. Derek Turner, *Digital Denied: The Impact of Systemic Racial Discrimination on Home-Internet Adoption* (Free Press Report), at 4, Dec. 2016, https://www.freepress.net/sites/default/files/resources/digital_denied_free_press_report_december_2016.pdf ("Digital Denied").

⁶⁹ Remarks of FCC Commissioner Ajit Pai at the Brandery, *A Digital Empowerment Agenda*, Cincinnati Ohio, Sept. 13, 2016, https://apps.fcc.gov/edocs_public/attachmatch/DOC-341210A1.pdf

⁷⁰ *Digital Denied* at 4.

⁷¹ *Id.*

persist.⁷² The disparity is even more dramatic for wired broadband specifically, which typically offers greater digital capacity than wireless connections.⁷³

Contrary to one conventional narrative, the data show that people of color have high demand for internet but steep costs and other financial barriers inhibit these communities from adopting. Of non-adopting Hispanic households, 39 percent cite “can’t afford it” as a reason for not adopting and 33 percent say they would subscribe if broadband access were offered at a lower price. Similarly, 35 percent of non-adopting Black households cite “can’t afford it” as a reason and 28 percent would adopt home internet at a lower price. As one would expect, these numbers are even higher among low-income households.⁷⁴

Online access to the public inspection file is valuable and important, but not everyone is online. Until internet access and other technological communications tools are universally available and affordable, any move to eliminate the main studio rule will disproportionately harm low-income families and communities of color stranded on the wrong side of the digital divide. That is true even if we confine our concerns to residents’ ability to communicate with stations over the internet, once again (improperly) ignoring the loss of local coverage and local jobs destined to result from elimination of this rule.

VI. Market Conditions Will Not Ensure that Programming Serves Local Community Needs

For several years the broadcast industry has been characterized by enormous waves of consolidation as a handful of big players take control of more and more stations through mergers, sharing agreements, and the loosening of media ownership limits that allows both to occur. To suggest that competitive market conditions will ensure these broadcasters don’t take advantage of their immense market power and instead serve local community needs is nothing short of naive.

⁷² *Digital Denied* at 71.

⁷³ *Id.* at 86.

⁷⁴ *Id.*

As described above, big broadcasters have faced fewer and fewer competitors as they have proceeded to buy each other out and orchestrate shell companies which technically own station assets, but which in no way compete with the parent broadcaster. Owners like Sinclair are increasingly taking control of multiple broadcast stations within the same market and airing the same newscasts over multiple channels, diminishing the number of viewpoints on air as well as removing potential competitors.⁷⁵ Without sufficient competition, broadcasters have very little incentive to do the resource-intensive work of reporting on local communities, particularly in communities of color, low-income and rural areas where typically white, metropolitan-based journalists may not provide fair and accurate coverage.⁷⁶

Broadcast conglomerates insist that while broadcast competition may be fading, they still face fierce competition from burgeoning digital news operations. Once again, this is only a half-truth at best: Digital operations are increasingly winning advertising dollars away from broadcast,⁷⁷ but so far big broadcasters have been more than able to compensate for revenues by hiking retransmission fees and rapidly consolidating.⁷⁸ Furthermore, the number of advertising dollars flowing to different platforms says nothing about the quantity or quality of their local content. And in studies commissioned by the FCC itself, scholars have shown that the proliferation of content on the internet does not assure the production of local content.⁷⁹

⁷⁵ *Cease to Resist* at 2.

⁷⁶ Eric Deggans, “Why ethics and diversity matter: The case of Trayvon Martin coverage,” *Poynter*, Oct. 23, 2012, <https://www.poynter.org/2012/mostly-white-and-sometimes-brown-media-people-in-a-mostly-brown-and-sometimes-white-world/192604/>; Josh Stearns, “In 2017, Journalists Have to Partner, Not Parachute,” *MediaShift*, Jan. 18, 2017, <http://mediashift.org/2017/01/2017-journalists-partner-not-parachute/>.

⁷⁷ Kate Kaye, “Data-Driven Targeting Creates Huge 2016 Political Ad Shift: Broadcast TV Down 20%, Cable and Digital Way Up,” *Advertising Age*, Jan. 3, 2017, <http://adage.com/article/media/2016-political-broadcast-tv-spend-20-cable-52/307346/>.

⁷⁸ Pew Research Center, *State of the News Media 2016*, June 5, 2016, <http://assets.pewresearch.org/wp-content/uploads/sites/13/2016/06/30143308/state-of-the-news-media-report-2016-final.pdf>.

⁷⁹ Matthew Hindman, “Less of the Same: The Lack of Local News on the Internet,” at 10, Draft Submitted Apr. 6, 2011, https://apps.fcc.gov/edocs_public/attachmatch/DOC-307476A1.pdf (“The big picture is that there is little evidence ... that the Internet has expanded the number of local news outlets. And while the Internet adds only a pittance of new sources of local news, the surprisingly small audience for local news traffic helps explain the financial straits local news organizations now face.”).

In fact, broadcasters have fiercely resisted cross-platform competition for local content production. In 2004, the National Association of Broadcasters lobbied the Commission to prohibit satellite radio from broadcasting localized coverage, effectively cornering the market on local news and information -- responsibilities that these broadcasters are now are now trying to run away from in this proceeding.⁸⁰ Increasingly broadcast conglomerates are also entering the digital space and may use their combined legacy and digital revenues to leverage their services over competitors on either platform.

Should massive media conglomerates begin to feel more pressure to compete with digital news organizations in the future, it's extremely unlikely that they would try to differentiate their service by providing more local news coverage. While online news organizations have in some cases made local news more accessible, most of their local coverage is still directly sourced from original reporting at traditional media outlets such as broadcast and newspapers.⁸¹ Most digital news organizations have thus far failed to raise the bar on quality local news coverage, giving broadcasters no competitors to chase.

More to the point, broadcast stations already fail to meet local community information needs. The Commission took note of this problem in 2008 after public comments and hearings surfaced deep-seated dissatisfaction with station attempts to promote localism, signalling inadequate engagement between stations and communities.⁸² Increasing consolidation has resulted in a growing number of local stations that don't produce their own local news, relying instead on outsourced newscasts. What's more, the content of those newscasts is suffering. According to a Pew Research study, between 1998 and 2002 nearly 31% of all local television news stories were more than a minute long, while 42% were under 30 seconds in length. By 2012, the percentage of stories over a minute long had shrunk to 20% and those under 30 seconds grew to 50%.⁸³ Other studies have found that the majority of local television news

⁸⁰ "NAB Again Urges FCC to Ban Local Content From Satellite Radio," *Radio World*, Apr. 14, 2004, <http://www.radioworld.com/news-and-business/0002/nab-again-urges-fcc-to-ban-local-content-from-satellite-radio/306824>.

⁸¹ Pew Research Center, *How News Happens*, Jan. 11, 2010, <http://www.journalism.org/2010/01/11/how-news-happens/>

⁸² *2008 Broadcast Localism Report* ¶ 1.

⁸³ *2014 State of the News Media*.

stories consist of short “voice-overs” by anchors that rely on very little local reporting.⁸⁴ Quality local coverage has been on decline, and audiences have noticed: Nearly a third of respondents to a 2013 study reported having ditched a news outlet, with more than 60 percent of those citing “less complete” journalism as the primary reason for their abandonment.⁸⁵

Market conditions are not competitive, but even if the Commission accepts broadcasters’ counter-narrative of robust cross-platform competition, it’s clear that existing market conditions are insufficient to provide for adequate local news coverage that serves communities’ needs. Eliminating the main studio rule would not improve market conditions, but in fact insulate big broadcasters even further from potentially meaningful competition.

The main studio rule and its associated local staffing and program origination capacity requirements are effectively the last line of defense for many underserved and marginalized communities struggling against shrinking local news coverage. Contrary to Chairman Pai’s oxymoronic statement on the NPRM, eliminating this capacity for original local programming will not promote more original local programming.⁸⁶ It will simply make it more difficult for communities to hold local broadcasters accountable, to engage with station reporters and to collaborate for the production of innovative local news content that truly serves the community.

The clearest example of this is the impact the Commission’s proposal would have on local service requirements.⁸⁷ As the NPRM notes, current rules require Class A television broadcast stations to broadcast on average at least three hours per week of locally produced programming. Eliminating the main studio rule would effectively nullify this requirement. There is no adequate substitute for local content produced within the community since, as discussed above, locally produced news has been shown

⁸⁴ *Local News in a Digital Age*.

⁸⁵ Chris Welch, “Quality to blame for declining news audiences, study suggests,” *The Verge*, Mar. 18, 2013, <https://www.theverge.com/2013/3/18/4119504/decline-quality-journalism-blamed-as-americans-abandon-news-outlets>.

⁸⁶ NPRM, Statement of Chairman Ajit Pai.

⁸⁷ 47 C.F.R. 73.6001(b).

to offer communities substantively better local coverage than outsourced newscasts. Any attempt to redefine “locally produced programming” to include programming produced outside the station’s contour is both logically and empirically suspect.

CONCLUSION

The Commission must abandon its proposal to eliminate the main studio rule. Instead of offering a financial salve to struggling stations, the proposal would serve to pad the pockets of profitable consolidated broadcasters while doing very little for small and independent stations. Marginalized people, including low-income populations, rural residents and communities of color, would find themselves fully abandoned by local news outlets and forced to rely on outsourced newscasts, selectively available digital services, and no safety net for emergency communication failures. Lack of competitive market conditions has already prompted big broadcasters to transition resources away from these communities, and getting rid of the main studio rule will do nothing at all to improve competitive conditions. The main studio rule is necessary to ensure broadcasters provide fair and equitable distribution of broadcast service, as the Commission is obligated to ensure under Section 307(b) of the Communications Act.

We strongly urge the Commission to reconsider its proposal and preserve the main studio rule and all its associated requirements.

Respectfully Submitted,

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