

December 6, 2018

VIA ELECTRONIC FILING (ECFS)

Marlene H. Dortch, Esq., Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Status of Competition in the Marketplace for Delivery of Audio Programming, MB Docket No. 18-227; Communications Marketplace Report, GN Docket No. 18-231; 2018 Quadrennial Review of the Commission's Broadcast Ownership Rules, MB Docket No. 18-349.*

Dear Ms. Searcy,

Connoisseur Media, LLC (“Connoisseur”), by its attorneys, applauds the FCC for moving forward with its next Quadrennial Review of the FCC’s Ownership Rules, particularly the radio local ownership limits. Those rules have been in place for over 22 years, during which the marketplace for audio entertainment and local advertising sales has dramatically changed. Now, in virtually every radio market, 50 percent or more of local advertising dollars on go to digital competitors who did not exist in 1996 when the current rules were adopted.¹ Local advertising sales provide the vast majority of radio revenue. Similarly, the digital audio services that are currently radio’s primary competition for listeners all came into existence more than a decade after the adoption of the 1996 rules.

Connoisseur applauds the open-ended look at the radio ownership rules advanced in the draft Notice of Proposed Rulemaking (“NPRM”) in the Quadrennial Review.² However, it notes that at next week’s meeting, the Commission will also be adopting its Marketplace Competition

¹ See, e.g., Comments of Connoisseur Media, LLC, Townsquare Media, Inc., Mid-West Family Broadcasting, Midwest Communications, Inc., and the Frandsen family stations, MB Docket No. 18-227, at nn. 23 & 24 (filed Sept. 24, 2018)(hereinafter “Connoisseur Comments”).

² Draft 2018 Quadrennial Regulatory Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Report and Order, MB Docket No. 18-349, FCC-CIRC1812-05 (rel. Nov. 21, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-355215A1.pdf> (“Draft Quadrennial Report”).

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Report (“Report”) which includes a section dealing with the Audio Marketplace.³ As the NPRM specifically incorporates the draft Report, Connoisseur is compelled to note that it believes the draft Report significantly understates the extent of competition in the audio marketplace.

While Connoisseur will not here take issue with each of the conclusions reached by the Commission’s staff in its assessment of the audio marketplace (it will address many of these issues in its comments on the NPRM), as the draft Report will be forwarded to Congress where it may be relied on in legislative matters, Connoisseur does wish to highlight a few notable omissions from or errors in the draft Report. These include the following:

- In paragraph 167, the draft Report states over-the-air radio receivers “are ubiquitous in the marketplace” as are computers and smartphones necessary to receive content provided by online audio providers.⁴ The draft Report makes no note of the fact that almost 30 percent of Americans over the age of 12, and 50 percent of those between 18 and 34, no longer have an AM or FM radio in their homes.⁵
- In its discussion of Intermodal Competition, while discussing issues such as music licensing and strategic partnerships, the report never addresses the actual competition between over-the-air radio and other audio providers, and it omits discussion of the competition for local advertising on which radio relies for the bulk of its revenue. These issues include:
 - The Report never analyzes how marketplace competitors view each other. Connoisseur pointed to specific statements from online companies as to how they see over-the-air radio as their competition, including a statement by the Chief Revenue Officer of Spotify that its service would “eat” radio and the statement by the CEO of Pandora that it intends “to take share from terrestrial radio.”⁶
 - The Report does not mention existing competition for advertising dollars, including specific examples given in the Connoisseur comments. One company noted that it has in the last three years experienced the loss of advertising accounts worth over \$100,000 to digital services like Pandora and Google AdWords in markets including Duluth, Fargo, Wausau-Stevens Point and *even Hibbing*,

³ *Draft Communications Marketplace Report*, Report, GN Docket No. 18-231, FCC-CIRC1812-07 (rel. Nov. 21, 2018), available at <https://docs.fcc.gov/public/attachments/DOC-355217A1.pdf> (“Draft Marketplace Report”).

⁴ Marketplace Report at ¶ 167.

⁵ Connoisseur Comments at 11 (citing data from Edison Research, *The Infinite Dial 2018*, at 11-12 (Mar. 8, 2018), <https://www.slideshare.net/webby2001/infinite-dial-2018> (“Infinite Dial Report”)). A very interesting article discussing the disappearance of radios from the home titled is available on Edison’s website. See Meg Lazovick, *Radio’s Hardware Problem: How Does Radio Compete if Consumers Don’t Have Radios?* (Sept. 28, 2018), <https://www.edisonresearch.com/radios-hardware-problem/>.

⁶ Connoisseur Comments at 14-15.

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*Minnesota.*⁷ Another party to the comments noted how advertisers are faced with more and more choices for their local advertising dollars – including one advertising agency in Utica, NY which a decade ago was called on by 11 companies looking to sell local advertising but which now gets calls from over 50 different companies trying to sell them local ads.⁸

- At paragraph 161, the draft Report cites Edison Research’s “most recent” Share of Ear study. In fact, the statistics cited in the draft Report are not the most recent statistics but instead appear to have been taken from an illustration on the Share of Ear website, which was taken from an older study. The most current statistics are available in another Edison Research study.⁹ These statistics show a 4 percent drop in the time spent listening to terrestrial radio, and a corresponding increase of 2 percent for streaming services and 2 percent increase in listening to podcasts – reflecting that listeners are interchangeable between these sources of audio entertainment. A similar correlation between decreases in listening to radio and increases in streaming was found in another study cited in Connoisseur’s comments.¹⁰ Clearly, there is a finite amount of time for the public to listen to audio services. Any significant increase in market share of digital services comes at the expense of legacy services.
- In discussing Factors Relevant to Entry, Competition and Expansion, the draft Report suggests that developing apps and Internet delivery platforms and music royalties may present barriers to entry to online audio providers.¹¹ The Report does not note that the most significant recent entrants to the online audio marketplace have been Apple, Amazon, and Google, which have market capitalizations hundreds of times larger than the capitalization of the entire radio industry.¹² To them, these costs are not significant. Moreover, these companies can use music and other audio entertainment as a loss leader to promote other portions of their business.¹³

It is clear the Audio Marketplace is a competitive one that is becoming more competitive every day. It is one where, contrary to the implications of the draft Report, there are no longer silos between over-the-air, satellite and online audio offerings. All compete for listeners and

⁷ *Id.* at 10.

⁸ *Id.* at 15.

⁹ Edison Research’s Podcast Consumer Report at 37, available at <https://www.edisonresearch.com/podcast-consumer-2018/> (last visited Dec. 5, 2018).

¹⁰ Connoisseur Comments at 7.

¹¹ Marketplace Report at ¶ 166.

¹² Connoisseur Comments at 16-17.

¹³ *Id.* at 19.

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revenues. Connoisseur asks that the Commission consider these and other facts in its assessment of the audio marketplace.

In changing its rules to allow broadcast-newspaper cross-ownership, the Commission waited so long to recognize changes in the marketplace that its relaxation of the rules came too late to aid many newspapers in withstanding competition from digital media. We trust that the Commission will not similarly delay the recognition that the audio marketplace has changed so much that radio needs to be freed from the regulatory shackles under which it is forced to operate. The public interest benefits from a strong free over-the-air radio industry need to be preserved. Connoisseur looks forward to further commenting on the NPRM to urge the Commission to modify the outdated local radio ownership rules to insure that the service to the public from over-the-air radio continues into the future.

Sincerely,

/s/

David Oxenford
Counsel for Connoisseur Media, LLC

cc: Chairman Ajit Pai
Alison Nemeth Steger, Legal Advisor
Commissioner Michael O'Rielly
Erin McGrath, Legal Advisor
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