



**Officers
Chair**

Judith L. Lichtman
National Partnership for
Women & Families

Vice Chairs

Thomas A. Saenz
Mexican American Legal
Defense and Educational Fund
Hillary Shelton
NAACP

Secretary/Treasurer

Lee A. Saunders
American Federation of State,
County & Municipal Employees

Board of Directors

Helena Berger
American Association of
People with Disabilities
Kimberly Churches
AAUW
Kristen Clarke
Lawyers' Committee for
Civil Rights Under Law
Lily Eskelsen Garcia
National Education Association
Fatima Goss Graves
National Women's Law Center
Chad Griffin
Human Rights Campaign
Mary Kay Henry
Service Employees International Union
Sherrilyn Ifill
NAACP Legal Defense and
Educational Fund, Inc.
David H. Inoue
Japanese American Citizens League
Gary Jones
International Union, UAW
Derrick Johnson
NAACP
Virginia Kase
League of Women Voters of the
United States
Michael B. Keegan
People for the American Way
Samer E. Khalaf
American-Arab
Anti-Discrimination Committee
Marc Morial
National Urban League
Janet Murguía
UnidosUS
Debra L. Ness
National Partnership for
Women & Families
Rabbi Jonah Pesner
Religious Action Center
Of Reform Judaism
Lisa Rice
National Fair Housing Alliance
Anthony Romero
American Civil Liberties Union
Ahniwake Rose
National Congress of American Indians
Richard L. Trumka
AFL-CIO
Toni Van Pelt
National Organization for Women
Randi Weingarten
American Federation of Teachers
John C. Yang
Asian Americans Advancing Justice |
AAJC

Policy and Enforcement

Committee Chair
Michael Lieberman
Anti-Defamation League
President & CEO
Vanita Gupta

September 5, 2019

Chairman Ajit Pai
Commissioner Michael O'Rielly
Commissioner Brendan Carr
Commissioner Jessica Rosenworcel
Commissioner Geoffrey Starks
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: MB Docket No. 18-349; FCC 18-179 – 2018 Quadrennial Regulatory Review
Reply Comment

Dear Chairman Pai and Commissioners,

On behalf of the Leadership Conference on Civil and Human Rights and the undersigned members of its Media/Telecommunications Task Force, we submit these reply comments in the Notice of Proposed Rulemaking pursuant to the 2018 Quadrennial Regulatory Review of the Federal Communications Commission's Broadcast Ownership Rules. The Leadership Conference is a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil rights of all persons in the United States. Media diversity has long been a top priority of The Leadership Conference and its members because we understand that meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, diverse, and independent media that serves our constituencies.

We strongly oppose the Commission's proposals to modify or eliminate the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule (collectively the "Media Ownership Rules"). The Media Ownership Rules serve the public interest in ensuring an accurate, diverse, and independent media and are the last bulwark against already abysmally low ownership diversity rates. Given the current low ownership diversity rates, the FCC's statutory obligation, existing judicial remands, and its own interpretation of the public interest standard, the FCC must not take action that has a strong probability of harming race and gender ownership diversity without affirmatively studying the issue.

In our previous comments, we explained how the statutory law, agency precedent, and judicial remands all require the Commission to collect accurate, useable race and gender ownership data and prioritize diversity in its adjudications and rulemakings.¹ In these reply comments, we discuss how the record demonstrates that the Commission must promote all three components of the public interest standard: competition, diversity, and localism. In

addition, the industry and other commenters support retention of the rules to promote competition and diversity. Further, the rise of internet content does not justify relaxation of the ownership rules because the internet is not a substitute for broadcast media. Finally, we discuss the flaws in the Commission's analysis that media ownership rules do not impact ownership diversity and its obligation to correct erroneous ownership diversity data collected on Form 323.

A. The public interest standard requires consideration of competition, diversity and localism.

The Telecommunications Act Sect. 202(h) requires the Commission to review "its ownership rules [quadrennially] as part of its regulatory reform review under section 11 of the Communications Act of 1934 and shall determine whether any of such rules are necessary in the *public interest* as the result of competition."² Under Commission precedent, the public interest standard consists of three, equally-important, components that protect civil and human rights: an economically competitive, appropriately localized, and meaningfully diverse broadcast sector.³

Many commenters agree that repealing the Media Ownership Rules will erode the public interest standard's essential goals of diversity, localism, and competition.⁴ While the National Association of Broadcasters (NAB) argues the "primary purpose" for the local TV ownership rule is fostering competition, not diversity,⁵ Congress explicitly mandates the FCC to enhance the whole public interest standard in Section 202(h), not just "economic values"⁶ and, in 2016, the U.S. Court of Appeals for the Third Circuit directed the FCC to consider diversity in its rulemaking.⁷

Reducing the Commission's analytical scope to a cost-benefit analysis, as the NAB suggests, is inconsistent with law and makes it more difficult for new entrants and small station operators to compete in the media marketplace.⁸ The Commission should not adopt an abstract theory that economies of scale will advantage locally-focused stations, especially those owned by women and people of color, when history has indicated the opposite; economies of scale allow incumbents to push out diverse station owners and minimize the amount of local news covered.

B. The record demonstrates that the current ownership rules empower small independent broadcasters to compete in the media marketplace and promote ownership and viewpoint diversity.

The Media Ownership Rules remain crucial for diverse, local news to remain on the air. Contrary to the NAB's claims,⁹ many commenters echo the concerns enumerated in our initial comments,¹⁰ including the concern that relaxing the Media Ownership Rules will foster further consolidation, stifling diversity and hindering critical local news coverage by obstructing new entrants from competing with large, homogenous stations.¹¹

The record demonstrates that consolidation is not the solution to the lack of diverse ownership and local news coverage and will only increase barriers to owning a broadcast station. Previous studies in the record demonstrate the negative impact of consolidation on owners of color and female owners.¹² Both NABOB and Urban One attribute the decrease in station ownership by people of color to previous

rollbacks of media ownership rules, connecting consolidation with declines in race ownership diversity.¹³ Additionally, both groups explain that relaxing the local radio rule—particularly the AM/FM subcaps—will make way for consolidation that poses even greater challenges for women and people of color operating radio stations.¹⁴ Furthermore, the newly-created radio incubator program will not improve ownership diversity without a competitive market for selling and buying broadcast stations.¹⁵

The NAB’s argument is predicated on the assumption that independent stations are currently struggling. However, many stations are thriving under the Media Ownership Rules, and further elimination of the rules will harm those prosperous, independent stations. Stations owned by people of color, members of the local communities they serve, religious groups, and stations in large and small markets agree that relaxing or eliminating the Media Ownership Rules, particularly the Local Radio Ownership Rule, will threaten their current business model, restricting their ability to compete.

For example, Triangle Access Broadcasting, which owns an FM station in Raleigh-Durham that is ranked 38 by Nielsen, states that by reducing AM station ownership limits, the costs of entering into the FM radio market will increase, because consolidated companies will drive up auction prices for radio spectrum, making it more difficult for independently-owned stations (those most likely to be owned by women and people of color) to cover local issues and diverse topics and to compete with radio behemoths for licenses.¹⁶ Triangle Access further explains that since FM translators are not counted under the existing rules, radio station owners already have a “free pass” to exceed the Local Radio Ownership Rule.¹⁷ Similarly, small-market King City Communications argues that the Local Radio Ownership Rule is necessary to prevent amalgamated stations from buying out independent local voices.¹⁸ Many other industry commenters agree the existing rule promotes healthy competition and diversity.¹⁹

As musicFIRST’s comments suggest, ownership consolidation has a negative impact on viewpoint diversity.²⁰ When station operators choose which songs to air, they control the viewpoints available on-air.²¹ The musicFIRST data analysis provides a stark example from the country music industry: songs by women artists made up only 11.3 percent of all songs performed on country radio in 2018, though women comprise approximately half of the U.S. population.²² Over the past two decades, a period during which the Media Ownership Rules have been relaxed, country music performed by women has declined on broadcast radio.²³

Though many commenters in this proceeding focused on the Local Radio Ownership Rule, retaining the Local Television Ownership Rule and Dual Network Rule are equally important to diverse ownership of television stations. For example, in 2014, Chairman Wheeler and Commissioner Clyburn reported that—following the removal of loopholes pertaining to television station ownership limits—ten new stations owned by women and people of color entered the market.²⁴ As discussed below in Section D, the data cited by the Commission illustrates a *decline* in diversity after the local television ownership rules were relaxed in 1999.²⁵

The local TV and radio ownership rules provide the Commission a content-neutral way to promote greater viewpoint diversity by requiring that different entities own licenses in local markets. And as commenters highlight, relaxation of the Rules will not promote diversity, localism, or competition.²⁶

Instead, it will lead to decreased competition among radio industries, as those stations will be forced to either join larger stations that do not promote their interests or leave the radio industry altogether.²⁷ Neither of these outcomes serve the public interest goals of ownership diversity and competition and will subsequently result in stifling the viewpoint diversity of broadcasts.

C. The internet is not a substitute for broadcast media.

The record supports the argument made in our initial comments that internet media is not a substitute for broadcast media.²⁸ The record makes clear that the radio industry itself does not see consolidation as a means to compete with online content sources. As many as 162 million Americans, nearly half of the U.S. population, do not use the internet at broadband speeds.²⁹ Broadcasting—both for technological and regulatory reasons—uniquely serves local communities. Furthermore, broadcast media is able to function during natural disasters and large events, when fixed connections and mobile services cannot. Moreover, their different technologies and different regulatory treatment mean that broadcasting and internet technologies serve complementary needs.

1. Consolidation will not improve broadcast industry competition with internet content.

Broadcast television and radio are distinguishable from cable, satellite, and strictly internet media technologies because the electromagnetic spectrum airways are publicly owned and controlled; are emitted at no cost to the end-user; and have virtually no barriers to access other than purchase of a relatively inexpensive and ubiquitous electromagnetic spectrum-accessible device.³⁰ The history of broadcast policy in the U.S. has also emphasized local broadcasting; stations are licensed to local communities to facilitate local information and locally-responsive content in a country with a wide variety of local cultures, governments and concerns.

According to a concentrated cohort of broadcast and telecommunications companies and their private sector advocates, the internet is dooming their profits and displacing their role in the everyday lives of people in the United States.³¹ The NAB uses fiscal economies of scale to justify strong deregulation without regard for the harms to localism and diversity that deregulation causes end-users.³² But other industry commenters reveal the flaws in that claim, explaining that deregulation and consolidation rulings will not help broadcast companies thrive in the internet age. Rather, deregulation will substantially increase large broadcast companies' revenues at the expense of small, local broadcasters that serve the public and offer local coverage that the internet lacks.³³

Many public interest advocates and independent broadcasters see a more nuanced trend; emerging internet technologies are not dooming or displacing broadcast media but complimenting and enhancing broadcast as an accessible, affordable, enduring public communication medium.³⁴ In our initial comments, we explained how internet-based communications are not replacing broadcast content, particularly for communities of color and low-income communities because: (a) large swaths of these constituencies do not have access to quality, reliable broadband internet service; and (b) their community concerns and events are not covered by nationally syndicated journalists online.³⁵

2. Broadcast provides access to uniquely local content.

Congress, the Supreme Court, and the FCC have all proclaimed localism, along with competition and diversity, has been a “cornerstone of broadcast regulation for decades.”³⁶ In Title III of the Communications Act “section 307(b) explicitly requires the Commission to make such distribution of license, frequencies, hours of operation, and of power among the several States *and communities* as to provide a fair, efficient, and equitable distribution of [broadcast] service to each of the same.”³⁷ In 2007 and 2008, the FCC took significant strides in studying localism and reviving its importance alongside the other two tenants of the public interest standard.³⁸ During these Localism Proceedings, the FCC “gather[ed] information from consumers, industry, civic organizations, and others on broadcasters’ service to their local communities” and vowed exercise its regulatory powers to increase the quality of broadcast localism.³⁹

Local news is unique to broadcast and its needs are not served through the internet.⁴⁰ People require sufficiently local inclement weather reports, traffic reports, newsflashes about local elections and municipal agency actions, school closings, townhalls, and the like.⁴¹ Commenters agree that the current ownership rules remain necessary to promote localism.⁴² As detailed in our initial comments, broadcast stations are uniquely situated to cover local news.⁴³ Unfortunately, when stations do achieve greater economies of scale, they do not invest the savings in local news, as NAB suggests.⁴⁴ In fact, when a single entity owns multiple stations, managers at the national level often cut costs by broadcasting the same segments across different markets, laying off local journalists and reducing the amount of local news covered.⁴⁵

The record does not support the expansion of the relevant market definition to include digital media.⁴⁶ As Free Press note, though NAB argues that viewers move to online platforms in place of traditional broadcast media, in fact, consumers take advantage of broadcasts available online, particularly when seeking local news.⁴⁷ At the same time, online platforms rely on broadcasters and newspapers to procure local news content.⁴⁸ Without broadcasters investing in local journalism, local news goes unreported, leaving millions of Americans without access to pressing news about issues in their own communities.⁴⁹ The Commission can ensure that local broadcasters can compete by properly defining the market as among broadcasters, upholding its mandate to promote localism and competition at the same time.

3. Broadcast media relays critical information when other communications methods, like the internet, are threatened.

In large events and emergencies, when people most need access to real-time local information, mobile and fixed internet and telephone connections are often inadequate for transmitting life-saving information. Broadcast is uniquely situated to serve the public in these circumstances.

One prominent example involves the 2017 Women’s March, when more than 500,000 people gathered on the National Mall one day after the presidential inauguration.⁵⁰ Both events overloaded mobile capacity, though wireless carriers had upgraded their networks specifically for the events.⁵¹ Radio broadcasts do not

experience the same congestion, which means that important information can be communicated via radio when cell phones become unworkable.

During power outages, broadcast is often the only way to communicate safety warnings and critical information about ongoing emergencies.⁵² One recent and powerful example of local broadcast's enduring importance involves Hurricane Maria and its aftermath.⁵³ During Hurricane Maria, torrential rains knocked out the power grid, leaving homes across Puerto Rico without power, and therefore no access to information by television, internet, or telephone at a time when communication was most crucial.⁵⁴ Months and years after Hurricane Maria destroyed the island's infrastructure, AM radio has now become the principal means of communicating information and entertaining people who remain in their homes.⁵⁵ A news team production manager from WORA-TV explained the lesson Hurricane Maria taught her, which was "when the power goes out, a \$5 transistor radio is more valuable than a smartphone."⁵⁶ Similar stories emerged during Hurricanes Katrina, Harvey, and Irma, which highlight the unique reliability of radio broadcasts when natural disasters destroy infrastructure.⁵⁷

The stories of broadcast technologies saving lives and improving the quality of life demonstrate that broadcast technologies can be lifesaving resources, and that the internet is no true substitute for broadcast.

D. The FCC incorrectly claims ownership rules do not impact race and gender ownership diversity.

As was the case in the 2014 Quadrennial Review, in the NPRM, the FCC relies upon the flawed assumption that media ownership rules and increased media concentration do not harm ownership rates by women and people of color.⁵⁸ The underlying data are insufficient and must be rejected in the present proceeding, but also demonstrate that the previous decision to relax ownership rules must be reversed. Moreover, the flaws are the result of the FCC's failure to ensure that its media ownership data are accurate. The FCC is fully capable of correcting the data and must do so.⁵⁹

1. The FCC's analysis is flawed and is not a sufficient basis for rulemaking.

In the 2014 Quadrennial Review, Second Report & Order, the FCC relied upon an extremely flawed analysis to make the novel and unjustifiable conclusion that media ownership rules and increased concentration had no impact on media ownership diversity. In doing so, the FCC compared two different data sets even though it knew the results were invalid; did not control for any variables (including the total number of licensed stations); and ignored that same study's documentation of the FCC's flawed data and methodology.

First, the FCC relied on data it knew to be incomplete and inaccurate. The FCC compared its own flawed Form 323 data and data collected by the National Telecommunications and Information Agency ("NTIA") that it has considered inadequate since 1998.⁶⁰ The FCC described the television data in the following way:

[NTIA] identified 32 minority-owned full power television stations in 1998 (racial and ethnic minorities)—the year before the Commission relaxed the former rule that had restricted

ownership to a single television station in a market. Following a decline in the 1999/2000 NTIA data to 23 stations, the Commission's recent Form 323 ownership data demonstrate that minority ownership has grown since that rule was eliminated: 60 stations in 2009; 70 stations in 2011; and 83 stations in 2013.⁶¹

The FCC acknowledged that this paragraph-long analysis was unreliable because it contrasted data from different sources, which "introduces potential variation from differences in the way the data were collected rather than actual changes in the marketplace." Nonetheless, the Commission based its conclusion on the unreliable data "in the absence of a continuous, unified data source."⁶²

Similarly, the FCC refused to tighten the local radio rule, again using a simplistic analysis and incomplete NTIA data.⁶³ The NTIA radio data (which, as was the case with television data, did not track female ownership) showed a decline in minority ownership after Congress lifted the national radio limits in 1996, while the Commission's Form 323 data showed higher numbers of women and racial minority owners.⁶⁴ The FCC acknowledged it had previously found "NTIA's data collection methodology did 'not insure a complete listing of all commercial radio and television stations owned by minorities' and the data did not include separate data on female ownership," Nonetheless, the FCC used the data because "these are the only data from that time period that are available."⁶⁵

The FCC knew racial data was inaccurate both from its own analysis and because a report upon which it relied documented the NTIA data's shortcomings.⁶⁶ And the FCC used NTIA data which did not track female ownership at all. The FCC then made an invalid comparison between incomplete NTIA data and the FCC's own Form 323 data from later years. It knew that comparing two different data sets was an error but used its own failure to create an adequate data set as an excuse.⁶⁷ The FCC used these data even though it found a comparison combining old and new data sets unacceptable later in the same order.⁶⁸

Second, the FCC claimed that the rule change did not harm ownership diversity, when the data cited by the FCC showed a *decline* from 32 stations to 23 stations the year after the relevant rule change in 1999.⁶⁹ The FCC also failed to consider the level of ownership diversity that might have been achieved if not for the initial decrease in 1999.⁷⁰ Further, it did not acknowledge that race/gender ownership increases reported between 2009-2013 could be the result of improved reporting.

The FCC's errors were just as significant in its analysis of radio. The FCC used the same flawed NTIA data to conclude that radio ownership was not negatively impacted by Congress' decision to lift the national radio ownership caps in 1996.⁷¹ As in the television analysis, NTIA's reports showed a *decline* in the years immediately following the change.⁷² Not until 2000 does the FCC identify an increase, but as NTIA itself explained, half of the increase was attributable to improved methodology, *i.e.* NTIA was able to *locate* 60 more stations. Such changes do not represent "actual" changes.

In short, the FCC was incorrect to rely on these data in its previous orders and it must not rely on these data in the current proceeding.

2. The FCC has failed to sufficiently improve its broadcast ownership data.

In 2000, the FCC began collecting race/gender broadcast ownership data on Form 323 to fulfill its statutory mandate to promote race/gender ownership diversity, and because of NTIA data's flaws.⁷³ To date, broadcasters have filed Form 323 data in 2009, 2011, 2013, 2015 and 2017 and the Media Bureau summarized it in regular reports between 2009-2015. Nonetheless, the FCC has made clear these reports are "not studies...that would help support the adoption of race- or gender-based preferences or policies."⁷⁴ The FCC has not yet released a report summarizing the 2017 data, although the filing period ended on March 5, 2018.⁷⁵

Over the years, significant flaws in the FCC's own data collection have become apparent. It was unreliable, difficult to use, and impossible to verify.⁷⁶ Over time, the FCC adopted some improvements.⁷⁷ For the most part, the FCC corrected flaws in harvesting data from .pdf files that previously had omitted huge swaths of data.⁷⁸ Adjusting the most egregious flaws, however, does not mean that the FCC now has accurate data.

Two problems remain with the FCC's data: the tracking numbers used to submit it and its completeness.

First, the tracking numbers filers used to submit data, called FCC Registration Numbers (FRNs), have been unreliable. The "Special-Use FRN," which is used by nearly 30 percent of all filers, "offers no way for the Commission to identify individuals reliably."⁷⁹ The number is automatically generated with no verifying information, and one individual can use multiple numbers or multiple individuals can use the same number.⁸⁰ The FCC recently eliminated the use of this FRN for most, but not all, filers,⁸¹ but it has never corrected previous erroneously-filed data. Thus, approximately 30 percent of entries in the FCC's ownership database do not reliably identify owners.

Second, Form 323 data is insufficient because some broadcasters fail to file in some years, so trend analysis between years is problematic as data sets are not consistent from year to year. For example, in 2013, the number of AM stations that did not file (759) far exceeded the number of stations controlled by women (310), calling into question conclusions based on that data.⁸² In 2011, 165 more full-power TV stations filed than in 2009, calling into question whether apparent increases in ownership by various ethnic groups were real.⁸³ In 2012 the FCC acknowledged these limits on trend analysis using its own data.⁸⁴ By 2015, full-power TV reporting was at 99 percent, but radio and lower class TV reporting continued to be incomplete.⁸⁵

3. The FCC can, and must, correct its data, starting with easy-to-implement fixes.

The Free Press reports, *Out of the Picture* and *Off the Dial*, describe the methodology its authors used to correct the FCC 323 data and enable accurate analysis. Those two studies utilized less accurate and more difficult-to-correct data from prior versions of FCC data collection, but the methodology can be applied to the current 323 data.⁸⁶ Because the FCC tracks all transactions among broadcasters, the FCC can easily determine whether a station that previously was owned by a woman or person of color continues to be owned by a woman or person of color simply by looking to see whether it has previously filed a 323 form. As long as an owner has filed a 323 form at some time over the previous decade, the FCC can fill in the gaps of a significant portion of the missing 323 entries. Further, the FCC could review the filings under special-use FRNs and identify filers to ensure that a single filer is identifiable throughout the FCC's

database. Once most existing filers are clearly labeled in the database, the number of missing filings will be relatively small. At that point, the FCC can move ahead with aggressive outreach and, if necessary, fines and penalties, for existing broadcasters that have not filed their 323 forms. Once the database has been corrected, the FCC can make an assessment—by comparing the total number of broadcasters and the total number of Form 323 data entries—to determine the degree to which the FCC 323 database is incomplete. This analysis can be used to correct inconsistencies in the FCC’s conclusions regarding the total number of people of color and women who own broadcast stations. The database could also be made available to scholars for research and analysis, thereby providing an additional benefit.

Conclusion

A commitment to promoting diverse media ownership is a fundamental component of the nation’s communications policy. We urge the Commission to retain and enforce the existing Local Radio Ownership, the Local Television Ownership, the Dual Network Rules, and SSA disclosure rules. If you have any questions about the issues raised in this comment, please contact our Media/Telecommunications Task Force Co-Chairs Cheryl Leanza, United Church of Christ, Office of Communication, Inc., at 202-904-2168 or cleanza@alhmail.com, and Kathleen Ruane, ACLU, at 202-675-2336 or KRuane@aclu.org, or Leadership Conference Senior Program Director Corrine Yu at 202-466-5670 or yu@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights
American Civil Liberties Union
Asian Americans Advancing Justice | AAJC
Common Cause
Communications Workers of America
NAACP
National Consumer Law Center, on behalf of its low-income clients
National Hispanic Media Coalition
United Church of Christ, OC Inc.

¹ The Leadership Conference on Civil and Human Rights, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349 (Apr. 29, 2019), <https://www.fcc.gov/ecfs/filing/10429280917704> [Leadership Conference Comments].

² Telecommunications Act of 1996, 47 U.S.C. § 202(h) (1996) [emphasis added].

³ See Dana A. Scherer, Federal Communications Commission (FCC) Media Ownership Rules, Congressional Research Service, 1 (Oct. 9, 2018) <https://crsreports.congress.gov/product/pdf/R/R45338> (citing Federal Communications Commission, “Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996; Cross-Ownership of Broadcast Stations and Newspapers; Rules and Policies Concerning Multiple Ownership of Radio Broadcast Stations in Local Markets; Definition of Radio Markets; Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area,” 18

FCC Record 13620, 13633, July 2, 2003 (2002 Biennial Review).) [Scherer, Federal Communications Commission (FCC) Media Ownership Rules]

⁴ See e.g., Comments of Free Press, *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, at 14-16 (April 30, 2019) <https://www.fcc.gov/ecfs/filing/10429735619589> [Free Press Comments]; Comments of King City Communications, *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, 1-2 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/1042936960489> [King City Comments]; Comments of Bristol Broadcasting, Inc., *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, 1-2 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/10429893211873> [Bristol Broadcasting Comments]; Comments of Thomas C. Smith, *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, 1-7 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/10430274733918> [Thomas C. Smith Comments]; Comments of Steven L. White, *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, 2-4 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/10429192419173> [Steven L. White Comments]; Comments of musicFIRST Coalition, *2018 Quadrennial Regulatory Review*, MB Docket No. 18-349, 3-12 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/1042963768046> [musicFIRST Comments]; Comments of National Hispanic Media Coalition et al., MB Docket No. 18-349, at 8, 16-19 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/1042983061986> [NHMC Comments]; Comments of Writer's Guild of America West, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 1-2 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/1042928498856> [WGAW Comments]; Comments of Crawford Broadcasting Company, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 1 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/10426277697492> [Crawford Broadcasting Comments]; Comments of Multicultural Media Telecommunications and Internet Council, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 5-12 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/1042987748822> [MMTC Comments]; Comments of National Association of Black Owned Broadcasters (NABOB), *2018 Quadrennial Review*, MB Docket No. 18-349, 1-2 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/10429228619823> [NABOB Comments]; Comments of Urban One, Inc. *2018 Quadrennial Review*, MB Docket No. 18-349, 3-5 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/1042900624240> [Urban One Comments]; Reply Comments of Free Press, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 3 (May 30, 2019), <https://ecfsapi.fcc.gov/file/105290338411206/FPQRReplies.pdf> [Free Press Reply Comments]; Reply Comments of musicFIRST Coalition, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 5-25 (May 29, 2019), <https://www.fcc.gov/ecfs/filing/10530144401602> [musicFIRST Reply Comments]; Reply Comments of MMTC, *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 2-8 (May 29, 2019), <https://www.fcc.gov/ecfs/filing/10529739909258> [MMTC Reply Comments]; Reply Comments of Open Mic et al., *2018 Quadrennial Regulatory Review*, MB Dkt. No. 18-349, 1-3 (May 29, 2019), <https://www.fcc.gov/ecfs/filing/105291454029282> [Open Mic Reply Comments].

⁵ See NAB Comments, 58. See also Scherer, Federal Communications Commission Media Ownership Rules, 1.

⁶ See NAB Comments, 58. See also Scherer, Federal Communications Commission Media Ownership Rules, 1.

⁷ *Prometheus Radio Project v. Federal Communications Commission*, 824 F. 3d 33, 54 n. 13 (3d Cir. 2016) [Prometheus III].

⁸ See NAB Comments at 35-39.

⁹ See generally NAB Comments.

¹⁰ See generally Leadership Conference Comments.

¹¹ See e.g., Free Press Comments, 14-16; King City Comments, 1-2; Bristol Broadcasting Comments, 1-2; Thomas C. Smith Comments, 1-7; Steven L. White Comments, 2-4; musicFIRST Comments, 3-12; NHMC Comments, 8, 16-19; WGAW Comments, 1-2; Crawford Broadcasting Comments, 1; Urban One Comments, 3-5; NABOB Comments, 1-2; MMTC Comments, 5-12; Free Press Reply Comments, 3; Open Mic Reply Comments, 1-3; MMTC Reply Comments, 2-8; musicFIRST Reply Comments, 5-25.

¹² See, e.g., S. Derek Turner & Mark Cooper, *Out of the Picture 2007: Minority & Female TV Station Ownership in the United States*, at 22 (Oct. 2007), <https://ecfsapi.fcc.gov/file/7020456517.pdf> [*Out of the Picture*].

¹³ See NABOB Comments, 3-4; Urban One Comments, 6-8.

¹⁴ See NABOB Comments, 10; Urban One Comments, 6-8.

¹⁵ See e.g., NABOB Comments at 5.

¹⁶ Steven L. White Comments, 3.

¹⁷ Steven L. White Comments, 3-4.

¹⁸ King City Comments, 1-2.

¹⁹ Crawford Broadcasting Comments, 1-2; *See* Comments of Salem Media Group, 2018 *Quadrennial Review*, MB Dkt. No. 18-349, 9 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/104290686326322>; Crawford Broadcasting Comments, 1; Salem Media Comments at 7-9.

²⁰ *See* musicFIRST Comments, 22.

²¹ *Id.*, 20-21.

²² *Id.*, 26-39.

²³ musicFIRST Comments, 32.

²⁴ Tom Wheeler and Mignon Clyburn, *Making Good on the Promise of Independent Minority Ownership of Television Stations* (Dec. 4, 2014), <https://www.fcc.gov/news-events/blog/2014/12/04/making-good-promise-independent-minority-ownership-television-stations>.

²⁵ *See* 2010/14 *Quadrennial Review*, Second Report and Order, 31 F.C.C.Rcd. 9864, 9911-12 (Aug. 25, 2016), <https://www.fcc.gov/document/2014-quadrennial-review-commissions-broadcast-ownership-rules> [Second R&O].

²⁶ *See* Salem Media Comments, 9-10; musicFIRST Reply Comments, 5-25; Free Press Comments, 4-11; Free Press Reply Comments, 5-7; *See generally* Open Mic Comments.

²⁷ *See id.*

²⁸ *See* musicFIRST Comments, 3-12; Free Press Comments, 11-13; Free Press Reply Comments 7-10; musicFIRST Reply Comments, 25-32.

²⁹ *See* John Kahan, It's time for a new approach for mapping broadband data to better serve Americans, Microsoft On The Issues (April 8, 2019), <https://blogs.microsoft.com/on-the-issues/2019/04/08/its-time-for-a-new-approach-for-mapping-broadband-data-to-better-serve-americans/>; U.S. Population 2019, World Population Review, <http://worldpopulationreview.com/countries/united-states-population/>. Higher speed access is important for media consumption, such as live audio streaming.

³⁰ Jerry Kang & Alan Butler, *Communications Law and Policy: Cases and Materials* 39-69, (6th ed. 2018).

³¹ *See generally*, NAB Comments; Meredith Corporation, 2018 *Quadrennial Review*, MB Dkt. No. 18-349 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/1042937660846>; Comments of Connoisseur Media et al., 2018 *Quadrennial Review*, MB Dkt. No. 18-349 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/104292645416049>; Comments of Vanguard Media, 2018 *Quadrennial Review*, MB Dkt. No. 18-349 (April 29, 2019) <https://www.fcc.gov/ecfs/filing/10429234607249>; Comments of Reno Media Group, 2018 *Quadrennial Review*, MB Dkt. No. 18-349 (April 29, 2019), <https://www.fcc.gov/ecfs/filing/1042929653310>.

³² *See* NAB Comments, 36-38.

³³ *See e.g.* Salem Media Comments, 9-10; Steven L. White Comments, 3; King City Comments, 1-2; Salem Media Comments, 1-2; Crawford Comments 1-2.

³⁴ *See* Free Press Comments, 11-13; musicFIRST Comments, 3-12; NHMC Comments, 8-12; WGAW Comments, 5-9; Thomas C. Smith Comments, 7-10; Steven L. White Comments, 1-2; Free Press Reply Comments, 7-10; musicFIRST Reply Comments, 25-32; MMTC Reply Comments, 5-8.

³⁵ *See* Leadership Conference Comments, 5-8.

³⁶ Federal Communications Commission, Notice of Inquiry In the Matter of Broadcast Localism, MB Docket NO. 04-233 (2004) (citing 47 U.S.C. § 307(b); FCC v. Allentown Broadcasting Corp., 349 U.S. 358, 362 (1955); and the Federal Communications Commission's Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88, 92 ¶ 11 (1982) on recon., 56 Rad. Reg. 2d (P&F) 448 (1984); Amendment of Section 3.606 of the Commission's Rules and Regulations, 41 F.C.C. 148, 167 (1952). *See also* Pacific Broadcasting of Missouri LLC, 18 FCC Rcd 2291 (2003).

³⁷ *Id.* at ¶ 2 (citing 47 U.S.C. § 307(b) which mentions 'radio' particularly, but here the Commission imputes that meaning to broadcast technologies writ large, evident from the context of the NOI), emphasis added.

³⁸ Federal Communications Commission, MB Docket No. 04-233 and complete list of Localism Proceedings <https://www.fcc.gov/general/localism-proceedings>.

³⁹ *See id.*

⁴⁰ Shan Wang, How much of what local TV stations post to Facebook is actually local? For many, right around half (April 26, 2018) <https://www.niemanlab.org/2018/04/how-much-of-what-local-tv-stations-post-to-facebook-is-actually-local-for-many-right-around-half/>

⁴¹ The Commission made a particularly egregious error when it eliminated the Critical Information Needs studies which would have more fully developed and analyzed these concerns; *See* Leadership Conference Comments, 5.

⁴² musicFIRST Reply Comments, 10, 13-15;

⁴³ Leadership Conference Comments, 5-7.

⁴⁴ *See* NAB Comments, 59-66.

⁴⁵ *See e.g.*, Tom Wheeler, On Local Broadcasting, Trump Federal Communications Commission Can't be Serious, Brookings (April 12, 2018), <https://www.brookings.edu/blog/techtank/2018/04/12/on-local-broadcasting-trump-federal-communications-commission-cant-be-serious/>; Paul Farhi, Jack Gillum & Chris Alcantara, In this town, you can flip the channel all you want—the news is often the same, Washington Post (updated June 14, 2018) (https://www.washingtonpost.com/graphics/2018/lifestyle/sinclair-broadcasting/?utm_term=.477426e931b3) (explaining that as Sinclair has purchased more stations, the amount of time devoted to local news has decreased and homogenous news segments are aired from multiple stations, sometimes in the same market); Paul Farhi, As Sinclair's sound-alike anchors draw criticism for 'fake news' promos, Trump praises broadcaster, Washington Post (April 2, 2018) (https://www.washingtonpost.com/lifestyle/style/as-sinclairs-sound-alike-anchors-draw-criticism-for-fake-news-promos-trump-praises-broadcaster/2018/04/02/a1be67e8-367a-11e8-9c0a-85d477d9a226_story.html?noredirect=on&utm_term=.d8883fbd0a9) (describing a specific instance where Sinclair ordered news anchors across different markets to read identical scripts); Sydney Ember, Sinclair Requires TV Stations to Air Segments That Tilt to the Right, New York Times (May 12, 2017) (<https://www.nytimes.com/2017/05/12/business/media/sinclair-broadcast-komo-conservative-media.html>) (explaining that Sinclair has a tendency of airing “must-runs” that tilt to the right and cut into local news time).

⁴⁶ Free Press Comments, 11-13; musicFIRST Comments, 3-12; Free Press Reply Comments, 7-10 (citing Comments of Triangle Access Broadcasting, Ronald Gordon and Ed Cherry, musicFIRST, and Leadership Conference); musicFIRST Reply Comments, 25-32 (citing MMTC Comments).

⁴⁷ Free Press Reply Comments, 7-8.

⁴⁸ David Bauder, Facebook says service hindered by lack of local news, Associated Press (March 18, 2019), https://apnews.com/790d194cbec347149be8b598009ad1c4?utm_source=Twitter&utm_medium=AP&utm_campaign=SocialFlow.

⁴⁹ *Id.*

⁵⁰ Margeurite Reardon, Women's March Overwhelms mobile network in D.C., C-Net (Jan. 22, 2017), <https://www.cnet.com/news/womens-march-overwhelms-mobile-network-in-dc/>;

⁵¹ *Id.*

⁵² Sanjay Acharya & Grace Petrin, Broadcasting is key communication medium in emergencies, ITU (Nov. 29, 2019), https://www.itu.int/net/pressoffice/press_releases/2013/68.aspx.

⁵³ Ryan Bell, After Hurricane Maria, AM radio makes a comeback in Puerto Rico, Columbia Journalism Review, Apr. 23, 2018, https://www.cjr.org/united_states_project/hurricane-maria-puerto-rico-radio.php.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See id.*; Rajini Vaidyanithan, The Hurricane Station, BBC News (Aug. 24, 2015), <https://www.bbc.co.uk/news/resources/1d20ed5228-1f23-4906-9057-ffdd9d5272f2>; Alli Romano, Nielsen's Brad Kelly on the Importance of AM/FM Radio During Natural Disasters (June 26, 2018), <https://www.mediavillage.com/article/natural-disasters-reaffirm-importance-of-amfm-radio/>.

⁵⁸ NPRM at paras 37, 72.

⁵⁹ *See also* Free Press Comments, 15-16; Reply Comments of Free Press, MB Docket No. 18-349, 10 (May 30, 2019), <https://ecfsapi.fcc.gov/file/105290338411206/FPQRReplies.pdf>.

⁶⁰ Second R&O at n.212.

⁶¹ Second R&O at 9895 (emphasis added).

⁶² *Id.*, at n.211.

⁶³ *Id.*, at 9911-12.

⁶⁴ *Id.*

⁶⁵ *Id.*, at n.326.

⁶⁶ Second R&O at n.326, n.215 (citing *Out of the Picture* at 21).

⁶⁷ *Id.*, at n.211.

⁶⁸ *Id.*, at n.944 (considering study of gender and viewpoint diversity).

⁶⁹ *Id.*, at 9895.

⁷⁰ *Id.*, at 23 (“Had these stations not been sold, minority ownership would be 20 percent higher than the current level.”).

⁷¹ Second R&O, at 9911-12.

⁷² *Id.*, at 9912 (312 minority-owned radio stations in 1995, 284 in 1996/97 and 305 in 1998).

⁷³ 1998 Biennial Review, Report & Order, 13 F.C.C.Rcd. 23056, 23095-97 (1998).

⁷⁴ Second R&O at 9975.

⁷⁵ Media Bureau Restricted FRN Public Notice, DA 17-1088, 32 F.C.C.Rcd. 9330 (2017).

⁷⁶ *Prometheus II*, 652 F.3d at 470-71.

⁷⁷ *See, e.g.*, Promoting Diversification of Ownership, R&O/Fourth FNPRM, 24 F.C.C.Rcd. 5896 (2009) (uniform filing date, broadened mandatory filers).

⁷⁸ *See, e.g.*, Report & Order and Third Further Notice of Proposed Rulemaking, MB Docket 07-294 et al. at para 94 (2008); *Out of the Picture*, 8-11 (identifying numerous errors in FCC data collection, including missing all stations owned by the largest African-American owned radio station in the country, missing 75% of female-owned stations and 69% of stations owned by people of color)

⁷⁹ Promoting Diversification of Ownership, Seventh FNPRM, 30 F.C.C.Rcd. 1725, 1732 (2015); Second R&O at 9973.

⁸⁰ Promoting Diversification of Ownership, Order, 31 F.C.C.Rcd. 398, 421 (2016).

⁸¹ Promoting Diversification of Ownership, Reconsideration Order, 32 F.C.C.Rcd. 3440 (2017).

⁸² UCC FNPRM Comments at 18 (citing 2014 323 Ownership Report, Table D(1a)).

⁸³ 2012 323 Ownership Report, 27 F.C.C.Rcd. 13814 at n.10 (2012).

⁸⁴ *Id.* at n.10 (“several factors counsel caution” with trend analysis, noting 85% of full-power TV stations filed in 2009 but 98% filed in 2011).

⁸⁵ Media Bureau 2015 Ownership Report at 25, Table A(1b) (2017); *See, e.g., id.* at 55, Table D(1b) (no data for 980 of the total 4,489 AM radio stations).

⁸⁶ *Out of the Picture*, 12-13.