Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	)))))	MB Docket No. 18-349

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Patrick McFadden
Larry Walke
Emily Gomes

Daniel McDonald
Theresa Ottina
Loren White
NAB Research

September 2, 2021

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY 1

II. THE FCC SHOULD FOCUS IN THS PROCEEDING ON ENSURING THE COMPETITIVE VIABLITY OF LOCAL STATIONS 6

III. THE FCC'S DECADES-OLD OWNERSHIP RULES HAVE NEVER SUCCESSFULLY PROMOTED DIVERSE OWNERSHIP OF RADIO AND TELEVISION STATIONS 9

A. The FCC's Rules Do Not Address The Central Challenge To New Entry And Diverse Ownership In Broadcasting, Which Is Access To Capital 10

B. The FCC's Ownership Rules Affirmatively Undermine Investment In Broadcasting And New Entry 15

IV. REFORM OF THE OWNERSHIP RULES WOULD PROMOTE LOCALISM BY SAFEGUARDING THE VIABILITY OF LOCAL BROADCAST JOURNALISM IN TODAY'S BIG TECH-DOMINATED MARKETPLACE 19

A. The FCC Cannot Ignore The Growing Crisis In Local Journalism 20

B. The Tech Giants' Dominance Of The Advertising Market Places Local Stations And Their News Operations Under Increasing Duress 23

C. Particularly Given The High Cost Of News Production, Economies Of Scale Are Vital To Local News Operations' Success 29

D. Stations In Smaller Markets With Limited Advertising Bases Struggle To Maintain Their Economic Viability And Their Local News Operations 31

V. SECTION 202(h) REQUIRES THE FCC TO UNDERTAKE A COMPETITION-CENTRIC ANALYSIS, WITH AN EYE TOWARD DEREGULATION 38

A. The Text, Structure, Purpose And History Of Section 202 Of The 1996 Act Show That Congress Intended Section 202(h) To Continue The Process Of Deregulation It Began 38

B. The Text, Structure, Purpose and History Of Section 202 Cannot Be Properly Read To Impose Only Standard Administrative Law Obligations On The FCC, Let Alone To Justify Reregulation Of Broadcast Stations 42

1. Attempting to Justify Reregulation by Misinterpreting the Term "Modify" in Isolation Is Contrary to the Full Text of Section 202(h), the Structure of Section 202 and Congressional Intent 43
2. The "Public Interest as the Result of Competition" Does Not Have the Same Meaning as the "Public Interest," and the FCC Must Give Full Effect to Congress's Specific Choice of Words 47
3. In its Section 202(h) Reviews, the FCC Should Test Each Rule's Public Interest Rationale Against Competition to Assess its Continued Necessity 51

C. The Supreme Court Left Open Broader Questions About Section 202(h), But Set A High Bar As To The Type Of Evidence Needed To Show That Changes To The Structural Ownership Rules Would Impair Diverse Ownership 53

VI. THE FCC CAN NO LONGER MAINTAIN THAT RADIO AND TV STATIONS COMPETE IN A MARKET LIMITED TO ONLY BROADCAST STATIONS, THEREBY UNDERMINING THE BASIS FOR THE CURRENT LOCAL OWNERSHIP RULES 55

A. New Evidence Makes Clear Yet Again That Broadcast Stations Compete In A Broad Advertising Market, Which Includes Digital Platforms 55

B. The FCC Cannot Retain The Current Local Ownership Limits Based On Outdated And Erroneous Assumptions About Competition In Local Markets . 61

VII. RECENT EVENTS AND MARKETPLACE DEVEOPMENTS HAVE ACCELERATED ADVERTISER AND CONSUMER USE OF DIGITAL PLATFORMS AND OUTLETS AND EXACERBATED AD-SUPPORTED BROADCASTERS' FINANCIAL CHALLENGES 64

A. The Pandemic Dealt A Severe Blow To The Radio Industry, With Stations Not Expected To Regain Their Pre-COVID Position In The Marketplace, Making Reform Of The Local Radio Rule More Urgent And Important 68

1. Consumer Adoption of Digital Devices and Competing Audio Services Continues Apace 69
2. Radio Industry Advertising Revenues Are Not Projected to Regain Their Pre-Pandemic Levels 75

B. The Continuing Transformation Of The Media And Advertising Markets, Including The Rapid Growth Of Ad-Supported Video Streaming Services, Presents Additional Significant Challenges To Local TV Stations 84

1. Local TV Stations Compete for Audiences Against a Vast and Still Growing Number of Other Outlets, Accessible Via a Range of Devices, in a Fragmented Marketplace 87
2. TV Broadcasters Compete for Vital Advertising Dollars Against Many Other Outlets in a Marketplace Increasingly Dominated by Digital Platforms 95

VIII. IN TODAY'S HYPER-COMPETITIVE MARKETPLACE, NO BASIS EXISTS FOR RETAINING – AND CERTAINLY NOT FOR INCREASING – THE CURRENT OWNERSHIP RESTRICTIONS ON TV STATIONS 99

A. Multicast Streams And Satellite And Low Power TV Outlets Continue To Serve The Public Interest And Do Not Warrant Treatment As Full-Service Stations Under The Local TV Rule 99

B. TV Stations' Voluntary Adoption Of ATSC 3.0 Provides No Rational Basis For Retaining Analog-Era Ownership Rules 106

C. Completion Of The Broadcast TV Incentive Auction And Repack Provides No Basis For Failing To Reform The Local TV Rule 107

IX. CONCLUSION 111

ATTACHMENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996	))))	MB Docket No. 18-349
	)	

COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS

I. INTRODUCTION AND SUMMARY

When the Commission first adopted rules prohibiting common ownership of more than one AM, FM or television station serving substantially the same area, Franklin D. Roosevelt occupied the White House. Now in the third decade of the 21st century, FCC rules still prevent ownership of more than one TV station in small markets and significantly restrict local common ownership of AM and FM stations separately by service and in total. The National Association of Broadcasters (NAB)[1] and many radio and TV broadcasters have previously demonstrated the absurdity of imposing analog-era ownership restrictions in a media and advertising marketplace completely upended by digital technology.

In response to the Public Notice seeking to update the record in this quadrennial review,[2] NAB provides additional information and data showing the substantial and growing pressures on ad-supported broadcast stations in a radically altered competitive landscape and the resulting need to modernize the FCC's rules. As documented below, marketplace

---

[1] NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

[2] FCC, *Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review*, Public Notice, MB Docket No. 18-349, DA 21-657 (June 4, 2021) (Public Notice).

changes since early 2019, including but not limited to the COVID-19 pandemic and recession, have made reform of the local ownership rules more urgent than ever.

To begin, NAB reminds the FCC that the broadcast "industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability."[3] Indeed, to fulfill Congress's intent in the Communications Act and subsequent legislation, the FCC must ensure that its broadcast regulatory framework, including its ownership rules, enable radio and TV stations to operate as viable private enterprises in a competitive market and to effectively serve the public interest and their local communities. As Congress found in a much less competitive marketplace, permitting "common ownership of stations will promote the public interest" and "increas[e] competition and diversity."[4]

The FCC's long-standing ownership restrictions in fact have failed for decades to meaningfully promote diverse ownership of broadcast stations. The primary cause of low levels of new entry and minority/female ownership is lack of access to capital, which structural ownership rules do not address. But even if capital were more accessible, the FCC's continued insistence on heavily regulating broadcasters – including through outdated ownership rules – is a clear disincentive to investment and new entry. In a world where investors and new entrants have countless other media and communications options, the Commission itself is a major impediment to increased diversity in the broadcast industry.

Beyond failing to promote ownership diversity, the FCC's rules also impede localism. Congress has recognized the current competitive threat to local journalism, and NAB and other parties have shown that the giant technology platforms that dominate both content discovery and digital advertising imperil the ability of news providers to reach online

---

[3] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).
[4] H.R. Rep. No. 104-204, at 118 (1995), *reprinted in* 1996 U.S.C.C.A.N. 10, 86.

audiences with their local content and to derive ad revenue from that content. Given this increasing duress on stations and their local news operations, the FCC must allow broadcasters to leverage the strong economies of scale in local news production, especially in smaller markets with limited advertising bases. Indeed, a recent FCC study concluded that most TV markets are likely unable to sustain four or more independent news operations.

Not only should the FCC focus here on the competitive viability of local stations as a matter of sound policy, but Section 202(h) of the 1996 Telecommunications Act also requires the FCC to focus on competition as the key consideration in its ownership reviews. As NAB explains, the statutory text, structure, purpose and history all show Section 202(h) to be a competition-based, deregulatory tool. Those straining to interpret Section 202(h) as non-deregulatory downplay, if not virtually ignore, the statutory phrase "necessary in the public interest *as the result of competition*," disregard Congress's manifest deregulatory intent, read statutory terms out of their context and slight the statutory structure.

In assessing competition, the FCC can no longer maintain the fiction that broadcast stations compete only against other broadcast stations. The record compiled in 2019 showed that broadcasters compete against myriad traditional and digital platforms for both audiences and ad revenue. Earlier this year, the Department of Justice submitted additional evidence, including a study by NERA Economic Consulting, which found that digital platforms compete with local TV broadcasters for local ad dollars and that the relevant market for analyzing local TV station combinations should include advertising on digital platforms. This study provides yet more evidence that the FCC cannot justify its ownership rules by acting as though broadcast stations are still the only relevant electronic outlets, as in the days of President Roosevelt's famous fireside chats. In fact, the FCC recently found that "three categories of participants" – MVPDs, online video providers and broadcast TV stations – "have defined the [video] market for the past decade" and continue to dominate it.[5]

Recent events and marketplace developments, moreover, have only exacerbated broadcasters' economic challenges and notably accelerated consumer and advertiser use of digital platforms. As Deloitte concluded in its 2020 digital media trends report, "the COIVD-19 story isn't so much 'before and after' as it is 'before and *faster*.'"[6]

Since the Commission began this review, consumer adoption of digital devices that enable access to virtually unlimited audio and video content 24/7/365 has continued apace. Consumers are acquiring more smart devices, from phones to watches to speakers, and record numbers are now streaming audio (and video), paying for subscription music services and listening to podcasts. These trends have further fragmented the formerly mass audience for AM/FM broadcasting and reduced listening to terrestrial radio. The pandemic's shock to the advertising market also harmed local radio stations. The radio industry's experience following the pandemic recession is projected to mirror radio stations' struggles after the 2008-2009 recession – a modest recovery but not again reaching the levels of advertising revenue earned prior to the recession.

Similarly, "[t]he past year has categorically shifted the television viewing landscape."[7] Consumers are acquiring more internet-connected TV devices, smart TVs and mobile devices, and using them to spend more time viewing increased numbers of streaming services, both subscription and ad-supported, the latter of which competes directly with broadcast TV for advertising. In this fragmented sea of video (and audio) choice, the formerly

---

[5] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3047, 3086-87 (2020) (identifying broadcast radio stations, satellite radio and online audio providers as the "major participants" dominating "today's marketplace for the delivery of audio programming").

[6] Deloitte, *Digital media trends survey*, at 3 (14th ed. 2020) (emphasis in original).

[7] Nielsen, *The Gauge Shows Streaming Is Taking A Seat At The Table* (June 17, 2021).

mass audience for traditional broadcast TV has declined in size, diverted to cable/satellite, over 300 video streaming services, video games and more. Due to these audience trends and the increasing dominance of digital platforms in the ad market, local TV stations' ad revenues have dropped significantly in real terms.

Given the record evidence and Section 202(h)'s mandate, the FCC must conclude that its local ownership rules are no longer necessary in the public interest as the result of competition. NAB accordingly urges the FCC to reform its local radio and TV rules as we proposed in 2019. For terrestrial radio to remain a competitive and meaningful provider of audio programming, the Commission should: (1) eliminate caps on AM ownership in all markets; (2) permit a single entity to own up to eight commercial FM stations in Nielsen Audio markets 1-75 (with the opportunity to own up to ten FMs by successfully participating in the FCC's incubator program); and (3) remove restrictions on FM ownership in Nielsen markets 76 and lower and in unrated areas. This proposal reflects the challenging competitive position of the local radio industry overall and accounts for the economic struggles of smaller-market stations and AM stations in particular.

Also as NAB earlier proposed, the FCC should no longer retain the *per se* restrictions that ban combinations among top-four rated TV stations, regardless of their audience or advertising shares, and that prevent ownership of more than two stations in all markets, regardless of their competitive positions. This across-the-board approach irrationally ignores actual competitive conditions in disparate local markets. And as a previous study showed, it is a myth that top-four stations in all-sized markets occupy positions of competitive power.

The FCC should act now to fulfill both Section 202(h)'s deregulatory mandate, and Congress's even longer-standing goal of a competitively viable broadcast service capable of serving local communities, by modernizing its local radio and TV ownership limits. The American public cannot afford for the FCC to remain asleep at the regulatory wheel.

II. THE FCC SHOULD FOCUS IN THS PROCEEDING ON ENSURING THE COMPETITIVE VIABLITY OF LOCAL STATIONS

Given the intense competition broadcasters now face, the FCC's primary concern in this quadrennial review should be the economic viability of local stations and their consequent ability to offer the programming and services, including local news, upon which Americans rely. This focus is necessary to comport with congressional intent in the Communications Act of 1934 (Act) and other major legislation and to promote the FCC's public interest goals.

In the Act, Congress established broadcasting as a privately-owned, not a publicly-owned or state-supported service, with stations as private enterprises subject to the marketplace.[8] Congress also established a system in which broadcast stations are licensed to local communities throughout the nation and required to serve the public interest,

[8] In fact, Congress did not even consider government ownership or financing of broadcast stations as an alternative. Glen O. Robinson, *The Federal Communications Act: An Essay on Origins and Regulatory Purpose*, *in* A Legislative History of the Communications Act of 1934, at 3, 11 (Max D. Paglin ed., 1989). The legislative history of the 1927 Radio Act "reveals no attention to the possibility of government ownership/operation of broadcast stations." *Id*. at 12. When the 1934 Act was being debated, moreover, Congress rejected a proposal to direct the FCC to set aside 25 percent of the broadcast frequencies or comparable airtime for use by educational, religious and other institutions, in part due to concerns as to how these noncommercial educational and welfare institutions would financially support their operations. *Id*. at 13-14. The 1934 Act specifically provides that all applications for station licenses must set forth facts as the FCC may prescribe as to the qualifications of an applicant to operate a station, including "financial" qualifications. 47 U.S.C. § 308(b); *see, e.g.*, *Mission Broad. Corp. v. FCC*, 113 F.3d 254, 257 (D.C. Cir. 1997) (upholding FCC decision denying applicants a permit to operate a TV station on the ground that each had failed to demonstrate it had the "reasonable assurance of financing needed to be awarded a permit"). As the Supreme Court recognized over 80 years ago, "the field of broadcasting is one of free competition," with stations surviving or failing in a commercial marketplace, *FCC v. Sanders Bros. Radio Station*, 309 U.S. 470, 474-75 (1940), and the FCC, as well as the Court, has recognized for many decades that broadcasters' financial wherewithal is a significant factor in providing quality service to the public. *Id*. at 475 ("An important element of public interest and convenience affecting the issue of a license is the ability of the licensee to render the bast practicable service to the community reached by his broadcasts. That such ability may be assured the Act contemplates inquiry by the Commission, *inter alia*, into the applicant's financial qualifications to operate the proposed station.").

convenience and necessity.[9] Accordingly, Congress not only placed obligations on licensed broadcasters but also on the Commission.

To fulfill Congress's vision, the FCC must ensure that its broadcast regulatory framework, including its ownership rules, enables TV and radio stations to serve the public interest and their communities of license, which means, as a practical matter, that the broadcast industry must remain economically viable in a highly competitive marketplace. Congress has repeatedly reconfirmed through legislation its intent that broadcasting remains a competitively viable service in a changing marketplace. In major legislation including the Cable Television Consumer Protection and Competition Act of 1992 (Cable Act) and the Telecommunications Act of 1996 (1996 Act), Congress acted to protect and promote the competitiveness of broadcast stations and the economic viability of over-the-air (OTA) local broadcasting.[10] The FCC's broadcast regulatory policies, including the ownership

---

[9] Section 307(b) of the Act requires the FCC to distribute licenses and frequencies "among the several States and communities as to provide a fair, efficient, and equitable distribution of radio service to each of the same." 47 U.S.C. § 307(b). When considering broadcast applications, Section 309(a) requires the FCC to determine whether the grant of each application would serve the public interest, convenience and necessity and, if so, directs the FCC to grant the application. 47 U.S.C. § 309(a). *See also* 47 U.S.C. § 310(d) (providing that before any station license is transferred or assigned, the FCC must find that the public interest, convenience and necessity "will be served thereby").

[10] Congress's "overriding" purpose in enacting the must-carry provisions of the Cable Act was to "guarantee the survival" of broadcast TV and ensure that every individual could access free TV programming. *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 647, 662-63 (1994) (agreeing with Congress that "preserving the benefits of free, over-the-air local broadcast television" was an "important governmental interest"). In highly specific legislative findings, Congress reaffirmed the value it places on local commercial TV stations serving communities throughout the country and on the viability of local OTA TV stations. *See* Cable Act, Section 2(a)(9) (stating that having cable systems carry the signals of local commercial TV stations was necessary to serve the goals of providing a fair, efficient and equitable distribution of broadcast services under Section 307(b) of the Act); Section 2(a)(16) (stating that without a must-carry requirement, "the economic viability of free local broadcast television and its ability to originate quality local programming will be seriously jeopardized"). 47 U.S.C. § 521 nt. In the main legislative report on the Cable Act, the Senate Commerce Committee found that enactment of retransmission consent was necessary to address a

rules, should reflect Congress's clear intent to "ensure that our system of free broadcasting remain vibrant."[11] The Commission has far too often neglected this fundamental goal.

In fact, the FCC has only rarely recognized in the context of its ownership rules that the broadcast "industry's ability to function in the 'public interest, convenience and necessity' is fundamentally premised on its economic viability."[12] This focus on the economic standing of local stations has become even more urgent in today's marketplace, where broadcasters face unprecedented competition for the advertising revenues vital to support station operations. Given the Act's emphasis on equitably distributing broadcast services across states and communities, 47 U.S.C. § 307(b), the FCC must take special care to ensure that its ownership rules enable the competitive viability of radio and TV services, including local news, in mid-sized and small markets with limited advertising bases.

"distortion in the video marketplace which threatens the future of over-the-air broadcasting." S. Rep. No. 102-92, at 35 (1991), *reprinted in* 1992 U.S.C.C.A.N 1133, 1168. Congress similarly enacted the 1996 Act "to preserve and to promote the competitiveness of over-the-air broadcast stations." H.R. Rep. No. 104-204, at 48 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 11. The section of this House Report addressing broadcasting was entitled "Broadcast Communications Competitiveness." *Id*. at 54. It stressed that OTA "broadcasting should remain a vital element" of the communications marketplace, and that Congress and the FCC needed to "reform Federal policy and the current regulatory framework to reflect the new marketplace realities" to "ensure the industry's ability to compete effectively in a multichannel media market." *Id*. at 55. Section 202(h) of the 1996 Act, moreover, mandated that the FCC regularly examine the media marketplace, determine whether its ownership rules "remain necessary in the public interest as the result of competition," and repeal or modify those that are not. A long series of satellite television bills also evidence Congress's concern with preserving our system of local broadcast TV stations and OTA television. *See, e.g.,* S. Rep. No. 113-322, at 2-3 (2014) (discussing legislative limits on importation of "distant" TV signals to preserve localism and to prevent non-local signals from "taking viewers away from local broadcast television stations that provide community-focused programming such as local news and weather," and stating that Congress determined that "over-the-air television would not be adversely impacted" by a license permitting satellite carriers to provide "local-into-local service," as such service would give more viewers access to local stations, thereby increasing their advertising revenues).

[11] S. Rep. No. 102-92, at 36 (1991), *reprinted in* 1992 U.S.C.C.A.N 1133, 1169.

[12] *Revision of Radio Rules and Policies*, Report and Order, 7 FCC Rcd 2755, 2760 (1992).

NAB urges the FCC to take seriously its role under the Communications Act, the Cable Act, the 1996 Act and other legislation in fulfilling Congress's intent to maintain a system of broadcast stations able to operate as viable private enterprises in a competitive market *and* capable of serving the public interest and local communities effectively. Particularly in this proceeding governed by a competition-centric statute, that means recognizing the regulatory and market structures undermining broadcasters' competitiveness and reforming the ownership rules to permit local stations in all-sized markets to take advantage of vital economies of scale, especially in local news production. As Congress stated in a much less competitive media environment, "[p]ermitting common ownership of stations will promote the public interest by harnessing operating efficiencies of commonly owned facilities, thereby increasing competition and diversity," as well as localism.[13]

III. THE FCC'S DECADES-OLD OWNERSHIP RULES HAVE NEVER SUCCESSFULLY PROMOTED DIVERSE OWNERSHIP OF RADIO AND TELEVISION STATIONS

The FCC has maintained local and national ownership restrictions since the World War II era. Those rules have failed for decades to meaningfully promote minority and female ownership of broadcast outlets. In fact, the levels of minority ownership were notably *lower* in the past when the ownership rules were at their strictest.[14] The FCC seems remarkably – and legally fallibly – incurious as to why its retention of ownership rules has not successfully promoted diverse ownership. The Commission can no longer ignore the fact that its rules have not advanced their purported diversity cause.

---

[13] H.R. Rep. No. 104-204, at 118 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 86. More recently, the FCC agreed with Congress that eliminating or reforming its local cross- and multiple-ownership rules would benefit consumers, as local media outlets would be better able to invest in local news and other programming and improve their overall service to local communities. *2014 Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9803 (2017) (2017 Reconsideration Order).

[14] *See* Reply Comments of NAB, MB Docket No. 18-349, at 17-18 (May 29, 2019) (NAB 2018 Quadrennial Replies).

If the Commission finally chooses to examine the rules' failure to encourage ownership diversity, it will uncover two straightforward explanations. First, the primary cause of low levels of new entry and minority/female ownership in broadcasting is lack of access to capital, which structural ownership rules do not address. Not a single rule matters if women and people of color cannot access critical capital. Second, even if capital were more readily available, the FCC's continued heavy-handed regulation of broadcasters, including through outdated ownership restrictions, serves as a major disincentive to investment. Potential investors and new entrants must ask whether it is worth their while to invest in an industry under the government's thumb, where they cannot achieve necessary scale, while other communications industries flourish with less or virtually no burdensome regulation. NAB discusses both of these issues in detail below.

A. The FCC's Rules Do Not Address The Central Challenge To New Entry And Diverse Ownership In Broadcasting, Which Is Access To Capital

The FCC's long-standing maintenance of broadcast ownership restrictions has not resulted in the hoped-for levels of minority or female ownership, and there is no rational reason to expect that retaining the current rules going forward will yield a different, let alone better, result. On (rare) occasion, the Commission has recognized this logic, stating in 2014 that, "considering the low levels of minority and female ownership," it did not believe that "the [newspaper] cross-ownership ban has protected or promoted minority or female ownership of broadcast stations in the past 35 years, or that it could be expected to do so in the future."[15] In fact, as NAB previously explained, the levels of minority ownership were notably *lower* decades ago when the ownership rules were much stricter than today.[16]

Maintaining structural ownership limits fails to promote new entry into broadcasting because those limits do not address the primary obstacle facing new entrants, particularly minorities and women – a lack of access to capital.[17] The lack of access to capital impairs small businesses of all types. Congress and various federal agencies, including the FCC, for years have agreed that small entities struggle to obtain capital to form and expand their businesses and that "women [and] minorities" have "particular difficulty obtaining access to credit or capital."[18] Congress recognized these problems decades ago and continues to propose and pass legislation designed to address the "significant obstacles" small businesses face in obtaining funding.[19] Congress also continues to recognize that minority

---

[15] *2014 Quadrennial Regulatory Review*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC Rcd 4371, 4455 (2014) (2014 Quadrennial FNPRM). The FCC made a similar finding about the radio/TV cross-ownership rule. *Id*. at 4470.

[16] *See* NAB 2018 Quadrennial Replies at 17-18. After decades of strict national and local multiple and cross-ownership restrictions reaching their apogee in the mid-1970s, the FCC found in 1978 that minorities "control[led] fewer than *one percent*" of the commercial radio and TV stations in the U.S., a figure noticeably lower than today, when ownership limits are looser. *Statement of Policy on Minority Ownership of Broadcasting Facilities*, 68 FCC 2d 979, 981 (1978) (emphasis in original).

[17] *See*, *e.g*., NAB 2018 Quadrennial Replies at 18-19; Reply Comments of NAB, MB Docket No. 17-318, at 23-24 (Apr. 18, 2018).

[18] Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, §§ 112, 331, 106 Stat. 986, 989, 1007 (1992) (also finding that adequate access to debt or equity capital is a "critical component" of small business success).

[19] H.R. Rep. No. 114-408, at 5 (2016). This report accompanying the SEC Small Business Advocate Act, signed into law in late 2016, also stated that "[m]any small companies still cannot access the capital they need to grow their businesses." *Id*. at 6. Legislation introduced this year to address small businesses' problems accessing capital include the Small Business Access to Capital Act of 2021 (S. 258) and the MicroCap Small Business Investing Act of 2021 (H.R. 3842).

and women-owned businesses face access to capital obstacles in starting and growing their companies.[20]

Several federal agencies and other governmental entities, including the Small Business Administration (SBA), have reached similar conclusions. In reports over the past decade, these entities have found that small business owners struggle to find available credit;[21] that the lack of sufficient starting capital is a constraint inhibiting entry by new firms;[22] and that inadequate access to financial capital continues to constrain the growth of minority-owned businesses[23] and women-owned businesses.[24]

Unsurprisingly, the FCC has found for decades that lack of access to capital impedes new entry into broadcasting and other communications services. When seeking comment on an incubator program to promote diverse ownership of mass media entities *in 1995*, the FCC stated its aim was to increase access to capital, which had "consistently been identified

---

[20] *See, e.g.*, Virtual Hearing, Subcomm. on Diversity and Inclusion of the House of Representatives Financial Services Comm., *Access Denied*: *Challenges for Women- and Minority-Owned Businesses Accessing Capital and Financial Services During the Pandemic* (July 9, 2020); Field Hearing, U.S. Senate Comm. on Small Business and Entrepreneurship, *Strengthening Access to Capital for Minority-Owned Small Businesses*, S. Hrg. 115-566 (Sept. 14, 2018); U.S. Senate Comm. on Small Business and Entrepreneurship, *Wealth Gap Report*, at 33-34; 49 (July 29, 2013); Majority Report of U.S. Senate Comm. on Small Business and Entrepreneurship, *21st Century Barriers to Women's Entrepreneurship*, at 2-3 (July 23, 2014); Small Business Jobs Act of 2010, Pub. L. No. 111-240, §§ 4101, 4103(d)(8), 124 Stat. 2504, 2582, 2591 (2010) (creating a lending fund to increase availability of credit for small businesses and requiring outreach to minorities and women about the availability of small business loans and the application process for them).

[21] Christine Kymn, *Access to Capital for Women- and Minority-owned Businesses: Revisiting Key Variables*, SBA, Office of Advocacy, Issue Brief at 1 (Jan. 29, 2014).

[22] Alicia Robb, Marin Consulting, for SBA, Office of Advocacy, *Access to Capital among Young Firms, Minority-owned Firms, Women-owned Firms, and High-tech Firms*, at 4 (Apr. 2013).

[23] Robert W. Fairlie, Ph.D. and Alicia M. Robb, Ph.D., *Disparities in Capital Access between Minority and Non-Minority-Owned Businesses*, Dep't of Commerce, Minority Business Development Agency, at 3, 5 (Jan. 2010).

[24] *Understanding the Landscape: Access to Capital for Women Entrepreneurs*, Women Business Owners' Access to Capital Literature Review, Federal Research Division, Library of Congress, at 1 (Mar. 1, 2018).

as a crucial barrier to entry."[25] In its initial Section 257 report to Congress, the FCC found that for small, women- and minority-owned businesses the "predominant impediment to entry . . . is access to and cost of capital."[26] In a later Section 257 report, the FCC discussed a "would-be radio station operator," stating that "if she has no demonstrated experience running a station, the capital market may overestimate the risk associated with lending to her and she may be unable to raise the funds necessary to start her business."[27] The Commission also has amended various rules to promote access to capital in the broadcast industry, including its equity/debt plus attribution and foreign investment rules, citing concerns that limited access to capital in the broadcast industry was inhibiting diversity of ownership and new entry.[28]

Numerous commenters in the FCC's 2018 proceeding adopting an incubator program agreed that access to capital is the overriding challenge to prospective new entrants, especially women and minorities.[29] Several of these commenters focused on a

---

[25] *Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities*, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2790 (1995).

[26] *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses*, Report, 12 FCC Rcd 16802, 16920 (1997).

[27] *Section 257 Triennial Report to Congress*, Report, 31 FCC Rcd 12037, 12042 (2016).

[28] *See Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5937 (2008); *Commission Policies and Procedures Under Section 310(b)(4) of the Communications Act*, Declaratory Ruling, 28 FCC Rcd 16244, 16249 (2013). In the foreign investment proceeding, 31 minority and civil rights organizations requested an easing of restrictions on foreign investment in broadcasting, stating that U.S. banks and venture firms that formerly financed small and medium-sized broadcast transactions had "left the space entirely." Letter from David Honig, President, MMTC, MB Docket No. 13-50 (Apr. 15, 2013). Then-Commissioners Clyburn and Pai both stated that they had repeatedly heard, since joining the FCC, that the major impediment to new entry and minority ownership in the broadcast industry was access to capital. Statement of Commissioner Mignon Clyburn and Statement of Commissioner Ajit Pai, 28 FCC Rcd at 16255, 16257-58.

[29] *See, e.g.*, Letter from G. Johnson, T. Buono and M. Fratrik to Marlene H. Dortch, MB Docket No. 17-289 (June 11, 2018); Letter from Lyle Banks to Marlene H. Dortch, MB

"middle market" gap, where station prices are high enough to require new entrants to raise substantial capital to purchase and successfully operate stations but are not sufficiently high to attract many lenders and equity investors, thereby exacerbating the access to capital problem for even established broadcasters and for new entrants particularly.[30]

Consistent with its own previous determinations and numerous commenters, the Commission accordingly concluded in the 2018 incubator rulemaking that "access to capital is most often the barrier" to station ownership by new and diverse entities.[31] Indeed, a study commissioned by the FCC in an earlier quadrennial review bluntly concluded that to change ownership patterns in broadcasting, "we need to either change the aggregate distribution of wealth" in the U.S. "or otherwise increase access to capital markets."[32] The retention of analog-era ownership restrictions, however, does nothing to address those broader economic issues that are the real cause of minority and female underrepresentation among all communications service providers, including broadcast station owners. Rather, as described below, those structural ownership restrictions, along with other asymmetric

---

Docket No. 17-289 (June 6, 2018); Letter from W. Lawrence Patrick to Marlene H. Dortch, MB Docket No. 17-289 (June 4, 2018); Letter from Pervis Parker to Marlene H. Dortch, MB Docket No. 17-289 (May 24, 2018); Letter from James Z. Hardman to Marlene H. Dortch, MB Docket No. 17-289 (May 10, 2018); Letter from Francisco R. Montero to Marlene H. Dortch, MB Docket No. 17-289 (May 15, 2018); Letter from Hugues Jean to Marlene H. Dortch, MB Docket No. 17-289 (May 17, 2018); Letter from Diane Sutter to Marlene H. Dortch, MB Docket No. 17-289 (May 18, 2018); Letter from Carolyn Becker to Marlene H. Dortch, MB Docket No. 17-289 (May 15, 2018); Letter from Trila Bumstead to Marlene H. Dortch, MB Docket No. 17-289 (May 14, 2018).

[30] *See, e.g.*, Letter from G. Johnson, T. Buono and M. Fratrik to Marlene H. Dortch, MB Docket No. 17-289, at 2 (June 11, 2018); Letter from Francisco Montero to Marlene Dortch, MB Docket No. 17-289, at 1 (May 15, 2018); Letter from W. Lawrence Patrick to Marlene Dortch, MB Docket No. 17-289, at 2-3 (June 4, 2018).

[31] *Rules and Policies to Promote New Entry and Ownership Diversity in the Broadcasting Services*, Report and Order, 33 FCC Rcd 7911, 7915 (2018).

[32] Arie Beresteanu and Paul B. Ellickson, Duke University, *Minority and Female Ownership in Media Enterprises*, Media Ownership Study No. 7, at 10 (June 2007) (available at: https://www.fcc.gov/media/media-ownership-2006-research-studies-archive).

regulations, discourage investment in broadcasting, reduce the availability of capital for both existing and prospective broadcasters and make non-broadcast business opportunities comparatively more inviting.

B. The FCC's Ownership Rules Affirmatively Undermine Investment In Broadcasting And New Entry

Outdated structural ownership rules do more than fail to promote investment and new entry into broadcasting. They *affirmatively impede* investment and entry by making broadcasting a less attractive business opportunity relative to others in the communications market. Certainly, the available evidence indicates that demand for certain new broadcast licenses is not strong. In the recently concluded auction of AM and FM construction permits (CPs), 30.2 percent of the CPs on offer were not acquired by anyone,[33] even though this auction was the first for full-power radio CPs since 2015. Similarly, in the five full-power FM auctions prior to Auction 109, nearly one-quarter of the CPs on offer went unsold.[34]

These auction results are hardly surprising. Broadcasters face significant competition for audiences and advertising dollars from other audio and video providers and the large technology platforms, yet they continue to be governed by legacy asymmetric ownership (and other) regulations that fail to reflect the rapid transformation of, and increased competition in, the media marketplace. Asymmetric restrictions that fail to account for such changes threaten to make broadcasting a less desirable investment. Specifically, numerous

---

[33] Auction 109 offered four AM construction permits and 135 FM construction permits, but the winning bidders acquired only 97 CPs. *See Auction of AM and FM Broadcast Construction Permits*, Public Notice, AU Docket No. 21-39, DA 21-780 (July 1, 2021); FCC, Public Notice, *Auction of AM and FM Broadcast Construction Permits Closes*, AU Docket No. 21-39, DA 21-983 (Aug. 12, 2021).

[34] *See* Reply Comments of NAB, GN Docket No. 20-60, at n. 67 (May 28, 2020) (noting that in the "last five auctions of frequencies for full-power FM stations combined, the FCC retained 147 unsold construction permits, or nearly one-quarter (23.4 percent) of the total number of permits offered in those auctions").

studies have shown that retaining legacy asymmetric regulations in an era of increased competition creates regulatory distortions, drives up the regulated industry's costs, causes already scarce capital to flow to less regulated industries, deters new firm entry and places the more heavily regulated companies at a competitive disadvantage relative to companies that provide similar services but are able to avoid regulatory classifications and constraints.[35] Thus, potential new entrants, including women and people of color, may perceive broadcast station ownership as a less attractive option for maximizing their return when other available investment opportunities, including digital and online, do not face the same restrictions and attendant costs.

If the Commission truly is interested in promoting investment and new entry in the broadcast industry, it must remove or reform local ownership and other uneconomic

[35] *See* Steve Pociask and Joseph P. Fuhr, Jr., *Concentration by Regulation: How the FCC's Imposition of Asymmetric Regulations Are Hindering Wireline Broadband Competition in America*, The American Consumer Institute Center for Citizen Research, at 2 (Jan. 2016) (demonstrating that asymmetric regulations on incumbent telecommunications service providers providing broadband services "affects broadband competition, reduces broadband investment, increases wireline concentration and reduces consumer choice"); George S. Ford, *Net Neutrality, Reclassification and Investment: A Counterfactual Analysis*, Phoenix Center Perspectives (Apr. 25, 2017) (showing that the threat of Title II reclassification reduced investment in broadband by at least 20 percent between 2011 and 2015); Ev Ehrlich, *A Brief History of Internet Regulation*, Progressive Policy Institute, at 16-17 (Mar. 2014) (examining the impact of uneconomic broadband regulations imposed on incumbent services compared to less regulated systems and observing that "investment goes where regulation guides it by making it either welcome or unwelcome," with such regulations having the ability to "throttle the flow of capital into the sector and are therefore implemented at a potentially great cost" to overall investment in the broadband sector); Rob Frieden, *Regulatory Opportunism in Telecommunications: The Unlevel Competitive Playing Fields*, 10 Commlaw Conspectus 81 (2001) (describing how "[a]symmetries in regulatory burdens create incentives to find ways to exploit artificial competitive advantages and avoid regulatory classifications that create a bias toward more pervasive and costly regulatory burdens" and have "the potential to tilt the competitive playing field in favor of one class of telecommunications carriers or service providers"); James Bailey and Diana Thomas, *Regulating Away Competition: The Effect of Regulation on Entrepreneurship and Employment*, 52 J. of Regulatory Econ. 237 (2017) (finding that more regulated industries experience fewer new firm births and slower employment growth and that small firms are more likely to leave a heavily regulated industry).

asymmetric restrictions that contribute to making broadcast station ownership a comparatively less desirable investment in today's marketplace.[36] As commenters in ownership and other FCC proceedings have indicated, ownership regulations keep broadcasters from achieving vital economies of scale and devalue broadcast station assets, ultimately preventing existing broadcasters, especially smaller ones, from obtaining capital for expansion and making it extremely difficult for new entrants without a track record in broadcasting to obtain the capital necessary to enter the business.[37] Eliminating or at least

[36] The FCC's recently-adopted rules concerning foreign sponsorship identification exemplifies this overregulation. *Sponsorship Identification Requirements for Foreign Government-Provided Programming*, Report and Order, 36 FCC Rcd 7702 (2021). Despite broadcasters airing almost no foreign government-provided content, the Commission slapped onerous new rules on all radio and TV stations in the country to ensure they are not somehow carrying such programming unawares (even without any evidence that stations have done so). Meanwhile, the Commission completely ignored the actual sources of foreign governmental content: MVPDs and the internet. This "regulate because we can" approach to broadcast regulation likely causes many potential investors – of any race, ethnicity or gender – to ponder the wisdom of a broadcast investment in the first instance.

[37] *See, e.g.*, Letter from Lyle Banks to Marlene H. Dortch, MB Docket No. 17-289, at 2 (June 6, 2018) (stating that broadcaster had divested his two TV stations due to the high cost of capital and lack of options for accessing less expensive capital, which made it impossible to acquire additional stations, and that without additional stations, his two-station group "could not achieve the economies of scale" that would give the group "long-term viability in a marketplace with so many video competitors"); Letter from W. Lawrence Patrick to Marlene H. Dortch, MB Docket No. 17-289, at 2-4 (June 4, 2018) (describing the reluctance of lenders and sources of equity capital to finance smaller, first-time buyers of broadcast stations, including lenders' preference for prospective owners to purchase stations in three or more markets to spread risk); Letter from G. Johnson, T. Buono and M. Fratrik to Marlene H. Dortch, MB Docket No. 17-289, at 2 (June 11, 2018) (explaining that "[i]t is difficult for even established broadcast owners, especially radio, to raise equity and debt financing in this competitive environment. . . . First-time owners face daunting, if not nearly insurmountable, odds in obtaining financing, other than from sources such as friends and family."); Reply Comments of the Center for Regulatory Effectiveness, MB Docket No. 06-121, *et al*., at 2-3 (Oct. 25, 2007) (explaining that ownership restrictions reduce the asset and net worth values of station owners, including minority and female owners; reduce the ability of owners to borrow against their assets to finance growth; "reduce the long run investment attractiveness of broadcast stations relative to other opportunities"; and artificially depress the value of broadcast stations, thereby "disproportionately increas[ing]" the ability of white male investors (who generally have greater access to capital than women and minorities) to acquire broadcast stations).

reforming asymmetric local ownership restrictions would place broadcasters on more equal regulatory footing with other competitors in the media marketplace and improve the economic position of station owners, ultimately providing incentives and access to capital for existing broadcasters to continue investing in their stations and for new entrants, including minorities and women, to establish themselves in the industry.[38]

In sum, it would be arbitrary and capricious for the Commission to retain structural ownership rules for the purported purpose of promoting new entry and diverse ownership. First, the FCC lacks any sound empirical evidence showing that such rules have in the past or likely will in the future effectively promote ownership diversity or that changes to those rules likely will harm future levels of minority/female ownership. As the Commission has recognized in at least one quadrennial review, "[t]o the extent that governmental action to boost ownership diversity is appropriate and in accordance with the law," any such action should not "be in the form of indirect measures that have no demonstrable effect on minority ownership and yet constrain all broadcast licensees."[39]

Second, the FCC, in accordance with congressional findings and other federal agencies, has explicitly found that the real barrier to increased ownership diversity is the

---

[38] *See, e.g.*, Reply Comments of Grant Co. Broad. Inc., MB Docket No. 18-349, at 2 (May 13, 2019) (stating that retaining the current radio caps will only "make things worse" and that ownership deregulation will help convince sources of capital that the radio industry is safe to invest in, which is the only way "to get back the ability to finance smaller transactions"); Comments of Dick Broad. Co. Inc., MB Docket No. 18-349, at 2 (Apr. 9, 2019) (explaining that relaxing the radio ownership rules would "send a message to the lending community that there will now be stability and scale in the industry" and provide "justification to lend again to broadcasters, including minority broadcasters and new entrants").

[39] 2014 Quadrennial FNPRM, 29 FCC Rcd at 4456-57 (rejecting claims that proposed modifications to newspaper/broadcast cross-ownership rule would adversely affect minority and female ownership levels).

lack of access to capital, which structural ownership rules do not remedy.[40] Maintaining rules that do not even address the problem identified, let alone address it directly or effectively, is the height of irrationality.[41]

Third, structural ownership rules not only fail to encourage investment and diverse new entry in broadcasting, they also affirmatively discourage investment and entry by reducing the attractiveness of the broadcast industry to lenders, equity investors and potential new entrants. Increasing the challenges facing both existing broadcasters and new entrants in obtaining loans or equity investment by retaining asymmetric ownership and other regulations will only discourage new entry and help starve the radio and TV industries of capital, thereby disserving the FCC's stated diversity goals and undermining Congress's goal of a competitively healthy OTA broadcast service.

IV. REFORM OF THE OWNERSHIP RULES WOULD PROMOTE LOCALISM BY SAFEGUARDING THE VIABILITY OF LOCAL BROADCAST JOURNALISM IN TODAY'S BIG TECH-DOMINATED MARKETPLACE

NAB has previously explained in detail why reform of the local ownership rules is needed to enhance broadcast stations' ability to maintain their local news operations and

[40] *See* Section III.A., *supra*; *see also* 2014 Quadrennial FNPRM, 29 FCC Rcd at 4470 (recognizing "many disparate factors, including, most significantly, access to capital, as longstanding, persistent impediments to ownership diversity in broadcasting"). The FCC also agreed with commenters that low levels of minority/female broadcast ownership "cannot be attributed solely or primarily to consolidation." *Id*.

[41] *See*, *e.g.*, *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (stating that an "agency must examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made") (citation omitted); *Bechtel v. FCC*, 10 F.3d 875, 880-81 (D.C. Cir. 1993) (finding criterion for licensing broadcast applicants arbitrary and capricious because FCC, despite 28 years of experience with its policy, had accumulated no evidence that it achieved any of the benefits that the FCC attributed to it); *ALLTEL Corp. v. FCC*, 838 F.2d 551, 559 (D.C. Cir. 1988) (finding rule arbitrary and capricious, given its lack of a "relationship to the underlying regulatory problem" identified by the FCC) (citations omitted).

provide quality local journalism and other valued audio and video programming.[42] Especially given the high capital and operating costs associated with local news operations, only financially and competitively viable stations have the resources to serve their communities with locally-produced news, weather, sports and emergency journalism. As has been well documented and recognized by Congress, many communities are experiencing a crisis in local journalism, which the pandemic only exacerbated. The struggles of local news providers, especially in smaller markets with limited advertising bases, will only continue to worsen, moreover, due to the advertising market's dominance by a handful of giant digital platforms that place local stations and their news operations under substantial duress. NAB accordingly urges the Commission to act expeditiously to reform its local ownership rules to allow TV and radio stations to further leverage economies of scale, which are particularly pronounced in local news production.

A. The FCC Cannot Ignore The Growing Crisis In Local Journalism

"[T]he local news industry is being decimated in the digital age."[43] Recognizing this threat, multiple bills have been introduced in Congress to support the local journalism provided by newspapers and broadcasters.[44] The FCC should follow Congress's lead in

---

[42] *See*, *e.g.*, Comments of NAB, MB Docket No. 18-349, at 35-38, 59-66 (Apr. 29, 2019) (NAB 2018 Quadrennial Comments); NAB 2018 Quadrennial Replies at 20-24, 45-49.

[43] Senator Maria Cantwell, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation, *Local Journalism: America's Most Trusted News Sources Threatened,* Report, at 1 (Oct. 2020). *See also* U.S. Senate Commerce Committee Ranking Member Maria Cantwell, *Senate Commerce Committee Minority Report Calls Unfair Practices by Tech Companies a Threat to Local News*, Press Release (Oct. 27, 2020) (stating that local news across the country creates trusted information and that "[w]e shouldn't let regional and community news die as local newspapers and broadcasters adjust to digital delivery because online giants are unfairly leveraging the advertising market against them").

[44] These bills include the Journalism Competition and Preservation Act, which would grant broadcast, print and digital news organizations temporary immunity from antitrust laws to allow them to collectively negotiate the terms on which their content may be carried by technology companies such as Google and Facebook; the Local Journalism Sustainability

recognizing the importance of viable, trusted local news operations and addressing the increasing threat to local news in communities across the country.

Recent events have brought into sharp focus the need for reliable sources of news and information in local communities. Americans relied on local news outlets as a major source of news about the COVID-19 pandemic,[45] and audiences turned to local broadcast stations specifically as sources of reliable information about the outbreak.[46] A survey of registered voters in ten battleground states following the 2020 election found that local broadcast TV news was respondents' most trusted news source,[47] which reconfirms previous surveys.[48] Given Americans' view of local news as more trustworthy and less biased than other news sources,[49] the Commission should prioritize the continued viability of local broadcast stations and their news operations in this proceeding.

Act, which would provide tax incentives to support local journalism, including an incentive for small businesses to advertise on local newspapers and broadcast stations; and the Future of Local News Act, which would create a commission of industry experts to study the issues facing the journalism industry and submit a report to Congress with findings and recommended solutions to support the industry. Angela Fu, *Legislators reintroduce bill to provide tax incentives to support local journalism*, Poynter (June 22, 2021). Congress also included local radio and TV stations and newspapers in the Paycheck Protection Program, which made them eligible for emergency federal support during the pandemic.

[45] Elisa Shearer, *Local news is playing an important role for Americans during COVID-19 outbreak*, Pew Research Center (July 2, 2020).

[46] *See*, *e.g*., Lillian Rizzo, *Local TV Sees Spike in Viewers*, *Drop in Ads in Coronavirus Crisis*, The Wall Street Journal (Apr. 3, 2020); Jon Lafayette, *Virus Crisis Bringing Young Viewers to Local Broadcast*, Broadcasting+Cable (Mar. 24, 2020); Nielsen, *In the "New Normal" of COVID-19*, *Local TV News Proves to be the Medium of Choice for News and Information* (Mar. 24, 2020).

[47] TVB Press Release, *Study of Key Battleground States Reveals Critical Role of Local TV Ads in 2020 Election Results*, businesswire (Dec. 8, 2020). TVB's 2020 Voter Funnel Study found that 73 percent of respondents said they trusted the news on local TV stations.

[48] *See, e.g*., Christine Schmidt, *Local TV is still the most trusted source of news*, Nieman Lab (Feb. 20, 2019) (reporting that 76 percent of Americans cite local TV news as a highly trusted source, the most of any medium).

[49] *See*, *e.g*., Megan Brenan, *Local News Media Considered Less Biased Than National News*, Gallup (Nov. 8, 2019).

NAB particularly urges the FCC to act now to reform its ownership rules to allow broadcasters to take advantage of economies of scale in local news production, rather than waiting until broadcast news operations significantly decline, as have many local newspapers. The newspaper industry in the U.S. lost 51 percent of its newsroom employees from 2008-2019 (with additional pandemic-related layoffs in 2020),[50] due to the collapse of their advertising revenues from competition by digital platforms.[51] As discussed in further detail below, these same forces are affecting local broadcast stations' advertising revenues and news audiences.

The Commission has not always displayed prescience as to how the digital revolution in media and advertising negatively impacts local news outlets, as shown by opposition to the slightest attempted loosening of the newspaper/broadcast cross-ownership rule in 2008 and the retention of that ban in 2016. In 2008, for example, a leading advocate at the Commission for strict media ownership rules opined that the rise of the internet had only "momentarily discombobulated" the newspaper industry, dismissed the idea of newspapers being "gobbled up by the Internet," and questioned the "supposed" poor financial condition of the industry[52] -- and this was one year after the website Newspaper Deathwatch had been founded to chronicle the decline of local newspapers. More seriously, he also refused to recognize the connection between the financial health of newspapers and their ability to

[50] Elizabeth Grieco, *U.S. newspapers have shed half of their newsroom employees since 2008*, Pew Research Center (Apr. 20, 2020); M. Walker and K.E. Matsa, *A third of large U.S. newspapers experienced layoffs in 2020, more than in 2019*, Pew Research Center (May 21, 2021).

[51] *See*, *e.g*., 2017 Reconsideration Order, 32 FCC Rcd at 9815 (citing evidence that print newspaper advertising declined by nearly 70 percent from 2003-2013).

[52] Dissenting Statement of Commissioner Michael Copps, *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2118 (2008) (2008 Ownership Order).

provide quality service to the public and serve the FCC's goals.[53] Then in 2016, the FCC essentially ignored the relevance of the financial crisis in the newspaper industry while retaining the complete ban on cross-ownership. This misguided regulatory approach is contrary to the Supreme Court's acknowledgement that "[p]rivate [financial] losses that result in discouragement of investment in quality service" have an "adverse effect on the provision of broadcasting service to the public" and thus are a "relevant concern under the Communications Act."[54]

Given that from 2004-2019 more than 2,100 U.S. newspapers shut down,[55] the short-sighted position that the Commission should not concern itself with the financial viability of local media outlets clearly disserves its policy goals. The Commission cannot maintain such a position here consistent with the public interest and Congress's intent "to preserve and to promote the competitiveness of over-the-air broadcast stations"[56] and to promote the "substantial governmental interest" in the continuation of locally-oriented broadcast programming, including news.[57]

B. The Tech Giants' Dominance Of The Advertising Market Places Local Stations And Their News Operations Under Increasing Duress

In examining the economic challenges besetting the local news industry, Congress has identified the "dominant" and "monopolistic" power of digital platforms such as Google and Facebook, and their unfair and "anticompetitive" treatment of local media outlets, as a

[53] *Id*. (stating that "our job is not to ensure that newspapers are profitable—which they mostly are. Our job is to protect the principles of localism, diversity and competition in our media.").

[54] *FCC v. Nat'l Citizens Committee for Broad*., 436 U.S. 775, 805 n. 24 (1978).

[55] Penelope Muse Abernathy, *News Deserts and Ghost Newspapers: Will Local News Survive?* (2020).

[56] H.R. Rep. No. 104-204, at 48 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 11.

[57] Cable Act, Sections 2(a)(10) & (11), 47 U.S.C. § 521 nt.

primary cause of the decline of local journalism.[58] As the bipartisan sponsors of the Journalism Competition and Preservation Act explained, "[n]early 90 percent of Americans" now obtain news via smartphones, computers or tablets, "dwarfing the number" who get news via television, radio or print media.[59] Facebook and Google, moreover, account for the "vast majority of online referrals to news sources," with those two companies also controlling "a majority of the online advertising market."[60] Last year Google and Facebook combined earned 54.1 percent of total U.S. digital advertising revenues, and, as of May 2021, Google alone had an 88.8 percent share of the U.S. search engine market.[61]

NAB agrees that the giant tech platforms' rise to dominate both content discovery and digital advertising has decimated the newspaper industry and is imperiling the ability of broadcast stations to reach online audiences with their local content and to derive ad revenue from that content. As NAB explained last fall in a submission to the House Antitrust Subcommittee,[62] radio and TV station ad revenues have significantly fallen over the past two

---

[58] News Release, *Senator Klobuchar and Representative Cicilline Introduce Legislation to Protect Journalism in the United States* (Mar. 10, 2021) (Klobuchar/Cicilline News Release) (along with co-sponsors Senator Kennedy and Representative Buck, announcing introduction of bill to allow news publishers to collectively negotiate with digital platforms).

[59] *Id*., citing a survey by the Pew Research Center. This Pew survey found that 86 percent of U.S. adults get news from digital devices, 60 percent of them often. In comparison, 68 percent report getting news from television (all types, not just broadcast), with only 40 percent reporting that they often do so. Fifty percent say they get news via radio, but only 16 percent often do so, and print publications trail well behind. Among consumers under age 50, only 16 percent of those ages 18-29, and just 25 percent of those ages 30-49, often get news from TV. Elisa Shearer, *More than eight-in-ten Americans get news from digital devices*, Pew Research Center (Jan. 12, 2021).

[60] Klobuchar/Cicilline News Release.

[61] *See* eMarketer, *Amazon's share of the U.S. digital ad market surpassed 10% in 2020* (Apr. 6, 2021); statcounter Global Stats, https://gs.statcounter.com/search-engine-market-share/all/united-states-of-america.

[62] Attachment A, NAB Written Statement for the Record, *Online Platforms and Market Power, Part 1: The Free and Diverse Press*, U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Antitrust, Commercial and Administrative Law (Sept. 2, 2020) (NAB Congressional Statement on Online Platforms and the Press).

decades, as the advertising market has become dominated by a few giant digital platforms.[63] In 2020, the U.S. digital advertising revenues of two companies – Google and Facebook – each *separately* far exceeded the *combined* OTA and digital ad revenues of *all* TV and radio stations in the country.[64] The market capitalizations of the tech giants, as well as the leading online and multichannel video and audio providers, dwarf the market caps of even the largest radio and TV station groups.

Beyond diverting advertisers – and crucial revenue – away from local broadcast stations throughout the country, the digital platforms also control the technologies that

---

[63] *See id.* at 5-9; NAB 2018 Quadrennial Comments at 53; Comments of NAB, GN Docket No. 20-60, at 18-19 (Apr. 27, 2020).

[64] BIA estimates that radio and TV stations' combined OTA and digital ad revenues were $30.3 billion last year. BIA Advisory Services, Press Release, *Radio Revenues Fell to $9.7B in 2020, As Pandemic Toll on the Industry Affected Local Radio Stations* (May 14, 2021); George Winslow, *BIA: Local TV Revenues Hit $19.7 Billion in 2020*, tvtechnology.com (June 10, 2021). Google's U.S. digital ad revenues in 2020 were about $44 billion, while Facebook's ad revenues were over $38 billion. *See* eMarketer, *Amazon's share of the U.S. digital ad market surpassed 10% in 2020* (Apr. 6, 2021); N. Perrin, *U.S. Digital Ad Spending 2021*, eMarketer (Apr. 14, 2021). And Amazon's U.S. digital ad revenues ($15.7 billion) exceeded the OTA and digital ad revenues of all U.S. radio stations ($10.6 billion). *Id*.

power both content discovery (search) and digital advertising.[65] Whether consumers use search engines, social networks, voice or video platforms, or even broadcasters' own apps to access news and other content, decisions made unilaterally by a few dominant digital technology giants impede local broadcasters' ability to connect with their audiences online. The ranking algorithms used by platforms determine what sources, articles and clips appear, or are "surfaced," to users. While the platforms constantly tweak and adjust them, those algorithms have consistently favored national sources over local sources; frequently favored controversial and polarizing content and opinion sources over quality journalism; and often make it difficult for smaller, local publishers to reach audiences at all.[66] In 2020, for example, after many local stations added a COVID-19 category to their news apps, Google unilaterally flagged and removed some of those apps from its store, thereby undercutting stations' commitment to providing up-to-date local and state coverage of the pandemic.[67]

The platforms' technological control and lack of transparency also permit them to impose advertising limits and policies that impede stations' ability to effectively monetize their own content online. For instance, the platforms unilaterally determine which content is eligible to be monetized and decide the share of revenue they retain versus the amounts passed on to the content providers that bear all the costs of producing the quality content that financially benefits the platforms. Broadcasters are generally unable to sell their own ad

[65] The House Subcommittee on Antitrust agrees. Its October 2020 report stated that, by "dominating both digital advertising and key communication platforms, Google and Facebook have outsized power over the distribution and monetization of trustworthy sources of news online, creating an uneven playing field in which news publishers are beholden to their decisions." *Investigation of Competition in Digital Markets*, Majority Staff Report and Recommendations, Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, at 388 (2020).

[66] NAB Congressional Statement on Online Platforms and the Press at 10-14.

[67] *Id*. at 13.

inventory for their content on third-party platforms because the platforms control the sale of that inventory, often to broadcasters' detriment.[68]

In short, TV and radio stations lack bargaining power when dealing with the digital giants that have become gatekeepers for content providers, including local news outlets, seeking to reach audiences and monetize their content online. The leading platforms' market power thus increasingly impairs broadcasters' ability to earn the ad revenues needed to help recoup the considerable costs of producing local news and information in the first place.

Recently, a study commissioned by NAB and conducted by BIA Advisory Services quantified the economic losses to broadcasters from certain practices of the big tech platforms.[69] Specifically, this study conducted extensive interviews of broadcast group executives and examined Google Search and Facebook News Feed in detail to model the value that local broadcasters' news content creates for the tech platforms but that broadcasters are unable to monetize due to the platforms' practices. Just from the examples of Google Search and Facebook News Feed, BIA estimated close to $2 billion in annual loss of value to broadcasters.[70] Its research led BIA to conclude that no platform currently offers a viable economic model for broadcast news, *i.e.*, one that would pay or enable

---

[68] *Id*. at 14-16.

[69] Attachment B, BIA Advisory Services, *Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News* (May 2021) (BIA Big Tech Study).

[70] BIA estimated: (1) Facebook News Feed lost value at $455 million annually, with a range between $325 to $585 million; (2) Google Search/zero click lost value at $1,289 million, with a range between $921.1 to $1,658 million; and (3) Google Search/local news algorithm weighting at $129 million, with a range from $91.9 to $183.8 million. *Id*. at iii, 21. BIA observed that many of Google's and Facebook's other services and terms beyond the scope of its study have major impacts on local news media and that the roles of Amazon and Apple in the local news ecosystem also have increasing impact. *Id*. at 22.

broadcasters to earn equitable revenue on their news content.[71] Other recent studies agree with BIA that, due to the ways in which digital platforms like Google direct attention to some news outlets and not others, the tech platforms may be "directing traffic and desperately needed advertising dollars away from local news."[72]

NAB is well aware that directly addressing the marketplace dominance of the giant technology platforms is a matter primarily for Congress and the antitrust agencies. However, the duress that the tech platforms place on local broadcast stations and their news operations is an essential matter for FCC consideration, given its statutory duty to determine the necessity of its ownership rules due to competition and to abide by Congress's intent for OTA broadcasting to remain a "vital element" of the communications market.[73] In light of growing competitive pressures on local stations, it is more important than ever that the ownership rules – which are under FCC control – permit broadcasters to leverage local economies of scale and spread the significant costs of news production across more outlets.

---

[71] *Id*. at ii, 21.

[72] S. Fischer, K. Jaidka and Y. Lelkes, *Auditing local news presence on Google News*, 4 Nature Human Behavior 1236 (Dec. 2020) (finding that national news outlets dominate search results on Google News and expressing concern about diverting attention and resources away from local news); *id*. at 1243. *Accord* Judd Legum and Tesnim Zekeria, *How Facebook's algorithm devalues local reporting*, Popular Information (June 22, 2021) (explaining that Facebook's algorithms promote traffic, and thus advertising revenues, toward aggregators and away from the local news outlets, including broadcast stations, "who have to pay for the costs of the reporting," yet "get practically nothing"); BIA Big Tech Study at 21 (concluding that Facebook's and Google's opaque and frequently changing algorithms do not properly weight the value of local news content). BIA also found that broadcasters' premium news content often surfaces in search returns and news feeds alongside non-professional journalism or worse, disinformation sites, thereby damaging stations' local news brands. *Id*.

[73] H.R. Rep. No. 104-204, at 55 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 19.

C. Particularly Given The High Cost Of News Production, Economies Of Scale Are Vital To Local News Operations' Success

Local news production is costly for broadcast stations. Over the period 2003-2018, news costs, on average, accounted for nearly 24 percent of TV stations' total expenses (and nearly 26 percent of the total expenses of ABC/CBS/Fox/NBC stations),[74] while many stations' news costs represented considerably higher percentages of their total expenses.[75] From 2013-2018, stations nationwide spent an average of over $3.0 million per year producing local news, with major network affiliates expending an average of nearly $3.6 million annually. Stations in larger markets with more resources spend much greater amounts. From 2013-2018, the average news expenses of TV stations in the ten largest markets reached almost $9.7 million annually, while ABC/CBS/Fox/NBC stations in the top ten markets spent an average of nearly $15.8 million annually on news.[76]

News expenditure data from 2019 are comparable. For example, the news expenses of ABC/CBS/Fox/NBC stations across the country averaged over $3.5 million. Those stations' news expenses reached an average of over $16.6 million in the top-10 markets but were only about $890,000 in markets 151-175 and $546,000 in markets 176+.[77] These

---

[74] *See* NAB Television Financial Reports 2004 to 2019.

[75] Utilizing data from NAB's Television Financial Reports, a BIA study reported that news operations accounted for 33.5 percent and 33.1 percent of the total expenses of ABC/CBS/NBC affiliates nationwide in 2014 and 2018, respectively. BIA Advisory Services, *The Impact on the Amount of News Programming From Consolidation in the Local Television Station Industry*, at 6-7 (Sept. 23, 2020) (BIA TV News Study), attached to *Ex Parte* Communication, Gray Television, Inc., MB Docket No. 18-349 (Oct. 13, 2020).

[76] *See* NAB Television Financial Reports 2014 to 2019.

[77] NAB Television Financial Report 2020, at 36, 38, 66, 68.

wide disparities in news expenses illustrate the vastly different economics of broadcasting and news production between markets of differing size.[78]

Broadcast stations are highly dependent on their declining advertising revenues to meet these operating and capital costs, and the rapid and on-going shift to streaming will place growing downward pressure on the amounts of retransmission consent fees earned by TV stations from cable and satellite operators. The continuing decline in MVPD subscribership due to competition from streaming services already has been called a looming "existential" crisis for news on local TV stations.[79]

Beyond earning additional revenues – an extremely difficult proposition in markets dominated by the tech platforms and, increasingly, streaming services – broadcasters also could better support their local news operations if they were permitted to achieve greater economies of scale by acquiring more outlets in local markets, thereby more widely spreading the high costs of news production. Multiple economists have concluded that TV broadcasting generally, and local news production specifically, are "subject to strong economies of both scale and scope," which are, by definition, "associated with falling unit costs of production" and "hence are *prima facie* welfare enhancing."[80] As a result, placing

---

[78] In addition to significant annual operational costs, stations also make major capital expenditures (*e.g.*, costs of constructing/remodeling studios, news sets and newsrooms; the acquisition and maintenance of production and editing equipment, station vehicles, satellite trucks, *etc*.) to support their news operations. The capital costs to start and then maintain a local news operation are considerable. According to the BIA TV News Study, the start-up costs for local news operations may range from nearly $6.5 million in top-50 markets to over $3.5 million in markets 101+. Annual costs associated with support and maintenance of capital equipment run to hundreds of thousands of dollars annually. *Id*. at 7-8.

[79] Tom Rogers, *Op-ed*: *Quality TV news could be a casualty of the streaming wars*, CNBC (June 7, 2021).

[80] J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale* and *Scope in TV Broadcasting*, at 1-2 (2011) (Economies of Scale Study), attached to Reply Comments of NAB, MB Docket No. 10-71 (June 27, 2011); *accord* Decl. of M. Israel and A. Shampine, Comments of NAB, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26,

undue limits on broadcasters' ability to achieve scale economies "result[s] in higher costs, lower revenues, reduced returns on invested capital [and] lower output," including "significantly reduc[ed]" local news output.[81]

A 2016 study in the American Economic Review confirmed that achieving economies of scale improves TV station profitability and can benefit viewers. This study analyzed data on over 1,200 broadcast TV stations from 1996-2007 to examine the effects of station combinations on profitability, programming quality and prices. It found that common ownership led to increases in profitability, which the author attributed primarily to merger-generated cost savings (*i.e.*, efficiencies) from the combination of TV stations in the same local markets. Notably, she found "no evidence" that these cost savings "came at the expense of viewers"; rather, she found that "within-market mergers, if anything, boosted viewership."[82] NAB notes that the record demonstrating the benefits of scale economies in broadcasting remains unrefuted.[83]

D. Stations In Smaller Markets With Limited Advertising Bases Struggle To Maintain Their Economic Viability And Their Local News Operations

NAB has previously submitted extensive evidence documenting the competitive challenges of radio and TV stations in mid-sized and small markets, given the smaller

---

2014) (finding that economies of scale and scope exist in TV broadcasting and that both lead "to increased investment in news programming").

[81] Economies of Scale Study at 2-3. Similar scale efficiencies exist in radio broadcasting. *See* BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, at 26-33 (Apr. 19, 2019) (BIA Radio Study), Attachment A, NAB 2018 Quadrennial Comments.

[82] Jessica Calfee Stahl, *Effects of Deregulation and Consolidation of the Broadcast Television Industry*, 106 American Economic Review 2185, 2186-87 (2016).

[83] *See* NAB 2018 Quadrennial Comments at 60-62; BIA Radio Study at 30-31; *see also* 2017 Reconsideration Order, 32 FCC Rcd at 9836.

economic bases and much more limited available advertising revenues in those markets.[84] Evidence in the record shows that radio and TV stations in mid-sized and small markets earn but a fraction of the advertising revenues earned by large market stations.[85] This economic fact has direct repercussions for local news production, as many studies and newsroom surveys have found that TV stations earning higher revenues offer more local news and/or public affairs programming and employ higher numbers of news staff.[86] Similarly, radio stations able to hire larger staffs air more news.[87]

---

[84] *See*, *e.g.*, NAB 2018 Quadrennial Comments at 31-33, 70-71, 75-76; BIA Radio Study at 14; BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction*, at 21-22, 24-27 (Mar. 15, 2019) (BIA TV Study), Attachment B to NAB 2018 Quadrennial Comments.

[85] According to BIA, in 2018 the average radio station in the smallest Nielsen radio markets (201-265) earned only 7.1 percent of the amount of ad revenue earned by the average radio station in the top-10 markets. Similarly, the average radio station in markets 76-100, 101-150 and 151-200 earned only 13.4, 11.7 and 10.5 percent, respectively, of the average top-10 station. *See* BIA Radio Study at 14. In 2017, the average TV station in the top-10 Designated Market Areas (DMAs) earned nearly 12 times the amount of ad revenues earned by the average station in the smallest DMAs (151-210) and about eight times the amount earned by stations in DMAs 101-150. *See* Attachment G to NAB 2018 Quadrennial Comments (citing BIA data).

[86] NAB 2018 Quadrennial Comments at 61; NAB 2018 Quadrennial Replies at 22-24; Economies of Scale Study at 4, 45-46 and Table 8 (citing numerous empirical studies finding a "positive and statistically significant relationship between revenue and local news production"); *accord* FCC, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, Media Ownership Study #4, Section I, at 21 (2007); P. Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming*: *An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecom., Information, and Media 112, 119 (2004). *See also* RTDNA, Bob Papper, *A Shocking Development*: *A Small Increase in Local TV Newsrooms . . . and a Record Amount of Local News* (May 15, 2019) (reporting that TV stations in larger markets with greater revenues, especially the top-50 markets, hired many more news staff and aired higher amounts of local news).

[87] Bob Papper, RTDNA, *Most Radio Stations Run Local News . . . and a Little More of It This Year* (May 15, 2019) (stating that the "bigger the staff, the more news a [radio] station runs," without exception); Bob Papper, RTDNA, *2018 Local News by the Numbers* (June 13, 2018) (reporting that the "bigger the staff, the more news a [radio] station runs," and stations with three or more news staffers air about 50 percent more news than stations with only one or two staffers).

More recent evidence and studies reconfirm that smaller market stations struggle to earn vital ad revenues and that reforming the ownership rules to permit broadcasters to take advantage of economies of scale is even more important to promoting the viability of station operations and local news production in smaller markets. For example, updated data confirm that radio stations in smaller markets earn just a fraction of the advertising revenues of stations in large markets. In 2020, the average radio station in the smallest Nielsen Audio markets (201-253) earned only 7.6 percent of the amount of revenue earned by the average station in the top-10 markets. Similarly, the average radio station in markets 151-200, 101-150 and 76-100 earned just 11.7 percent, 12.2 percent and 14.5 percent, respectively, of the average top-10 market station.[88] These recent data provide additional support for NAB's proposal to remove restrictions on FM station ownership in markets 76+ and in unrated areas.[89]

Similarly, small market TV stations continue to earn much lower levels of advertising revenue than large market stations. In 2019, for example, the average TV station in the smallest markets (DMAs 151-210) earned only 8.8 percent of the amount of ad revenues earned by the average station in the top-10 DMAs. Similarly, the average TV station in DMAs 101-150 and DMAs 51-100 earned just 13 percent and 19.9 percent, respectively, of the ad revenue of the average top-10 DMA station. Even in DMAs 26-50, the average TV station earned only slightly over one-third (34.6 percent) of the ad revenues gained by the average top-10 DMA station.[90]

---

[88] *See* Attachment C, 2020 Radio Station Advertising Revenues by Market Rank.

[89] *See* NAB 2018 Quadrennial Comments at 31-33; BIA Radio Study at 14, 34; Section VII.A., *infra*.

[90] *See* Attachment D, The Relationship Between Market Size and Advertising Revenue per TVHH. In 2020, an unusual year characterized by the pandemic recession and a national election, the same pattern holds. For instance, the average TV station in DMAs 151-210,

Unsurprisingly, RTDNA's most recent surveys again confirm that larger market broadcast stations, and those stations with the resources to hire more staff, produce more hours of local news than small market stations and those with smaller news staffs.[91] The surveys also found that the coronavirus "killed some local radio news," led to TV newsroom budget cutbacks and caused a "decided decrease" in the profitability of local TV news, with the author observing that the highest level of local TV news profitability in the history of the RTDNA surveys was in 1996, prior to the growth of the internet and digital ad platforms.[92]

Two recent studies further confirm the importance of economies of scale for local news production and the special challenges that stations in smaller markets earning lower ad revenues face in maintaining local news operations. A 2021 study by the FCC's Office of Economics and Analytics (OEA) found a strong relationship between the number of independent local TV news operations in a market and market size, with only a limited

---

101-150 and 51-100 earned just 9.6 percent, 15.4 percent and 21.8 percent, respectively, of the ad revenues earned by the average top-10 DMA station. *See id*. Previous years showed even greater disparities between large and small market stations' ad revenues. *See* NAB 2018 Quadrennial Comments at 70-71 and Attachment G.

[91] For example, in 2020 TV stations with staff size 51+ aired on average 8.3 hours of local news per weekday, while stations with 1-10 staff members aired only 2.6 hours of local news per day. TV stations in DMAs 151-210 aired on average 4.4 hours of local news per day, while stations in the top 50 DMAs aired well over seven hours per day. B. Papper, *Another Record Amount of Local TV News*, 2021 RTDNA/Newhouse School at Syracuse University Newsroom Survey (May 12, 2021). Similarly, larger radio stations and radio stations in major markets were most likely to produce more news. B. Papper, *Most Radio Stations Run Local News . . . and a Little More of It Again This Year*, 2021 RTDNA/Newhouse School at Syracuse University Newsroom Survey (May 12, 2021).

[92] B. Papper, *The Profound Effects of Coronavirus on TV and Radio Newsrooms*, 2021 RTDNA/Newhouse School at Syracuse University Newsroom Survey (May 12, 2021). Nearly 31 percent of TV news directors reported budget cutbacks, and eight percent of radio stations reported that the pandemic and resulting economic disruption had caused the cancelling of local news. "Profitability dropped by almost 10 points," with only 51.2 percent of news directors reporting their local TV news was profitable, down from around 61 percent in earlier years. B. Papper, *The Business of News*, 2021 RTDNA/Newhouse School at Syracuse University Newsroom Survey (May 12, 2021). The already-low profitability of radio news also has dropped over time. B. Papper, *The Business of Radio News,* 2021 RTDNA/Newhouse School at Syracuse University Newsroom Survey (May 12, 2021).

number of larger markets able to support four independent news operations.[93] Given the inability of most TV markets to economically sustain four news operations, the OEA Study concluded that in some markets a "merger that eliminates a source of local news may be optimal" if the "merged entity improves the quality or increases the quantity of local news programming."[94] This study provides further support for NAB's position that the FCC should eliminate its *per se* restriction that bans any combinations among top-four rated TV stations, regardless of their audience or advertising shares or ability to sustain news operations.[95]

Last fall, a BIA study examined the hours of local TV news provided by Gray Television's stations in 93 markets and analyzed whether Gray aired more local news in those markets where it had greater local scale.[96] Specifically, BIA analyzed the number of hours of local news provided by Gray's stations in each of their local markets in 2014 and 2020 to determine whether an intervening acquisition affected the amount of local news the stations aired.[97] The study concluded that the additional scale achieved after an acquisition allowed Gray to increase its local news production significantly more than in markets without

---

[93] Specifically, it found a 75 percent likelihood that the top 38 TV markets would be able to sustain four or more independent news operations, and just a 50 percent likelihood that the top 51 markets would be able to support four news operations. K. Makuch and J. Levy, *Market Size and Local Television News*, OEA Working Paper 52, at 4 (Jan. 15, 2021) (OEA Study). A decade ago in a less competitive advertising marketplace, the FCC similarly found that most smaller markets did not support four separate local TV news operations. *See 2010 Quadrennial Regulatory Review*, Notice of Proposed Rulemaking, 26 FCC Rcd 17489 at ¶ 53 and n. 117 (2011) (citing a staff analysis that found only 22.5 percent of smaller markets (those with six or fewer TV stations) were served by four local news operations).

[94] OEA Study at 21.

[95] *See* NAB 2018 Ownership Comments at 70-76; Section VII.B., *infra*.

[96] Written *Ex Parte* Communication, Gray Television, Inc. (Gray), MB Docket No. 18-349 (Oct. 13, 2020), attaching BIA TV News Study.

[97] BIA TV News Study at i-ii (describing the study).

any acquisitions, and the expansion of local news following an acquisition was most pronounced in smaller markets.[98]

Gray's experience in its 93 markets shows the importance of economies of scale to local TV stations and their news operations. Despite competition from digital advertising platforms, Gray's stations in markets with acquisitions between 2014 and 2020 did not experience as pronounced a decline in ad revenue shares as their stations in markets without any such acquisition, and, combined with greater economies of scale, were able to substantially increase their local news production to serve their communities.[99] And this benefit was the greatest in small markets with limited available advertising revenues, where stations most struggle to maintain their economic viability and their local news operations.

Any realistic examination of the media marketplace shows that broadcast stations and their news operations are being challenged by the same forces that caused the significant decline in local newspapers – greater competition for advertising dollars and audiences from digital platforms.[100] Given the unrefuted evidence showing that economies

---

[98] *Id*. at ii-iv, 10-13 (detailing the increases in the hours of local news aired by Gray stations in all 93 markets on average and in markets of varying size).

[99] *Id*. at iv.

[100] Viewership of local news programming aired by "Big Four" affiliates has declined over time. *See* NAB 2018 Quadrennial Comments at 64, n. 248; *see also* BIA TV News Study at 1-2 (documenting decline in total viewership of local news programming of "Big Four" affiliates during the morning, evening and late-night time slots, from 2007-2018). While viewership of local TV stations' evening and late-night news modestly grew from 2019 to 2020 (perhaps due to the pandemic), viewership still lags notably behind the levels of previous years. Pew Research Center, *State of the News Media*: *Local TV News Fact Sheet* (July 13, 2021). In contrast, audiences increasingly turn to online options, including social media, for news. Over half (53 percent) of U.S. adults now get news on social media "often" or "sometimes," and 36 percent of adults "regularly" get news on Facebook. E. Shearer and A. Mitchell, *News Use Across Social Media Platforms in 2020*, Pew Research Center (Jan. 12, 2021). Over a quarter (26 percent) of U.S. adults get news from YouTube. G. Stocking, P. Van Kessel, M. Barthel, K.E. Matsa, and M. Khuzam, *Many Americans Get News on YouTube*, *Where News Organizations and Independent Producers Thrive Side by Side*, Pew Research Center (Sept. 28, 2020). Eighteen percent of U.S adults say that social media is the most common way

of scale enable increased local news production, and the lack of empirical evidence showing that the existing ownership restrictions actually promote local news production, the FCC should act now to ensure the continued competitiveness of local radio and TV stations and their ability to maintain local news operations. In an environment where, as Acting Chairwoman Rosenworcel recently observed, Americans can "see and hear news and information where we want it, when we want it, and from whom we want it," local ownership rules that still reflect a time "when there were just a few channels on the [broadcast] dial"[101] cannot be justified as necessary to promote competition or viewpoint diversity, and they impede localism.[102]

---

they get political/election news, with only 16 percent citing local TV stations. Among adults ages 18-29 and 30-49, 48 percent and 40 percent, respectively, say that social media is the most common way they get political news, with only 10 percent and 31 percent, respectively, citing local TV. Amy Mitchell, *et al*., *Americans Who Mainly Get Their News on Social Media Are Less Engaged*, *Less Knowledgeable*, at 3-4, Pew Research Center (July 30, 2020). *See also* Deloitte, *Digital media trends*: *Courting the consumer in a world of choice*, at 13 (15th ed. 2021) (Deloitte 15th Digital Media Trends) (finding that younger consumers strongly prefer social media, not broadcast network or cable TV, to get news).

[101] Letter from Acting FCC Chairwoman Jessica Rosenworcel to the Honorable Cathy McMorris Rodgers, Ranking Member, Committee on Energy and Commerce, U.S. House of Representatives, at 1 (June 4, 2021) (explaining why the historical context in which the Fairness Doctrine was originally adopted is so different than today, given the "amount of material available" via non-broadcast outlets including "cable channels, satellite services, and over the Internet").

[102] NAB again observes it would be arbitrary and capricious for the FCC to retain (or attempt to tighten) the local TV rule on the basis of diversity because the FCC expressly decided in 2008 that the TV rule is intended to promote competition, not diversity. *See* NAB 2018 Quadrennial Comments at 57-59. Following the court's decision in *Sinclair v. FCC*, 284 F.3d 148 (D.C. Cir. 2002), the FCC in the 2006 quadrennial concluded that the local TV rule was intended to promote competition for viewers and advertisers in local markets, and specifically found, in a marketplace less diverse than the current one, that the rule was *not* needed to promote diversity. 2008 Ownership Order, 23 FCC Rcd at 2064-66 (also stating that the local TV rule was "no longer necessary to foster diversity because there are other outlets for diversity of viewpoints in local markets, and a single service ownership restriction is not necessary to foster diversity"). In its order concluding the 2010 and 2014 quadrennial reviews, the FCC repeated that the "primary purpose" of the local TV rule is to promote competition and not to foster viewpoint diversity. *2014 Quadrennial Regulatory Review*, Second Report and Order, 31 FCC Rcd 9864, 9887 (2016) (2016 Ownership Order); *see*

V. SECTION 202(h) REQUIRES THE FCC TO UNDERTAKE A COMPETITION-CENTRIC ANALYSIS, WITH AN EYE TOWARD DEREGULATION

Not only should the Commission focus on the competitiveness of broadcast stations in this quadrennial review as a matter of sound policy, but Section 202(h) also requires the FCC to focus on competition as the key consideration in its mandated periodic reviews. The statutory text, structure, purpose and legislative history all show Section 202(h) to be a competition-based, deregulatory provision.[103]

A. The Text, Structure, Purpose And History Of Section 202 Of The 1996 Act Show That Congress Intended Section 202(h) To Continue The Process Of Deregulation It Began

Section 202(h) directs the FCC to periodically determine whether its broadcast ownership rules are "necessary in the public interest *as the result of competition,*" and then to "repeal or modify" any rule determined to be "no longer in the public interest."[104] Competition is the only public interest factor Congress specifically identified, and that singular status indicates its preeminence as the driver of the FCC's required analysis. It is the lens through which the public interest need for the ownership rules must be viewed.[105]

---

also 2017 Reconsideration Order, 32 FCC Rcd at 9835 (observing that FCC had, in its 2008 Ownership Order, "determined that the [local TV] rule was no longer necessary to promote viewpoint diversity and instead relied on competition" to justify its rule). As NAB explained in its initial comments, it would be arbitrary and capricious and contrary to Section 202(h) for the FCC now to suddenly decide that the local TV rule is intended – and needed – to promote viewpoint diversity after all, and use that rationale to retain a competitively unnecessary rule. NAB 2018 Quadrennial Comments at 57-59.

[103] In interpreting another provision of the 1996 Act, the D.C. Circuit identified the "traditional tools" of statutory construction as "includ[ing] examination of the statute's text, legislative history, and structure . . . as well as its purpose." *Bell Atlantic Tel. Companies v. FCC*, 131 F.3d 1044, 1047 (D.C. Cir. 1997) (citations omitted). *See also Gundy v. U.S.,* 139 S. Ct. 2116, 2126 (2019) (describing statutory interpretation as a "holistic endeavor" that "determines meaning by looking not to isolated words, but to text in context, along with purpose and history") (citation omitted).

[104] 1996 Act, § 202(h) (emphasis added).

[105] Any claim that "competition" is a mere input, or just one factor among other equal factors, for the FCC to consider is contrary to the plain text of Section 202(h), which singles

This text, and NAB's reading of it, reflects Congress's goals in enacting the 1996 Act: "To *promote competition* and *reduce regulation* in order to secure lower prices and higher quality services" for American consumers.[106] With regard to broadcasting specifically, Congress similarly intended the 1996 Act "to preserve and to promote the competitiveness" of broadcast stations, and believed that reforming federal policy and the FCC's regulatory framework to reflect marketplace realities was necessary to ensure the broadcast industry's ability to compete effectively.[107]

Congress itself began the deregulation of the broadcast industry's structure by eliminating or relaxing a number of ownership restrictions. For example, Section 202 of the 1996 Act, *inter alia*, directed the FCC to revise its rules to: (1) eliminate the national cap on radio station ownership and loosen restrictions on ownership of radio stations in local markets; (2) repeal the numerical limit on common ownership of TV stations nationally and increase the maximum percentage of households a single TV broadcaster may reach nationally; (3) relax the one-to-a-market restrictions (*i.e.*, the radio/TV cross-ownership rule); (4) ease the dual network rule; and (5) eliminate certain cable/broadcast network cross-ownership restrictions.[108] Congress also repealed the statutory provision banning common ownership of a cable system and a broadcast TV station in the same local market.[109]

---

out only competition. After all, the FCC for decades has included competition as one of the public interest goals of its broadcast ownership rules. Thus, if Congress had only wanted the FCC to consider competition equally with its other public interest goals (traditionally, viewpoint diversity and localism), then Congress would not have explicitly mentioned competition, as that factor was already included in its use of the term "public interest."

[106] 1996 Act, Preamble, 110 Stat. at 56 (emphasis added).

[107] H.R. Rep. No. 104-204, at 48, 54-55 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 11, 18-19 (also discussing the significant changes in the video and audio markets and the numerous outlets that compete with broadcast stations).

[108] *See* 1996 Act, §§ 202(a), (b), (c), (d), (e) and (f).

[109] *See id.* § 202(i).

Section 202(h) – entitled "Further Commission Review" – follows those provisions and is the capstone of Congress's deregulatory effort. In recognition of the ever-evolving nature of competition, Congress instructed the FCC "to continue the process of deregulation" by reviewing each of its ownership rules every four years to determine whether any of them are necessary in the public interest as the result of competition and to repeal or modify those that are not.[110] That command is clear on its face. And when read against the backdrop of the ownership changes Congress itself made or directed in the 1996 Act, it becomes even more evident that these periodic reviews were designed to ensure that ownership restrictions would be repealed or modified to "keep pace with the competitive changes in the marketplace."[111] Indeed, the D.C. Circuit, in questioning the FCC's contention that an "'incremental' approach to the deregulation of broadcast ownership" was appropriate, instead likened the "mandate of § 202(h)" to "Farragut's order at the battle of Mobile Bay ('Damn the torpedoes! Full speed ahead.')."[112]

Further confirming the statute's focus on competition and deregulation, Congress expressly linked the Section 202(h) reviews with the FCC's broader "regulatory reform review under section 11 of the Communications Act."[113] Section 11 also was added by the 1996

---

[110] *Fox TV Stations, Inc. v. FCC*, 280 F.3d 1027, 1033 (D.C. Cir. 2002) (also stating that in the 1996 Act, "Congress set in motion a process to deregulate the structure" of the broadcast industry), *opinion modified on reh'g on other grounds*, 293 F.3d 537 (D.C. Cir. 2002). *Accord Sinclair Broad. Group v. FCC*, 284 F.3d 148, 159 (D.C. Cir. 2002).

[111] *Prometheus Radio Project v. FCC*, 824 F.3d 33, 50 (3d Cir. 2016) (citations omitted).

[112] *Fox*, 280 F.3d at 1044 (describing Section 202(h)'s mandate as requiring the FCC to "promptly – that is, by revisiting the matter biennially – [ ] 'repeal or modify' any rule that is not 'necessary in the public interest'"). Similarly, the court in *Sinclair* rejected the FCC's reliance on the absence of definitive empirical studies and unresolved questions about media substitutability to justify its decision about the local TV rule, stating that this "wait-and-see approach" could not be "squared with its statutory mandate" to repeal or modify any rule that is not necessary in the public interest. 284 F.3d at 164 (citation omitted).

[113] 1996 Act, § 202(h) (directing the FCC to review its ownership rules quadrennially "as part of its regulatory reform review under section 11").

Act to ensure that the FCC reviews periodically its regulations governing telecommunications services to "determine whether any such regulation is no longer necessary in the public interest *as the result of meaningful economic competition*" and to "repeal or modify any regulation it determines to be no longer necessary in the public interest."[114] By firmly placing Section 202(h) reviews within the context of the 1996 Act's "pro-competitive, deregulatory national policy framework,"[115] Congress again confirmed that the statutory text is focused on competition, with an eye toward real, ongoing regulatory reform. And given that Congress concluded that "substantial reform" of its and the "Commission['s] oversight of the way the broadcasting industry develops and competes" was necessitated due to the modest (by today's standards) "explosion of programming distribution sources" in the 1990s,[116] then the case for regulatory reform of the ownership rules in today's digital marketplace is even more compelling. Thus, the text, structure, purpose and legislative history of Section 202 all lead to the conclusion that Section 202(h) is a deregulatory statute requiring repeal or modification of rules rendered unnecessary in the public interest due to competition.[117]

---

[114] 47 U.S.C. § 161 (emphasis added). *See Cellco P'ship v. FCC,* 357 F.3d 88, 98-99 (D.C. Cir. 2004) (explaining that Section 11 of the 1996 Act establishes a "deregulatory presumption").

[115] S. Rep. No. 104-230, at 1-2 (1996).

[116] H.R. Rep. No. 104-204, at 55 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 18-19.

[117] *See Fox*, 280 F.3d at 1033, 1042-1044, 1048; *Sinclair*, 284 F.3d at 159, 164. Contrary to the Third Circuit Court of Appeals' misreading of Congress's deregulatory intent, Section 202(h) clearly does more than establish a timing requirement on the Commission. *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 395 (3d Cir. 2004) (*Prometheus I*) (opining that the only "deregulatory" aspect of Section 202(h) was the periodic requirement to justify its rules). After all, if that had been Congress's only intent, it would not have placed Section 202(h) within Section 11's broader "regulatory reform review"; nor would it have directed the FCC to determine whether any of its rules remain necessary in the public interest as the result of competition specifically and mandated an outcome (*i.e.*, repeal or modification of unnecessary rules). Instead, Congress would have just directed the FCC to examine its ownership rules every four years.

B. The Text, Structure, Purpose and History Of Section 202 Cannot Be Properly Read To Impose Only Standard Administrative Law Obligations On The FCC, Let Alone To Justify Reregulation Of Broadcast Stations

As an initial matter, NAB points out that Section 202(h) places an obligation on the Commission beyond its general administrative law duty, recognized by many cases, to reexamine its rules as circumstances change.[118] Despite this long-standing administrative law requirement for the FCC and other agencies to "monitor" their regulations and make adjustments to reflect "new developments or better understanding of the relevant facts,"[119] Congress nonetheless imposed additional obligations on the Commission to: (1) regularly conduct a competition-centric analysis of its broadcast ownership rules specifically,[120] and (2) repeal or modify any rules determined by that analysis to be no longer in the public interest.[121] Interpreting Section 202(h) as only imposing the "same old, same old" administrative law obligations, in an attempt to downplay the statute's deregulatory intent and the specific requirements placed on the FCC in its quadrennial reviews, would make

[118] *See, e.g., Cincinnati Bell Tel. Co. v. FCC,* 69 F.3d 752, 767 (6th Cir. 1995); *Bechtel v. FCC,* 957 F.2d 873, 881 (D.C. Cir. 1992); *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C. Cir. 1979).

[119] *ACLU v. FCC*, 823 F.2d 1554, 1565 (D.C. Cir. 1987), citing *American Trucking Ass'ns v. Atchison, T. & S. F. Ry.*, 387 U.S. 397, 416 (1967).

[120] In *Fox*, the D.C. Circuit found the retention of a TV ownership rule contrary to Section 202(h) because the FCC's analysis of competition in the television industry was "woefully inadequate," and accordingly concluded that the FCC had failed "to address meaningfully the question that Congress required it to answer." 280 F.3d at 1044 (faulting the FCC for not "defining the relevant markets, let alone assessing the state of competition therein").

[121] In interpreting Section 11, the D.C. Circuit concluded that, after the FCC has determined under § 11(a) that a regulation "is no longer necessary in the public interest as the result of meaningful economic competition," § 11(b)'s directive to "repeal or modify" any such regulation "make[s] clear that the Commission is under a *mandate that extends beyond its normal monitoring responsibilities.*" *Cellco*, 357 F.3d at 99 (emphasis added).

Section 202(h) essentially redundant and insignificant. As the Supreme Court has made clear, no statute should be interpreted in such a manner.[122]

1. Attempting to Justify Reregulation by Misinterpreting the Term "Modify" in Isolation Is Contrary to the Full Text of Section 202(h), the Structure of Section 202 and Congressional Intent

The Commission and various other parties over the years have contended (or just assumed) that Section 202(h) authorizes the FCC to tighten its ownership restrictions. The textual authority cited at times for that faulty proposition has been the word "modify" in the phrase "repeal or modify" in the second sentence of Section 202(h).[123] But "modify" cannot be read "in a vacuum."[124] In the context of Section 202(h), "modify" means, as it does throughout Section 202, that the FCC can relax existing regulations; properly viewed, it does not give the Commission power to tighten those restrictions.

"The meaning of statutory language, plain or not, depends on context."[125] A "fundamental canon of statutory construction" requires the words of a statute to be "read in their context and with a view to their place in the overall statutory scheme."[126] As described above, in Section 202 Congress enacted a sea change in policy toward broadcast ownership

---

[122] "[O]ne of the most basic interpretive canons" is that a statute should be construed "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Corley v. United States*, 556 U.S. 303, 314 (2009) (citations omitted).

[123] In *Prometheus I*, the Third Circuit concluded without any discussion of the term specifically – let alone any close textual analysis or consideration of the context of the phrase "repeal or modify" – that "modify" allows the FCC to make the ownership rules either more or less stringent. 373 F.3d at 394-95.

[124] The Supreme Court "has long refused to construe words in a vacuum." *Gundy*, 139 S. Ct. at 2126 (citation omitted).

[125] *Bailey v. U.S.*, 516 U.S. 137, 145 (1995) (citations omitted); *accord Yates v. U.S.*, 574 U.S. 528, 537 (2015).

[126] *Republic of Sudan v. Harrison*, 139 S. Ct. 1048, 1057 (2019); *see also Massachusetts v. Morash*, 490 U.S. 107, 115 (1989) (in interpreting a statute, courts are not "guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy").

restrictions, choosing to "reduce regulation" and "promote competition."[127] Congress itself ordered specific, significant deregulation in Section 202, and then directed the FCC to determine, on an ongoing basis, whether to "repeal or modify" the remaining ownership restrictions still further in light of competition.[128]

Given Congress's object and policy in the 1996 Act generally and Section 202 specifically, the claim that Section 202(h) authorizes any "modification," no matter how re-regulatory and restrictive, is thus highly implausible on its face. One cannot rationally argue that, despite all its efforts in 1996 to reform the broadcast ownership regulatory regime, Congress gave the Commission carte blanche to restore pre-1996 restrictions or to otherwise impose more restrictive rules.

Examining the terms of Section 202 more granularly supports NAB's interpretation of the term "modify" as not encompassing reregulation. In Section 202(h), "repeal" proceeds "modify" as the FCC's only choices after it determines an ownership rule to be no longer necessary in the public interest as the result of competition. If a rule has been made unnecessary by market competition, then logically "modify" must mean relax, as there can be no basis for tightening an unnecessary rule. Indeed, even the FCC has acknowledged in the context of Section 11 that a "deregulatory presumption" arises after it determines under § 11(a) that a regulation is no longer necessary in the public interest as the result of meaningful economic competition.[129] Given this "deregulatory presumption," it then follows that the actions directed by § 11(b) – to "repeal or modify" the unnecessary regulation –

---

[127] *Reno v. ACLU*, 521 U.S. 844, 857-58 (1997).

[128] *See Fox*, 280 F.3d at 1043 (rejecting the FCC's arguments for retaining the national TV ownership cap without change, and concluding that Congress's choice of certain numerical ownership limits in Section 202 "determined only the starting point from which the Commission was to assess the need for further change" under Section 202(h)).

[129] *Cellco*, 357 F.3d at 99; 47 U.S.C. § 161(a).

must be deregulatory in nature.[130] Thus, "modify" in the context of the FCC's periodic regulatory reviews cannot be interpreted as encompassing the tightening of rules.

The word "modify," moreover, appears elsewhere in Section 202 (in §§ 202(a) and 202(c)(1)), and Congress consistently used the term to direct the elimination or easing of ownership rules.[131] Section 202 (in subsection (c)(2)) also contains Congress's instruction that the Commission conduct a rulemaking to "determine whether to retain, *modify*, or eliminate its limitations" on the number of TV stations that may be commonly owned in the same local market[132] -- a direction permitting the FCC to steer a course between retention and elimination of the "limitations," but not to create new or more stringent ones.[133]

The interpretation of the word "modify" to permit reregulation creates still other incongruities. If Section 202(h) allows increased regulation, for example, then the FCC could restore the national radio ownership cap, or the numerical cap on ownership of TV stations nationwide, that Congress chose in Sections 202(a) and 202(c)(1)(A) to "modify" by "eliminating" them entirely. When Congress directed the Commission to "repeal or modify"

---

[130] *Cellco*, 357 F.3d at 99; 47 U.S.C. § 161(b).

[131] Section 202(a) instructed the FCC to "modify" its regulations by "eliminating" the national radio cap; Section 202(c)(1)(A) directed the FCC to "modify" its rules by "eliminating" the numerical caps on TV station ownership nationwide; and Section 202(c)(1)(B) required the FCC to "modify" its rules by "increasing" the national TV audience reach cap.

[132] 1996 Act, § 202(c)(2) (emphasis added).

[133] Congress's deregulatory intent is particularly clear with regard to radio. Beyond eliminating the national cap and substantially relaxing the local numerical caps on radio station ownership in Sections 202(a) and 202(b)(1), Congress in Section 202(b)(2) provided an exception to those already-relaxed local caps by authorizing the FCC to permit an entity to own radio stations in excess of the local limits under certain circumstances.

unnecessary ownership restrictions, it surely did not intend to authorize restoration of rules that Congress had ordered to be eliminated.[134]

Finally, NAB's reading of "modify" in Section 202(h) is not only necessitated by context but also is consistent with a common meaning of the term, namely, "to make less extreme: moderate."[135] Under Section 202(h), the Commission therefore can moderate its regulations by limiting their scope, or making them "less extreme, severe or strong" – or, of course, repeal them altogether – but cannot make them more stringent.[136] An interpretation of the term "modify" as somehow authorizing reregulation in the face of clear congressional

---

[134] Following the 1996 Act, Congress again indicated it did not intend for the FCC to use § 202(h) reviews to reregulate. Due to FCC delay in completing its first mandated periodic review, Congress in late 1999 directed the FCC to complete the first required biennial review within 180 days. Consolidated Appropriations Act, 2000, P.L. 106-113, § 5003, 113 Stat. 1501, 1501A-593 (1999). The accompanying Conference Report instructed: "[I]f the Commission concludes that it should *retain any of these rules under the review unchanged*, the Commission shall issue a report that includes a full justification of the basis for so finding." H.R. Conf. Rep. No. 106-464, at 148 (1999) (emphasis added). Clearly, Congress believed that merely retaining rules unchanged required "a full justification," and evidently did not even contemplate tightening the rules as an option, which supports a reading of § 202(h) as permitting deregulation but not reregulation.

[135] https://www.merriam-webster.com/dictionary/modify#:~:text=transitive%20verb,modifies%20the%20noun%20%22hat.%22 (first listed definition). *See also* yourdictionary.com ("to modify is to make a change or alteration"; "to make less extreme, severe, or strong"); dictionary.com ("to change somewhat the form or qualities of; alter; partially amend; to reduce or lessen in degree or extent; moderate; soften"); thefreedictionary.com ("To change in form or character; alter. To make less extreme, severe, or strong."); macmillandictionary.com ("to change something slightly, especially in order to improve it or to make it less extreme"); lexico.com ("make partial or minor changes to (something), typically so as to improve it or make it less extreme").

[136] The FCC previously appeared to recognize this limitation on its authority. *See 2000 Biennial Regulatory Review*, 16 FCC Rcd 1207, 1213 (2001) (explaining that, "in some instances, the process of repealing or modifying regulations may necessarily involve the creation of new, less burdensome regulations"; thus, "as part of the biennial review process, we do not intend to impose new obligations on parties in lieu of current ones, unless we are persuaded that the former are less burdensome than the latter").

intent to deregulate is inconsistent with the text, structure, legislative history and purpose of Section 202 and would be deemed unreasonable by a reviewing court.[137]

2. The "Public Interest as the Result of Competition" Does Not Have the Same Meaning as the "Public Interest," and the FCC Must Give Full Effect to Congress's Specific Choice of Words

Those straining to interpret Section 202(h) in a less competition-focused, less deregulatory way also often downplay – if not virtually ignore – the phrase "public interest as the result of competition" and act as though Congress merely said "public interest."[138] Given the unprecedented levels of competition in the media and advertising marketplaces today, NAB understands that diverting attention away from competition is the only hope opponents of ownership reform may have for maintaining the current local ownership rules. That approach, however, is contrary to the terms of Section 202(h), clear congressional intent and multiple tenets of statutory construction.

While parties supporting retention – or even tightening – of analog-era ownership restrictions may stress Congress's use of the phrase "public interest," that language is not free-standing. Section 202(h) requires the Commission to "determine" whether the ownership rules "are necessary in the public interest as the result of competition." This clear directive is obviously not the equivalent of directing the FCC to "determine" whether its rules are "necessary in the public interest." Reading the first sentence of Section 202(h) in that

[137] *See Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 321 (2014) (stating that an agency interpretation "inconsistent with the design and structure of the statute as a whole" would not be reasonable and would "not merit deference") (citation omitted).

[138] The Third Circuit in *Prometheus I* ignored the phrase "as the result of competition" when examining the text of § 202(h) in Sections II.B.1. and II.B.2. of its opinion, and erroneously appeared to assume without explanation that the "public interest as the result of competition" meant nothing different than the "public interest." 373 F.3d at 391-95.

manner would ignore "the question that Congress required" the FCC "to answer."[139] It also would be inconsistent with several basic principles of statutory interpretation.

First, construing Section 202(h) as requiring merely a standard "public interest" analysis, rather than a competition-focused one, would be contrary to the plain language of the statute, thereby violating the most basic canon of statutory construction.[140] Second, it would create a superfluity problem. Congress "intend[s] each of its terms to have meaning"[141]; thus, the FCC must give full effect to the phrase "as the result of competition," so that this provision will not be "inoperative or superfluous, void or insignificant."[142] Third, throughout the provisions of the Communications Act addressing broadcasting, Congress used the phrase "public interest,"[143] but in the 1996 Act, which significantly amended the Act, Congress in Section 202(h) deliberately changed that familiar, well-established language and said "public interest as the result of competition," which must mean something different. It is "presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion" of statutory language.[144]

Fourth, "it is a commonplace of statutory construction that the specific governs the general";[145] thus, "[s]pecific terms prevail over the general in the same or another statute

---

[139] *Fox*, 280 F.3d at 1044 (concluding that retaining a national TV ownership rule was contrary to Section 202(h) because FCC did not conduct an adequate competition analysis).

[140] *See*, *e.g*., *Barnhart* v. *Sigmon Coal Co*., 534 U.S. 438, 461 (2002) (stating that it must be "presume[d] that a legislature says in a statute what it means and means in a statute what it says there") (citations omitted).

[141] *Bailey*, 516 U.S. at 145.

[142] *Corley*, 556 U.S. at 314.

[143] *See*, e.g., 47 U.S.C. §§ 303, 307(a), 309(a), 310(d).

[144] *Barnhart*, 534 U.S. at 452; *accord Russello v*. U.S., 464 U.S. 16, 23 (1983).

[145] *Morales v. Trans World Airlines*, *Inc*., 504 U.S. 374, 384 (1992).

which might otherwise be controlling."[146] "That is particularly true," according to the Supreme Court, where "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions"[147] – such as with Congress's adoption of Section 202 to overhaul the FCC's over-regulatory broadcast ownership regime and reorient it towards competition to preserve OTA broadcasting as a vital part of the marketplace. Section 202(h)'s specific terms accordingly govern the mandated quadrennial reviews, and Congress's instructions to the FCC in that section obviously limit the way the Commission can exercise its general authority "[]consistent with law."[148] In short, if the "public interest as the result of competition" just means the "public interest," and if Congress's directive in Section 202(h) to "repeal or modify" competitively unnecessary rules imposes no obligation on the FCC beyond its general regulatory authority, then the entirety

---

[146] *Fourco Glass Co. v. Transmirra Products Corp*., 353 U.S. 222, 228-29 (1957), quoting *D. Ginsberg & Sons*, *Inc*. *v*. *Popkin*, 285 U.S. 204, 208 (1932). *Accord Bloate v*. *U.S*., 559 U.S. 196, 207 (2010) (quoting *D*. *Ginsberg* with approval).

[147] *RadLAX Gateway Hotel*, *LLC v*. *Amalgamated Bank*, 566 U.S. 639, 645 (2012) (citations omitted) (explaining that, when interpreting statutes containing both "general authorizations" and "more limited, specific" ones, the "terms of the specific authorization must be complied with").

[148] 47 U.S.C. § 303(r) (granting power to the FCC, as the "public convenience, interest, or necessity requires," to "[m]ake such rules and regulations . . . *not inconsistent with law*, as may be necessary to carry out the provisions of this chapter . . . .") (emphasis added). For example, the FCC cannot rely on its general authority to disregard Congress's directive to determine the necessity for its rules as the result of competition, or its mandate to repeal or modify rules determined to be no longer in the public interest. Courts have overturned agency decisions made pursuant to their general authority under a statute because they overrode or bypassed more specific statutory provisions in doing so. *See*, *e.g*., *Markair*, *Inc*. *v*. *Civil Aeronautics Board*, 744 F.2d 1383, 1385-86 (9th Cir. 1984) (rejecting the CAB's reliance on its general authority to grant certificates consistent with the "public convenience and necessity" because it "bypass[ed]" a more specific provision when granting certificates to several airlines). In another broadcast-related context (retransmission consent), the FCC has specifically recognized that its general grants of authority do not authorize it to act in a manner "inconsistent" with other provisions of the Act and that, under a "fundamental canon of statutory construction," specific provisions govern more general ones. Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2728 and n. 57 (2011).

of Section 202(h) becomes virtually meaningless. Such a result would violate the “cardinal rule” that “effect shall be given to every clause and part of a statute.”[149]

Finally, some parties may point to the two-sentence structure of Section 202(h), suggesting that the second sentence – requiring the FCC to “repeal or modify any regulation it determines to be no longer in the public interest” – empowers the FCC to consider the public interest unbounded by competition. But this second sentence does not stand alone and cannot be interpreted so as to ignore Congress’s emphasis on competition in the first sentence. The two sentences work together and should be read accordingly. Specifically, the word “determines” in the second sentence refers back to the determination required by the first sentence, where the “public interest” is cabined by “the result of competition.”[150]

Reading the two sentences of Section 202(h) separately also would lead to nonsensical results. If the second sentence were construed as authorizing a separate and different public interest determination (*i.e.*, one not singling out competition), then that would render the competition-centric public interest determination Congress directed the FCC to make in the first sentence ineffective and superfluous. In essence, the FCC would make a competition-focused determination of the public interest necessity for its ownership rules as required by Section 202(h)’s first sentence and then promptly discard it, as that determination would have no relevance as to whether any of the rules would be repealed or

[149] *RadLAX*, 566 U.S. at 645, quoting *D. Ginsburg*, 285 U.S. at 208. *Accord Riccio v. Sentry Credit*, *Inc*., 954 F.3d 582, 588 (3d Cir. 2020) (rejecting a reading of a statute contrary to “one of the most venerable of our interpretive canons: the rule against surplusage”).

[150] In *Gundy*, the Supreme Court soundly rejected a party’s interpretation of a section of a statute based on the “first half” of that section “isolated from everything else – from the second half of the same section, from surrounding provisions in [the statute], and from any conception of the statute’s history and purpose.” 139 S. Ct. at 2126. A reviewing court similarly would reject an interpretation that isolated Section 202(h)’s second sentence from the first, from the surrounding provisions in Section 202, and from the deregulatory purpose of Section 202 and the 1996 Act.

modified under the second sentence. Congress cannot be assumed to have imposed such a pointless requirement on the Commission. To give the first sentence of Section 202(h) full effect, the statute logically should be read to require the FCC to make a single public interest determination: whether its ownership rules remain necessary in the public interest as the result of competition. Pursuant to that determination, the Commission, per Congress's instruction in the second sentence, then repeals or modifies any rule no longer in the public interest. Attempting to jettison the key factor of competition by artificially separating the two sentences Congress enacted together would violate the text, structure, history and deregulatory purpose of Section 202 generally and Section 202(h) specifically.[151]

3. In its Section 202(h) Reviews, the FCC Should Test Each Rule's Public Interest Rationale Against Competition to Assess its Continued Necessity

The most natural reading of "the public interest" in light of the surrounding terms in Section 202(h) would be for the FCC to examine whether the public interest grounds upon which it initially based a particular rule still supports the rule given current competitive realities. Under the statute, the FCC must review the ownership rules "adopted pursuant to this section and all of its ownership rules" and must repeal or modify any rule determined to be "no longer in the public interest." By referring back to the time the rules were "adopted" and instructing the FCC to change rules "no longer" necessary, Section 202(h) contemplates

[151] Importantly, Congress knew how to instruct the FCC to review ownership rules without pursuing a deregulatory purpose or giving primacy to competition. That is what Congress did in Section 202(c)(2), ordering the FCC only to "conduct a rulemaking proceeding to determine whether to retain, modify, or eliminate" the local TV rule. Congress' choice of differing language in Section 202(h) compels the conclusion that Section 202(h) reviews must center on competition and achieve meaningful reform.

a retrospective analysis.[152] Thus, the FCC should look to the original rationale for each rule and test that rationale's continued necessity under current competitive conditions.[153]

Given Congress's clear intent to create a meaningful reform process driven by competition in Section 202(h), the Commission should not cast around for new public interest rationales for keeping its rules despite competitive changes. But even assuming the FCC could rely on new public interest rationales, it still must focus primarily on competition – the only factor identified by Congress – in analyzing whether the ownership rules remain necessary. The Commission must honor that express limitation on its "public interest" authority under Section 202(h).[154]

---

[152] *See Gustafson v. Alloyd Co.*, 513 U.S. 561, 575 (1995) (because "a word is known by the company it keeps," courts must "avoid ascribing to one word [or phrase] a meaning so broad that it is inconsistent with its accompanying words"); *Nat'l Broad. Co.* v. *U.S.*, 319 U.S. 190, 216 (1943) (stating that the "public interest" must be "interpreted by its context").

[153] NAB observes, however, that the FCC altered its original public interest rationale for the local TV rule, expressly determining in 2008 that it was intended to promote competition and was no longer needed to promote viewpoint diversity. *See* NAB 2018 Quadrennial Comments at 57-59; 2017 Reconsideration Order, 32 FCC Rcd at 9835. Accordingly, the FCC would no longer test the continued necessity of that rule to promote viewpoint diversity.

[154] Beyond statutory difficulties, the FCC also would create constitutional problems if it were to retain structural ownership rules for the sole or primary purpose of promoting minority and female ownership, even if the rules themselves are facially race- and gender-neutral. *See Rucho v. Common Cause*, 139 S. Ct. 2484, 2496 (2019) ("Laws . . . that are race neutral on their face but are unexplainable on grounds other than race, are of course presumptively invalid"); *see also Adarand Constructors, Inc. v. Pena*, 515 U.S. 200, 213 (1995). In 2016, the FCC declined to adopt race- or gender- conscious measures to promote minority/female ownership of broadcast stations, stating that the record evidence was insufficient for such measures to withstand constitutional scrutiny. 2016 Ownership Order, 31 FCC Rcd at 9961, 9987 (finding that no evidence in the record is "sufficient to satisfy the constitutional standards to adopt race- or gender-conscious measures" and that "no commenter has provided actionable study designs that would likely provide the evidence necessary to support race- and/or gender-conscious measures").

C. The Supreme Court Left Open Broader Questions About Section 202(h), But Set A High Bar As To The Type Of Evidence Needed To Show That Changes To The Structural Ownership Rules Would Impair Diverse Ownership

As described in the Public Notice (at 3), in April the Supreme Court unanimously reversed the Third Circuit Court of Appeals' decision overturning the FCC's 2017 Reconsideration Order repealing or modifying several local ownership rules.[155] The Court upheld the FCC's analysis that the "historical justifications" for the ownership rules at issue "no longer apply in today's media market, and that permitting efficient combinations among radio stations, television stations, and newspapers would benefit consumers."[156] Indeed, the Court observed that neither the Third Circuit, nor the advocacy groups defending its decision, even disputed the FCC's conclusion that the ownership rules in question no longer served the FCC's public interest goals of competition, localism and viewpoint diversity.[157] In rejecting arguments that the advocacy groups did make, the Court found that the Commission reasonably concluded under the Administrative Procedure Act (APA) that its rule changes were not likely to harm minority and female ownership, and rejected arguments that the law required the FCC to undertake its own empirical or statistical studies before exercising its discretion to repeal or modify rules under Section 202(h).[158]

Given the Supreme Court's 9-0 decision in the FCC's and NAB's favor on APA grounds, the Court did not reach and did not express any opinion on NAB's additional

---

[155] *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1157 (2021). The Third Circuit, by a 2-1 vote, had vacated the FCC's 2017 Reconsideration Order revising or eliminating certain ownership rules. The panel majority objected to the FCC's treatment of ownership diversity and ordered the FCC to ascertain on record evidence, whether by new empirical research or an in-depth theoretical analysis, the effect any rule changes would have on minority and female ownership.

[156] *Prometheus*, 141 S. Ct. at 1160.

[157] *Id*. at 1157-58.

[158] *Id*. at 1160.

arguments about the appropriate interpretation of Section 202(h). The Justices expressly left open the question of whether the FCC is authorized to consider minority and female ownership in its Section 202(h) reviews,[159] although in his concurring opinion Justice Thomas concluded that the Third Circuit had improperly imposed non-statutory requirements on the FCC by forcing it to consider ownership diversity and that nothing in Section 202(h) directs the Commission to consider that factor.[160] None of the other Justices wrote separately, whether to dispute Justice Thomas' opinion or otherwise.

While not addressing the statutory questions, the Court nonetheless set a high bar as to the type of evidence that any party would need to submit to the FCC to show a link between reform of the structural ownership rules and an impact on minority or female ownership. The Court stressed that, despite repeated requests from the Commission, no commenter in the quadrennial review proceedings at issue had submitted empirical evidence indicating that changing the ownership rules would likely harm minority/female ownership in the future.[161] It noted that the "purely backward-looking" studies submitted to the FCC by Free Press actually showed a "long-term *increase* in minority ownership" after the local radio and TV ownership rules were relaxed in the 1990s, and observed that Free Press had "offered no statistical analysis of the likely *future* effects of the FCC's proposed rule changes on minority and female ownership."[162] The Court suggested here that the Commission (even assuming it may properly consider minority/female ownership under Section 202(h) as a basis for keeping competitively questionable ownership rules) cannot retain those rules on the grounds that eliminating or reforming them would harm

---

[159] *Id*. at note 3.

[160] *Id*. at 1161.

[161] *Id*. at 1159-60.

[162] *Id*. at 1159-60 (emphases added).

minority/female ownership unless it has statistical evidence showing that rule changes would likely impair the levels of diverse ownership in the future.

Those who (erroneously) assume relaxation of asymmetric ownership restrictions harms minority/female ownership have failed to empirically establish that past reforms of those rules caused declines in minority/female ownership. Thus, their ability to empirically show that further rule changes would likely decrease ownership diversity in the future appears doubtful at best. And, as Section III. discussed in detail, it is inherently unlikely that changing the structural ownership rules would significantly impact the levels of station ownership diversity, given that those rules do not even address the major impediment to increasing new entry and minority and female ownership – the lack of access to capital.

VI. THE FCC CAN NO LONGER MAINTAIN THAT RADIO AND TV STATIONS COMPETE IN A MARKET LIMITED TO ONLY BROADCAST STATIONS, THEREBY UNDERMINING THE BASIS FOR THE CURRENT LOCAL OWNERSHIP RULES

A. New Evidence Makes Clear Yet Again That Broadcast Stations Compete In A Broad Advertising Market, Which Includes Digital Platforms

The Public Notice (at 4, 6) inquires about new or additional information regarding the media marketplace, including data and studies, that would inform the FCC's analysis. Last January, the Department of Justice (DOJ) submitted information it thought relevant to the FCC's consideration in its 2018 ownership review.[163] This information included an empirical study by NERA Economic Consulting (NERA), which NAB had submitted to DOJ, and the transcript from DOJ's 2019 Public Workshop on Competition in Television and Digital Advertising (DOJ Competition Workshop).[164]

---

[163] *Ex Parte* Letter from Makan Delrahim, Assistant Attorney General, DOJ, Antitrust Division, to FCC, MB Docket No. 18-349 (Jan. 6, 2021).

[164] *Id.,* attaching Transcript of DOJ Competition Workshop (May 2-3, 2019) (DOJ Workshop Transcript); Jeffrey Eisenach, Lawrence Wu, Andrew Card, Robert Kulick, John Scalf, Ivan Tasic and Megan Ye, *The Evolution of Competition in Local Broadcast Television Advertising and the Implications for Antitrust and Competition Policy*, NERA (Oct. 2020) (NERA Study).

NAB's 2019 comments discussed the modern advertising market in detail. We provided substantial evidence showing that radio and TV stations struggle to compete with other media outlets and, especially, large digital ad platforms for the local ad revenues needed to support station operations and valued services.[165] The materials submitted by DOJ earlier this year provide additional evidence that broadcasters compete in a broad ad market increasingly dominated by digital platforms, thereby further undermining local radio and TV rules premised on an outdated conception of market competition.

The NERA Study focused on the substitution by local advertisers between advertising on digital media and advertising on broadcast TV stations and whether the relevant market for a competition analysis should be broader than one confined only to broadcast TV stations. In light of the existing economic literature, extensive evidence about dramatic changes across the media landscape, and its new empirical analysis, NERA concluded that: (1) digital platforms compete directly with local TV broadcasters for local advertising dollars, and (2) the relevant market for purposes of analyzing combinations between local TV broadcasters should include advertising on digital platforms, not just local broadcast TV advertising.[166]

NERA began its Study by examining existing research on whether local broadcast TV advertising constitutes a distinct relevant market and found that previous empirical analyses did not support the view that local TV advertising constitutes a relevant market.[167] Then, the Study examined the marketplace impact of the rapid growth in the quantity and variety of

---

[165] *See* NAB 2018 Quadrennial Comments at 20-28, 50-54; BIA Radio Study at 9-13; BIA TV Study at 10-18; NAB 2018 Quadrennial Reply Comments at 37-45, 59-64.

[166] *See* NERA Study at 27, 37-38.

[167] *Id*. at 10-11 (discussing various studies from 2000-2016).

digital media. It detailed the decline in broadcast TV's audience share;[168] the swift growth in consumer adoption of digital platforms, including Facebook and YouTube; the expansion of digital ad inventory; and the increasingly comparable nature of digital advertising to TV advertising.[169] As a result of these factors, digital platforms have "captured an increasing share of local advertising spend from local broadcasters" and will capture a still greater share going forward.[170] The NERA Study found that this evidence strongly suggests that "digital advertising delivered over both fixed and mobile broadband networks constitutes a direct substitute for local broadcast advertising, adding to existing competition from cable TV (which competes directly with broadcast for local advertising dollars) and other media."[171]

In light of this evidence, NERA then analyzed whether and by how much growth of digital media has affected the relationship between local broadcast TV advertising prices and local broadcast TV concentration over a ten-year period (2009-2018), using quarterly data from approximately 200 DMAs.[172] Specifically, NERA estimated the relationship

---

[168] The NERA Study provides yet more evidence that digital media platforms compete with broadcast TV stations (and cable TV) for audiences, as well as advertisers, and that the explosion in digital options has eroded traditional TV viewership. *Id*. at 12-18 (pointing out, *inter alia*, that digital platforms offer the same type of original content once only found on broadcast or cable TV, and citing research suggesting that computers and smart phones are direct substitutes for real-time TV viewing.) *Id*. at 13-14 and note 49.

[169] NERA Study at 12-23.

[170] *Id*. at 23, Heading D. For example, the Study documented that digital's share of local advertising spend rose from 15 percent in 2010 to 55 percent in 2019, and is projected to rise to 72.8 percent in 2029. In stark contrast, local spot TV's share of the ad market fell from 15.9 percent in 2010 to 12.6 percent in 2019, and is projected to decrease to 8.8 percent in 2029. *Id*. at 25, Figure 7.

[171] *Id*. at 2; *see also id*. at 12, 27.

[172] *Id*. at 2. NERA's approach was based on the following framework: If broadcast TV advertising is a distinct relevant market, then changes in local market concentration would affect local TV station ad prices. In more concentrated markets, prices would be higher; in less concentrated markets, prices would be lower. But if there were competing alternatives to local TV station advertising, an increase in local market concentration may have little or no effect on prices. In other words, a combination of two local TV stations may lead to an

between the DMA-level Herfindahl-Hirschman Index (HHI) for local TV broadcasters and local TV advertising prices for three time periods (2009-2011, 2012-2015 and 2016-2018). For the early period, NERA found a small but statistically significant positive relationship between market concentration and broadcast TV ad prices,[173] but that relationship had dissipated to insignificance by the middle period. By the late period, that relationship had reversed to a negative one (*i.e.*, increases in broadcast TV market concentration were associated with a decrease in TV ad prices although the effects were still not statistically significant).[174] Notably, the NERA Study also showed that the disappearance of the price-concentration relationship over time was "directly tied to the growth of digital media."[175] Their results, moreover, were robust across a variety of specifications.[176]

In sum, the NERA Study provides new empirical evidence that advertisers view advertising on digital platforms as a substitute for local TV advertising, and that the "cumulation of competitive alternatives," now including digital, prevents TV broadcasters from increasing advertising prices, even in cases where competition from other local TV

---

increase in local broadcast TV market concentration, but it might not lead to higher prices if digital advertising was a competitive constraint before and after the merger. *Id*. at 27.

[173] NERA estimated, during the 2009-2011 period, a 0.7 percent increase in price from a 100-point increase in HHI. *Id*. at 2.

[174] *Id*. at 2, 27-34. Given that digital platforms' share of the U.S. advertising market and consumer usage of those platforms have grown since 2018, one would assume that this trend has become even more pronounced.

[175] *Id*. at 2. NERA modeled the impact of online advertising using DMA-level data on Facebook adoption to assess how varying levels of Facebook adoption (both over time and across DMAs) affected the relationship between concentration (measured by HHI) and ad prices. NERA found that the positive relationship between concentration and price dissipated as Facebook adoption increased. At current levels of adoption, NERA's estimates indicated there is no statistically significant relationship between local broadcast TV HHI and TV ad prices, even in DMAs in which Facebook adoption is lowest. *Id*. at 2, 34-36.

[176] NERA estimated the three time-period model using the number of broadcast TV firms in each market as the measure of concentration, instead of HHI, and modeled the effects of online advertising using YouTube, rather than Facebook, adoption and reached similar results. *Id*. at 2.

stations appears to decrease due to broadcast station combinations.[177] Accordingly, "it can no longer be presumed that local broadcast television advertising constitutes a separate relevant market for purposes of competition analysis."[178]

Various participants at the DOJ Competition Workshop similarly rejected a narrow view of the relevant market. For example, in a panel examining whether local TV stations compete with cable spot and online advertising, all the panelists strongly agreed that broadcast TV, cable TV and digital outlets compete for advertising dollars, and are substitutes for each other, in local markets.[179] NAB agrees – and the FCC previously found – that cable operators provide significant competition in local advertising markets.[180] Attachment E shows that cable operators' local ad revenues have increased over time as a proportion of the ad revenues earned by broadcast TV stations in local markets. Indeed, the competitive presence of cable operators in local ad markets is equivalent to having multiple additional broadcast TV stations in each local market.[181]

---

[177] *Id*. at 3.

[178] *Id*. at 38.

[179] *See* DOJ Workshop Transcript at 75-78, 82-84, 86-87, 94. *See also id*. at 90 (explaining that cable competes with local broadcast TV for advertising by aggregating audiences across dozens of networks and by offering greater and more targeted audience reach than a broadcast TV station can in a local market).

[180] *See, e.g., Carriage of Digital Television Broadcast Signals*, Third Report and Order, 22 FCC Rcd 21064, 21089-90 (2007) (concluding that "local advertising revenue has become an increasingly important source of revenue for the cable industry," noting that between 1992-2003, cable revenue from local advertising rose by 525 percent). *See also* Cable Act, § 2(a)(14), 47 U.S.C. § 521 nt ("Cable television systems and broadcast television stations increasingly compete for television advertising revenues.").

[181] For example, in the top-10 DMAs, the millions in local ad revenues earned by cable operators per each top-10 market in 2020 was the equivalent of nearly five additional TV stations in each market, based on average TV station ad revenues in those markets. In DMAs 11-25, local cable's ad revenues per market were the equivalent of nearly three additional TV stations in each market, based on the average TV station ad revenues in those markets. Attachment E, Cable Share of Local Broadcast TV Revenues, at 1-2.

Importantly, the DOJ panel on advertising competition also stressed that broadcast, cable, digital and other media compete for a finite amount of advertising dollars, as advertisers have fixed budgets.[182] That means "to the degree that somebody takes advertising dollars out of the marketplace, they're taking them from somebody else."[183]

The zero-sum nature of competition for advertising revenue became especially pronounced with the recession of 2008-2009, when the overall ad market noticeably declined relative to U.S. economic growth. Advertising market growth since 2008 has not maintained its long-term historical trend of keeping pace with gross domestic product (GDP).[184] Due to this slow growth, the U.S. ad market as a whole did not match its pre-Great Recession total until 2018, and the growth that has occurred is mostly due to increases in advertising on digital outlets.[185] This slower overall growth, combined with the rapid expansion of digital advertising and then a pandemic-produced recession, have posed difficult challenges for broadcast outlets highly dependent on ad revenues. Indeed, the FCC recently recognized that "advertising revenue in the radio industry never fully recovered from the decline in advertising experienced during the recession following the 2008 financial

---

[182] DOJ Workshop Transcript at 77-78, 83 (also emphasizing that advertisers' fixed budgets do not expand whenever they want to try a different ad option).

[183] *Id*. at 77.

[184] Prior to the recession, the ad market equated to about two percent of GDP, but that fell to 1.6 percent in 2008, 1.4 percent in 2009, and then to just 1.2 percent in 2017 and 1.3 percent in 2019, with no signs of recovering to the 2.0 percent range. *See* NAB 2018 Quadrennial Comments at 20-21; D. Baine, *Advertising market growth unable to keep up with GDP*, Kagan, a media research group within S&P Global Market Intelligence (2019); D. Baine, *Rapidly changing video world impacts advertising market*, Kagan, a media research group within S&P Global Market Intelligence (Feb. 19, 2020) (2020 Ad Market Report) (reconfirming that U.S. ad market continued to be unable to grow in lockstep with GDP, as it had in the past).

[185] *See* NAB 2018 Quadrennial Comments at 21 and note 83 (and cites therein).

crisis."[186] The Commission must now recognize the breadth of competition and the substitutability of various advertising platforms in the modern digital marketplace.

B. The FCC Cannot Retain The Current Local Ownership Limits Based On Outdated And Erroneous Assumptions About Competition In Local Markets

> _Question_: *"What is the main competition in your market?"*
>
> _Answer of a radio broadcaster_: *"It used to be a handful of radio stations . . . but now it's a long list: video games, Pandora, Spotify, TV stations and whatever app somebody just downloaded. . . . [A]nything people do with their time . . . has become our competition, because everything is readily available."*
>
> _Answer of another radio broadcaster_: *"If you add all the radio money in the market, it's about 7 cents on the dollar. . . . In five years, Facebook and Google have taken more money out of the marketplace than all the radio companies combined. There has been a pivot point on who the competition is. No longer is it the radio guy across the street."*[187]

The significant empirical evidence submitted by DOJ buttresses the extensive showings in NAB's previous filings that broadcast stations compete for audiences and advertisers against myriad traditional, multichannel and digital outlets, and that the Commission cannot rationally justify its local ownership restrictions on the pretense that broadcast radio stations compete only against other radio stations and that broadcast TV stations compete only against other TV stations.[188] Such artificially narrow definitions of the

[186] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3090-91 (2020).

[187] David Menconi, *Five Independent Radio Broadcasters Discuss Their Strategies For Small-Market Success*, Billboard (Sept. 17, 2019) (quoting Bruce Goldsen, co-owner of four radio stations in south central Michigan, and Ed Levine, President/CEO of Galaxy Media Partners, which owns 13 radio stations in central New York state).

[188] *See* NAB 2018 Quadrennial Comments at 7-28, 44-57; NAB 2018 Quadrennial Reply Comments at 30-45, 56-64; NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 1-10 (July 11, 2019) (filing NAB's written comments submitted to DOJ Competition Workshop); Comments of NAB, GN Docket No. 20-60, at 5-23, 27-39 (Apr. 27, 2020) (NAB Communications Marketplace Comments); Reply Comments of NAB, GN Docket No. 20-60, at 3-19 (May 28, 2020) (NAB Communications Marketplace Replies). NAB hereby incorporates its comments and reply comments in the communications marketplace proceeding (GN Docket No. 20-60) into this proceeding.

relevant markets lack empirical foundation and common sense, and run counter to the marketplace realities experienced by audiences and advertisers alike. In a media landscape marked not by scarcity, but by unprecedented abundance of content and advertising options, all outlets – whether traditional or digital, audio or video – compete for audiences' limited time and attention and advertisers' finite ad dollars. In today's "attention economy,"[189] the Commission can no longer maintain ownership rules premised on the view that local TV and radio stations exist in markets hermetically sealed against the vast array of media outlets and advertising platforms accessible by audiences from virtually anywhere, at any time, via any device.

Indeed, in other proceedings the FCC has explicitly recognized broader audio and video markets. In its most recent examination of the communications marketplace, the FCC found that "[t]hree categories of audio providers dominate the audio marketplace in the United States: 1) terrestrial radio providers, 2) satellite radio, and 3) online audio providers."[190] Similarly, the FCC concluded that the "video marketplace continues to be dominated by the three categories of participants *that have defined the market for the past decade*: multichannel video programming distributors (MVPDs), online video distributors (OVDs), and broadcast television stations."[191] Given the FCC's recent definitions of the audio

---

[189] DOJ Workshop Transcript at 75-76 (describing the breadth of the "attention economy," and noting that social media companies like Facebook, broadcast TV, print, cable, other types of media and even billboards compete for attention and ad dollars),

[190] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3086 (2020). *See also id*. at 3087 (explaining that "[c]onsumers can access audio programming from multiple sources, from terrestrial broadcast radio stations" to "entities that use Internet and mobile technologies to deliver audio content," and identifying the "major participants in today's marketplace for the delivery of audio programming" as including terrestrial radio broadcasters, satellite radio and online audio providers).

[191] *Id*. at 3047 (emphasis added). *See also id*. (stating that "consumers can access video programming content from multiple sources," identifying the "three primary categories of market participants" as MVPDs, OVDs and broadcast TV stations, and observing that the

and video markets as including a wider range of participants, it would be arbitrary and capricious for the Commission to continue to retain structural ownership rules reflecting the premise that no other providers participate in the same market as terrestrial broadcasters.

Accordingly, NAB again urges the FCC to recognize the vast changes in the media environment and to adopt appropriately broad definitions of the relevant competitive markets in this quadrennial review proceeding.[192] The Commission also must reform its local radio and TV ownership rules as NAB has proposed to reflect this radically altered competitive landscape. Such action is required by Section 202(h) and the APA,[193] and is consonant with Congress's intent in the 1934 Act, the Cable Act and the 1996 Act that radio and TV stations remain competitively viable and capable of serving their local communities.

"past two years have seen a number of changes in terms of competition among these participants").

[192] As discussed in earlier comments, the FCC must acknowledge, and reform its local radio rules to reflect, that radio stations compete for audiences in a market that includes, at the least, terrestrial radio broadcasters, satellite radio providers and providers of audio programming over the internet and to mobile devices. NAB 2018 Quadrennial Comments at 7-8. Similarly, the local TV rule must reflect that TV stations compete for audiences in a market including, at the least, terrestrial TV broadcasters, pay-TV providers and providers of video programming over the internet and to mobile devices. *Id*. at 43-44. The ubiquity of digital devices, moreover, has increased competition between audio and video sources, eroding the long-assumed division between audio and video. *See*, *e.g*., NAB Communications Marketplace Comments at 3, 8, 14; NAB Communications Marketplace Replies at 17. And as discussed above and in previous comments, radio and TV stations compete with a range of media outlets and digital platforms for advertising revenues.

[193] *See, e.g., Fox*, 280 F.3d at 1044 (finding FCC decision to retain a national TV ownership rule to be arbitrary and capricious and, because the FCC failed to "*defin[e] the relevant markets*" or "assess[] the state of competition therein," contrary to Section 202(h)) (emphasis added); *Comcast Corp. v. FCC*, 579 F.3d 1, 7-8 (D.C. Cir. 2009) (finding cable ownership rule arbitrary and capricious because FCC did not account for competitive impact of satellite and fiber optic companies, despite record evidence of increasing competition among these video providers); *Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 764 (6th Cir. 1995) (in finding ownership limitations in wireless industry arbitrary, court stressed that the FCC's "broadly stated fears" about concentration were insufficient to justify its restrictions and that the FCC had failed to provide a "supported economic justification" for those rules).

VII. RECENT EVENTS AND MARKETPLACE DEVEOPMENTS HAVE ACCELERATED ADVERTISER AND CONSUMER USE OF DIGITAL PLATFORMS AND OUTLETS AND EXACERBATED AD-SUPPORTED BROADCASTERS' FINANCIAL CHALLENGES

> *"[T]he COVID-19 story isn't so much 'before and after' as it is 'before and faster.'"*[194]

Media and advertising analysts agree that the pandemic accelerated preexisting media and entertainment industry trends, especially consumers' embrace of all things digital,[195] as well as accelerating the digital transformation of the advertising market and the broader economy.[196] One analyst compared the effects of the pandemic in 2020 to "someone toss[ing] a grenade into the ad market," at least for most sectors of the market, with the notable exception of digital (internet plus mobile).[197] Despite the pandemic, digital

---

194 Deloitte, *Digital media trends survey: COVID-19 accelerates subscriptions and cancellations as consumers search for value*, at 3 (14th ed. 2020) (Deloitte 14th Digital Media Trends) (emphasis in original).

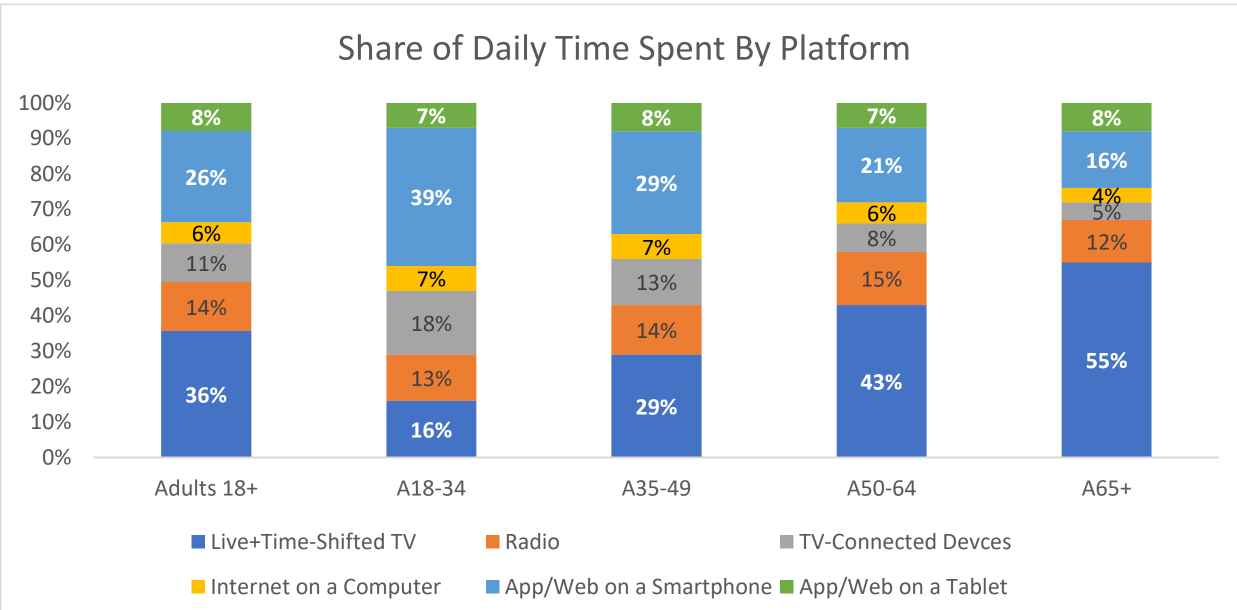
195 Deloitte 15th Digital Media Trends at 2; *see also*, *e.g.*, Y. Wurmser, *Mobile Advertising Outlook 2021*, eMarketer (Dec. 16, 2020) (stating that pandemic accelerated behavioral shifts among users, including increased video streaming, gaming and mobile shopping); Deloitte 14th Digital Media Trends at 3 (observing that customer acquisition has accelerated, especially in paid streaming video, music and gaming subscriptions); PwC, *Global Entertainment & Media Outlook 2021-2025*, *Power shifts*: *Altering the dynamics of the E&M industry*, at ii (2021) (PwC 2021 Outlook) (stating that COVID-19 "accelerated changes in consumer behavior to pull forward digital disruption" by several years).

196 PwC 2021 Outlook at 2 (explaining that rapid adoption of e-commerce during pandemic buoyed internet advertising); MoffettNathanson, *U.S. Digital Advertising*: *Are Even the Bulls Too Low?* (Sept. 29, 2020) (raising its online advertising forecasts due to expected increase in dollars going toward online ads as result of the rapid pace of ecommerce growth during pandemic); *see also*, *e.g.*, Nicole Perrin, *US Digital Ad Spending 2021*, eMarketer (Apr. 14, 2021); Suzanne Vranica, *Google*, *Facebook and Amazon Gain as Coronavirus Reshapes Ad Spending*, Wall Street Journal (Dec. 1, 2020).

197 D. Baine, *U.S. ad market does better in pandemic than in Great Recession*, Kagan, a media research firm within S&P Global Market Intelligence (Mar. 1, 2021) (2021 Ad Market Report) (stating that COVID-19 shocked most ad sectors, including broadcasting, but continued strength in digital meant the overall decline in the ad market was less severe than in the last recession); *accord* N. Perrin, *US Digital Ad Spending 2021*, eMarketer (Apr. 14, 2021) (explaining that advertisers pulled back in the first half of 2020, but digital had a strong recovery in the second half while traditional media faced steep spending drops).

ad spend increased 12.2 percent year-over-year in 2020.[198] The U.S. local ad market is now "completely dominated" by digital advertising, which will comprise an even higher share of the local and national ad market in the coming years.[199] Obviously, the accelerated digital dominance of the advertising market presents formidable financial challenges to ad-supported outlets such as local radio and TV stations.

The COVID-19 pandemic also increased already-strong consumer usage of digital outlets, with a concomitant decline in consumers' share of time spent with traditional media.



Source: Nielsen Total Audience Report Q2 2020

As shown by the graphic, Nielsen estimated that, in the second quarter of 2020, adults 18+ spent only half of their daily media time with traditional platforms (linear TV, including broadcast/cable/satellite, and radio), and spent half of their time with digital platforms (internet on a computer, app/web on smartphones and tablets, and TV-connected devices,

---

198 Megan Graham, *Digital ad spend grew 12% in 2020 despite hit from pandemic*, CNBC (Apr. 7, 2021) (citing report conducted by PwC for the Interactive Advertising Bureau).

199 2021 Ad Market Report (estimating that local internet and mobile ads will generate about two-thirds of total local advertising in 2021, and that by 2030, the digital sector could comprise nearly 80 percent of local advertising).

including game consoles and internet-connected devices).[200] But adults ages 18-34 and 35-49 spent just 29 and 43 percent, respectively, of their daily media time on traditional platforms and 71 and 57 percent, respectively, of their time with digital platforms. Even those ages 50-64 spent 42 percent of their daily media time with digital platforms, and adults 65+ spent more time with apps/web on smartphones than with radio (16 percent versus 12 percent). The share of media time consumers devote to digital platforms, moreover, grew significantly from Q2 2018 to Q2 2020.[201]

Perhaps unsurprisingly given the time consumers now spend with digital media, 79 percent of U.S. adults go online "almost constantly" or "several times a day," with 85 percent going online at least daily.[202] Thirty-one percent of adults say they go online "almost constantly," with 48 percent and 42 percent of those ages 18-29 and 30-49, respectively, reporting that they are almost constantly online.[203]

Deloitte reports that U.S. households own an average of seven digital devices with screens (smartphones, tablets, smart TVs, laptops) for accessing video and audio content.[204] Just prior to the start of the COVID-19 pandemic, a Deloitte survey found the

---

[200] Other estimates of digital media usage are even higher. eMarketer reported that in 2020, digital time accounted for 57.5 percent of U.S. adults' daily media time and projected that figure to reach 60.2 percent by 2022. Insider Intelligence, *US adults added 1 hour of digital time in 2020*, eMarketer (Jan. 26, 2021) (reporting that in 2020 adults spent one hour more per day on digital activities across all devices than in 2019).

[201] In Q2 2018, for example, adults 18+ spent 59 percent of their daily media time with linear TV and radio and 41 percent of their time with digital platforms; adults ages 18-34 spent 42 percent of their time with traditional media and 58 percent of their time with digital platforms; and adults ages 35-49 spent 52 percent of their time with traditional media and only 48 percent of their time with digital platforms. BIA TV Study at 10.

[202] A. Perrin and S. Atske, *About three-in-ten U.S. adults say they are "almost constantly" online*, Pew Research Center (Mar. 26, 2021).

[203] *Id*. Twenty-eight percent of White adults say they are almost always online, compared to 37 percent of Black adults and 36 percent of Hispanic adults. *Id*.

[204] Deloitte 14th Digital Media Trends at 4.

average US consumer had 12 paid media and entertainment subscriptions that radio and TV broadcasters had to compete with for those consumers' time and attention.[205] The pandemic increased consumers' subscriptions to video streaming services,[206] leading Nielsen to proclaim earlier this year that the media landscape had been "permanently altered" by video streaming's increased share of media consumption.[207] In its recent annual report on media and entertainment, PwC stated broadly and "with certainty that a significant proportion of [consumers'] habits accrued" during the pandemic "will endure." Many of the trends that were already evident, including the growth of e-commerce, the "relentless" rise of streaming and the "growing influence" of gaming and user-generated content, gained further momentum and will increasingly lead to power shifts within the industry.[208]

Given that ad-dependent media outlets in this pandemic-altered ecosystem still must earn revenue by "selling" their audiences to advertisers, the accelerated splintering of audiences and the rapid diversion of consumers toward digital platforms inevitably impacts broadcast stations' financial well-being and marketplace competitiveness. Below, NAB further details how the accelerated digital transformation of the media and advertising markets since comments were originally filed in this proceeding has placed additional, substantial competitive pressures on local radio and TV broadcasters.

---

[205] These subscriptions include pay TV, streaming video, streaming music, video games, audio books, digital magazines and newspapers. Deloitte 14th Digital Media Trends at 4.

[206] *Id*. at 7-8.

[207] Nielsen Insights, *Tops of 2020*: *Nielsen Streaming Unwrapped* (Jan. 12, 2021).

[208] PwC 2021 Outlook at 5.

A. The Pandemic Dealt A Blow To The Radio Industry, With Stations Not Expected To Regain Their Pre-COVID Position In The Marketplace, Making Reform Of The Local Radio Rule More Urgent And Important

Despite Section 202(h)'s deregulatory intent and requirement that the Commission retain only rules necessary in the public interest as the result of competition, the local radio caps have remained unchanged since 1996. While the FCC's regulatory framework has stood still for a quarter of a century, technological changes have revolutionized the creation and distribution of media content and the advertising marketplace.

To remain a viable competitor to non-broadcast outlets unencumbered by comparable regulatory restrictions, terrestrial radio operators must be permitted to achieve greater economies of scale. If the Commission ultimately retains broadcast radio-specific ownership caps in this proceeding, NAB again urges adoption of its proposal for reforming those limits: (1) in Nielsen Audio markets 1-75, a single entity could own or control up to eight commercial FM stations, with no cap on AM ownership;[209] and (2) in Nielsen markets outside of the top 75 and in unrated markets, there would be no restrictions on the number of commercial FM or AM stations a single entity could own. NAB's proposal reflects the competitive changes in the marketplace that impact broadcast radio generally, and it appropriately accounts for the special challenges facing smaller-market stations and AM stations in particular.

In earlier submissions, NAB discussed and provided extensive evidence detailing the digital transformation of the media and advertising markets and how it has splintered radio stations' audiences, harmed their ability to attract adequate ad revenues and undermined

[209] To promote new entry into broadcasting, an owner in these top 75 markets would be permitted to own up to two additional FM stations (for a total of 10 FMs) by successfully participating in the FCC's incubator program.

the competitive viability of many stations.[210] Below, NAB updates information pertaining to these matters and provides additional data about broadcast radio's competitive position, especially in light of the pandemic and subsequent recession.[211]

1. Consumer Adoption of Digital Devices and Competing Audio Services Continues Apace

As NAB earlier documented, local radio stations face intense and increasing competition for audiences from an expanding universe of content providers accessible via virtually ubiquitous digital devices. These trends continued to pick up pace over the last two years and clearly show that consumers' devices profoundly affect their content choices.

As of early 2021, 88 percent of the total U.S. population ages 12+, or 250 million people, owned smartphones, up from 10 percent in 2009.[212] Smartphone ownership is even higher among younger people; earlier this year, 96 percent of adults ages 18-29 reported owning a smartphone, as did 95 percent of those ages 30-49.[213] Fifty-one percent of those ages 12+, or 145 million people, also owned tablets, and 18 percent (or 51 million people) had internet-connected watches.[214] Smart speaker ownership is rising rapidly. By early 2021, 33 percent of the 12+ U.S. population (94 million people) owned a smart speaker, up from only seven percent in 2017, and smart speaker owners now have an average of 2.3 smart speakers in their households.[215] Smart speaker owners reported increased usage of

---

[210] NAB 2018 Quadrennial Comments at 7-28; NAB 2018 Quadrennial Replies at 34-40; NAB Communications Marketplace Comments at 5-23; NAB Communications Marketplace Replies at 16-19; BIA Radio Study at 1-18, 31-34.

[211] Public Notice at 5-6 (asking about the pandemic's effect on the broadcast industry).

[212] Edison Res. & Triton Digital, *The Infinite Dial 2021* (Mar. 11, 2021) (Infinite Dial 2021).

[213] Andrew Perrin, *Mobile Technology and Home Broadband 2021*, Pew Research Center (June 3, 2021).

[214] Infinite Dial 2021.

[215] *Id*. Smart speaker ownership reaches 49 percent among those who work full-time or part-time from home. *Id*.

their devices to access music, entertainment and news as a result of the pandemic,[216] and, just prior to the pandemic, 46 percent of the time spent listening to audio sources via smart speakers went to "pure play" streaming, with only 24 percent to AM/FM radio.[217] The average music listener ages 13+ now owns 6.5 devices for music and uses 3.7 devices in a typical month.[218]

In contrast to the growth of newer devices, AM/FM radio ownership continues to fall, particularly among 18-34-year-olds. From 2008-2020, the average number of radios in homes fell from 3.0 to 1.5, and the number of homes with no radios increased from four to 32 percent. Over half (52 percent) of the homes of those ages 18-34 lack radios.[219]

These changes in technology and ownership of technology have fundamentally altered the public's audio (and video) consumption habits. When comparing the weekly reach of various platforms among U.S. adults 18+, apps/web on a smartphone nearly equals the reach of radio and exceeds the reach of linear TV across demographic groups.[220] The virtually ubiquitous smartphone tops the list of devices used for music listening, followed, in order, by in-car radios, desktop/laptop computers, smart speakers, smart TVs and standalone radios.[221] Indeed, 30 percent of *all* audio listening in the U.S. is now done

---

[216] NPR, Press Release, *Use of Smart Speakers in the U.S. Increases During Quarantine* (Apr. 30, 2020).

[217] NPR and Edison Research, *The Smart Audio Report Winter 2019* (Jan. 8, 2020).

[218] Nielsen Music and MRC Data, *US Music 360*, at 43 (2020) (2020 Nielsen Music 360) (defining "music listeners" as those who listened to music within the past 12 months, audio or video). *Id*. at 6.

[219] Edison Res. & Triton Digital, *The Infinite Dial 2020* (Mar. 19, 2020) (Infinite Dial 2020).

[220] *See The Nielsen Total Audience Report*, at 4 (June 2021) (reporting Q4 2020 data).

[221] 2020 Nielsen Music 356 at 44 (listing top devices for music listening, among music listener device owners).

via a mobile device, an increase of 67 percent since 2014.[222] As of last summer, 53 percent of all American teen/adult listening was via digital devices of various types, rather than traditional devices.[223] While AM/FM radio remains strong among in-car media users, consumers continue to incorporate digital audio in vehicles as well.[224] The refinement and deployment of voice controls in vehicles is making it simpler for drivers and passengers to select a variety of audio options other than traditional radio.[225]

Notably, digital devices are multi-purpose devices that permit consumers to access different types of audio content (including radio, streaming services, owned music and audiobooks), and also to switch between audio and video content.[226] Audio and video services do compete against each other for audiences' time and attention, as streaming audio and podcast consumers spend significantly less time watching TV than the average

---

[222] L. Venta, *Edison Research: 30% of all Audio Listening in the U.S. now done on Mobile Device*, radioINSIGHT (Mar. 4, 2021); RAIN News, *30% of all American audio listening happens via mobile*, *on track to surpass radio receivers* (Mar. 8, 2021). Among listeners ages 13-34, 46 percent of total daily audio consumption is via a mobile device, with only 20 percent via an AM/FM radio. *Id*.

[223] Brad Hill, *Over 50% of American teen/adult listening was on digital devices*, RAIN News (July 21, 2020) (citing Edison Share of Ear data). "Traditional" devices include AM/FM receivers, SiriusXM receivers, CD players, turntables and TV channels. "Digital devices" include smartphones, computers, internet-connected TVs and smart speakers.

[224] The percentage of in-car media users ages 18+ citing AM/FM radio as the audio source used most often in the car dropped from 57 to 50 percent between 2017 and 2020. *See* Infinite Dial 2020. Satellite radio is an especially strong competitor to terrestrial radio in vehicles. *See* Edison Research, *Miles Different*: *In-Car Audio* (Sept. 2018); *see also* NAB Communications Marketplace Comments at 9-10; NAB 2018 Quadrennial Comments at 11-12 (discussing SiriusXM's competitive challenge to terrestrial broadcasting).

[225] *See* NAB Communications Marketplace Comments at 15-16; *see also* R. Stine, *Spotify Aims for More In-Car Listening*, Radio World (Apr. 16, 2021) (reporting that dashboard competition will further intensify with Spotify's new aftermarket streaming device for cars); Infinite Dial 2021 (among those 18+ who have driven/ridden in a vehicle in the last month, 20 percent own an in-dash information and entertainment system).

[226] *See*, *e.g*., Anna Washenko, *Apple Music arrives on Samsung Smart TVs,* RAIN News (Apr. 28, 2020); Brad Hill, *Spotify announces video podcasts*, RAIN News (July 22, 2020).

consumer.[227] Audio and video services also now blend together. As Nielsen explained, music "is no longer just about listening" and will continue to become more of a visual experience as consumers' engagement with music videos, social media, short video clips and virtual live events grows.[228] The silos between audio and video are continuing to break down, thereby expanding the range of outlets against which radio and TV stations must compete.

Predictably in light of consumers' rapid adoption of myriad digital devices, audio (and video) streaming has exploded in popularity. Sixty-two percent of the U.S. 12+ population (176 million people) listen at least weekly to online audio – which was nonexistent when the local radio caps were last reformed – and average weekly time spent listening to online audio hit 16 hours, 14 minutes in early 2021.[229] Time spent on digital audio listening grew 8.3 percent in 2020, with further gains in digital audio listening time projected through 2023, while radio's time spent is projected to fall over 10 percent from 2019-2023.[230] On-demand song streaming (audio only) rose 16.2 percent from the first half of 2019 to the first half of 2020,[231] and on-demand song streaming (audio and video) increased 10.8 percent from the first half of 2020 to the first half of 2021.[232] The vast majority of music listeners stream. According to Nielsen, 93 percent of U.S. music listeners ages 13+ stream music

---

[227] Inside Radio, *Podcasting Is Growing Faster But Streaming Audio Audience Is Bigger* (Sept. 3, 2019) (citing Nielsen data).

[228] 2020 Nielsen Music 360 at 13.

[229] Infinite Dial 2021. The five leading online brands are Spotify, Pandora, Google Play (now known as YouTube Music), Apple Music and Amazon Music. Unsurprisingly, those who own an Amazon Alexa device listen to Amazon Music at higher rates than other consumers. *Id*.

[230] RAIN News, *Digital audio listening +8.3% in 2020. More increase projected for 2021*. (Feb. 9, 2021); RAIN News, *Digital audio listening time projected to grow through 2023, as radio dips* (June 7, 2021) (citing e-Marketer research).

[231] Nielsen Music/MRC Data, *MidYear Report U.S. 2020* (July 2020) (increasing from 361.1 billion to 419.8 billion).

[232] MRC Data, *MidYear Report U.S. 2021* (July 2021) (reporting that total on-demand song streaming rose to 555.3 billion in the first half of 2021).

using a music streaming service.[233] Again showing the melding of audio and video, YouTube is the leader by a very large margin among free music streaming services[234] and is a top source for discovering new music.[235]

A record number of Americans now subscribe to paid on-demand streaming services and listen to podcasts. According to RIAA, the number of full-service paid subscriptions averaged 75.5 million in 2020, up from 60.4 million in 2019 and only 22.7 million in 2016, and other audio subscriber estimates are considerably higher.[236] Edison Research recently reported that 47 percent of Americans ages 13+ subscribe to a paid audio service, up from 23 percent in 2015.[237] Forty-one percent of the U.S. population ages 12+ (116 million people) listen to podcasts monthly, and 28 percent (80 million people) listen at least

---

[233] 2020 Nielsen Music 360 at 51. Even higher numbers of African-American (96 percent) and Hispanic (96 percent) music listeners stream music (audio and/or video). African-American and Hispanic music listeners also spend more time than other music listeners streaming music videos online and watching short music video clips on social video sites. *Id*. at 132, 137. *See also* Ron Rodrigues, Sr., *Five Takeaways From The New Edison Research Audio Study* (Nov. 4, 2019) (stating that "multicultural listeners are digital trendsetters" and citing a study finding that "African-American listeners use 48 additional minutes of audio per day, and 34 percent greater share of streaming audio, than the general market").

[234] 2020 Nielsen Music 360 at 66. In fact, among music listeners in a typical month, 63 percent stream music videos, 61 percent listen to AM/FM OTA radio and 61 percent stream audio songs and playlists online. *Id*. at 10.

[235] A survey in 2020 reported that YouTube was named by 68 percent of those ages 12+ seeking new music as their leading source for music discovery. Edison Research and Triton Digital, *New-Music Seekers*: *An Infinite Dial Report* (July 16, 2020).

[236] Joshua Friedlander, *Year-End 2020 RIAA Revenue Statistics,* at 2 (2021). RIAA reports the average number of subscriptions over the year, counts multi-user plans as a single subscription and excludes limited-tier subscriptions (services limited by factors such as catalog availability, product features or device/access restrictions). This may explain why RIAA's estimates as to the number of paid subscriptions are much lower than other estimates. *See*, *e.g*., *MusicWatch report notes growth in US* "music *buyers*" *to 116M*, musically.com (Mar. 19, 2020) (estimating that in 2019, 80 million Americans paid for a music subscription).

[237] RAIN News, *Nearly half of Americans subscribe to paid audio* (June 16, 2021).

weekly.[238] Podcasts now account for six percent of total audio listening time, up from two percent in 2014.[239] According to Nielsen, moreover, the podcast audience is now more diverse than the U.S. population overall.[240]

This widespread consumer adoption of other audio (and video) options has splintered the formerly "mass" media audiences, including for AM/FM radio. Between late 2015 and late 2020, AM/FM radio's share (counting both OTA and streaming) of total time spent listening by Americans 13+ fell by more than ten percentage points.[241] This decline was clearly exacerbated by the pandemic, which reduced the time consumers spent in their cars, but it also reflects the increase in audiences' time spent on streaming audio, satellite radio, podcasts, music videos on YouTube and even audiobooks.[242] As Edison Research observed, the "pandemic has had an influence on our listening, but if anything, it has really just accelerated some trends that we have seen over the past few years."[243] This observation is confirmed by Nielsen data documenting declines in weekly time spent listening to AM/FM

---

[238] Weekly podcast listeners average eight podcasts per week, and younger consumers listen to podcasts more frequently, with 56 percent of those ages 12-34 listening at least monthly. Infinite Dial 2021.

[239] Inside Radio, *Edison's Share Of Ear Shows Podcasting Capturing More Listening Time* (Mar. 11, 2021).

[240] Forty-one percent of podcast listeners are non-White, and Hispanics in particular have gravitated to podcasts. Nielsen, *Podcasting Today*: *Podcast Audiences*, *Growing in Diversity*, *Are The New Audio Opportunity* (Feb. 25, 2021). As of early 2021, consumers had 1.7 million podcast titles to choose from. *Id*.

[241] Edison Share of Ear®, Q4 2015-Q4 2020; *see also* Inside Radio, *Edison's Share Of Ear Shows Podcasting Capturing More Listening Time* (Mar. 11, 2021).

[242] *Id*. Music listeners specifically spend 26 percent of their music listening time on streaming audio songs and playlists online and 23 percent of their music time on AM/FM (both OTA and streaming). Notably, music listeners spend 24 percent of their music time on video sources of music (streaming music videos online, watching short music video clips on social video sites and watching music videos on TV). 2020 Nielsen Music 360 at 21.

[243] Inside Radio, *Edison's Share Of Ear Shows Podcasting Capturing More Listening Time* (Mar. 11, 2021).

radio since the second quarter of 2014. As shown in Attachment F, weekly listening to AM/FM radio among adults 18+ fell by two hours from 2014-2020, with those under age 35 spending considerably less time with AM/FM than the average adult.

Given this overwhelming evidence, the Commission can no longer rationally retain local radio ownership caps that reflect the analog marketplace of the 1990s. It must now recognize that radio stations compete for audiences in a vastly more expansive marketplace than one accounting only for competition between terrestrial radio stations. The same is true for the other core metric of competition – advertising dollars – which NAB addresses below.

2. **Radio Industry Advertising Revenues Are Not Projected to Regain Their Pre-Pandemic Levels**

As NAB documented last year, the coronavirus pandemic's shock to the advertising market significantly harmed local radio stations.[244] Unfortunately, the radio industry's experience following the pandemic recession is expected to mirror stations' struggles after the 2008-2009 recession – a modest recovery in advertising revenue but never again reaching the revenue levels achieved prior to the recession.

Given their dependence on advertising revenues and the source of those revenues, the radio industry was particularly hard hit by the pandemic and subsequent recession. BIA previously estimated that 75-80 percent (or more in some markets) of total OTA radio ad revenue is attributable to local businesses,[245] which were shuttered or restricted and could

---

[244] *See* NAB Communications Marketplace Comments at 23-25; NAB Communications Marketplace Replies at 4-6.

[245] *See* BIA Advisory Services, *Market Assessment and Opportunities for Local Radio*: *2018-2022*, at 18 (Apr. 2018). *See also* Steve Knopper, *Back To The Future*: *Townsquare Media's* '*Local First' Approach To Radio May Be An Antidote To Streaming*, Billboard (Sept. 17, 2019) (reporting that 90 percent of Townsquare radio stations' advertising comes from local companies); Ted Johnson, *Local Media Outlets to D.C. Lawmakers*: *Consumers Are Leaning On Us During Coronavirus Crisis*, *But We Need A Lifeline*, Deadline (Apr. 28, 2020) (stating that the "lion's share" of radio stations' ad revenues comes from local businesses affected by coronavirus shutdown and economic disruption).

not afford to advertise. When ad dollars are cut, radio stations feel the impact immediately, and those are revenues the stations will never be able to recoup, as airtime cannot be resold after-the-fact. According to Radio Ink, radio company CEOs reported revenue drops anywhere between 40 to 70 percent during the spring of 2020.[246] Unsurprisingly, numerous radio broadcasters of all sizes were forced to lay off or furlough employees, reduce salaries or even go silent.[247] A "record number of radio stations signed off" the air in April 2020,[248] and according to the FCC, there were 115 fewer full-power commercial AM/FM stations at the end of 2020 than at the end of 2019.[249]

Examining pre- and post-pandemic advertising revenue shows the radio industry's serious financial challenges even prior to the pandemic recession, which only have been exacerbated by recent events. The Commission previously found that radio industry ad revenues never fully recovered from the drop experienced during the 2008-2009 recession.[250] Analysts now similarly predict that local radio station ad revenues will not fully recover from the further decline experienced during the pandemic recession, with OTA ad revenues through 2025 remaining below the level of revenues earned in the years

---

[246] Radio Ink, *Just How Bad Is The Ad Revenue Decline?* (May 7, 2020).

[247] *See* NAB Communications Marketplace Comments at 23-24 and notes 94-95; NAB Communications Marketplace Replies at 5-6 and note 15. According to the Bureau of Labor Statistics, total broadcasting jobs in the U.S. declined by 9.8 percent from June 2019 to June 2021. Inside Radio, *Bureau Of Labor Statistics Shows Broadcasting Added Back 700 Jobs Since June 2020* (July 8, 2021).

[248] Inside Radio, *April Saw A Big Spike In Stations Going Silent*, *Many Cited Coronavirus As The Culprit* (Apr. 29, 2020) (reporting that 35 radio stations went dark in April 2020, bringing the total number of stations off the air to 369).

[249] FCC News Release, *Broadcast Station Totals as of December 31, 2020* (Jan. 5, 2021) (reporting 11,250 full-power commercial AM/FM stations); FCC News Release, *Broadcast Station Totals as of December 31, 2019* (Jan. 3, 2020) (reporting 11,365 full-power commercial AM/FM stations).

[250] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3090-91 and Fig. II.E.3 (2020) (depicting radio station ad revenues from 2004-2020 and showing that radio revenue never again reached the levels earned in the 2004-2006 period).

immediately prior to the coronavirus outbreak.[251] The decline is stark when comparing ad revenues from 2005 (*i.e.*, prior to both recessions) to revenues earned in 2020. According to BIA data, local radio stations' OTA ad revenues fell from $17.6 billion in 2005 to only $9.7 billion in 2020, a fall of 44.9 percent in nominal terms.[252] By 2025, BIA projects that radio station OTA ad revenues will rebound only to $10.8 billion, which would represent a nominal decline of 38.6 percent from 2005.[253]

While radio station OTA ad revenue dipped 24.2 percent just from 2019 to 2020, digital audio advertising revenue grew 13 percent.[254] Major audio and tech platforms also continue to enhance their position in the ad market.[255] Due to the ad market's domination

---

[251] *See* Attachment G, Local Radio Station Over-The-Air Revenue 2005-2025 (citing BIA data); *see also* Ross Benes, *Radio Ad Spending Will Decline by 25% This Year*, eMarketer (Sept. 16, 2020) (predicting radio ad spending to partially rebound in 2021, but projecting that spending will not reach pre-pandemic highs again).

[252] *See* Attachment G, Local Radio Station Over-The-Air Revenue 2005-2025. Taking radio stations' digital revenues into account, total radio ad revenues still reached only $10.6 billion in 2020, representing a 39.8 percent decline from the $17.6 billion level reached in 2005. *See* BIA Advisory Services, Press Release, *Radio Revenues Fell to $9.7B in 2020, As Pandemic Toll on the Industry Affected Local Radio Stations* (May 14, 2021).

[253] *See* Attachment G. Taking projected digital ad revenues into account, BIA Advisory Services expects total radio ad revenues in 2025 to reach $12.3 billion, representing a 30.1 percent decline from 2005. These significant drops in revenue have affected all radio stations, including FM. From 2003-2018 (*i.e.*, prior to the pandemic recession), the OTA ad revenues of FM stations dropped by 23.4 percent on a nominal basis and by 43.8 percent in real terms (after accounting for inflation) in the 253 continuously surveyed Arbitron/Nielsen Audio markets. *See* NAB Communications Marketplace Comments at 18-19.

[254] *See* Attachment G; RAIN News, *Digital Audio Advertising revenue grew 13% in 2020* (*IAB/PwC Internet Advertising Revenue Report*) (Apr. 8, 2021); RAIN News, *IAB: Podcast revenue to exceed $2B in 2023* (May 12, 2021) (projecting $1.3 billion in podcast ad revenue this year and $2.2 billion in 2023).

[255] *See, e.g.,* RAIN News, *Amazon Audio Ads collaborates with GroupM to benefit clients* (May 20, 2021) (reporting that Amazon Audio Ads is working with GroupM, the largest ad buyer in the world, to promote digital audio advertising and give the agency's clients favorable access and terms); RAIN News, *SiriusXM combines acquired sales orgs to create SXM Media*, *reaching 150M listeners* (May 10, 2021) (reporting that the sales divisions of Sirius, Pandora and Stitcher are being combined to create SXM Media, reaching 150 million listeners across satellite, streaming and podcasting, which will offer audio advertising

by the digital giants and the difficulties broadcasters face in monetizing content online,[256] the radio industry's share of the local ad market has steadily fallen over time.[257]

Advertising-dependent local broadcast stations cannot expend resources they do not have to improve their services offered to local communities or even, in some cases, to maintain the same level of services they provided in the past. Beyond TV stations' challenges in maintaining viable local news operations in smaller markets,[258] NAB explained, even prior to the pandemic, that many radio stations in mid-sized and small markets and in unrated areas experienced problems generating revenue sufficient to cover their substantial fixed costs, given the smaller business base and limited advertising revenues in those markets.[259] BIA data from 2018 and 2020 demonstrate that full-power

---

solutions and scale to clients); Brad Hill, *Pandora puts interactive voice ads into beta*, RAIN News (July 24, 2020) (reporting on Pandora's plans to test and then scale interactive ads in streaming audio); Brad Hill, *Google advances its programmatic audio buying tools*, RAIN News (Aug. 18, 2020) (reporting on how Google "raised its game" in programmatic audio).

[256] *See* NAB 2018 Quadrennial Comments at 20-26, 50-54; NAB 2018 Quadrennial Replies at 38-40, 59-61; NAB Communications Marketplace Comments at 16-23, 34-39; Section IV.B., *supra*. Radio broadcasters have attested to the significant competitive impact digital ad platforms have had in their local markets across the country. *See* Joint Comments of Connoisseur Media, LLC, *et al*., MB Docket No. 18-349, at Exhibit C (Apr. 29, 2019).

[257] According to estimates of the local U.S. ad market, digital ad revenues grew by a Compound Annual Growth Rate (CAGR) of 19.7 percent from 2010-2019, while radio stations' local ad revenues declined by a negative 1.1 percent CAGR. Due to these disparate growth rates, digital's share of the local ad market skyrocketed, while radio stations' local ad share fell from 16.1 percent in 2010 to 10.4 percent in 2019. *See* 2020 Ad Market Report. Earlier this year, Kagan estimated that radio stations' share of all local U.S. ad revenues had fallen to 8.8 percent in 2020, and projected that by 2030, radio's share of the local ad market would drop to 5.5 percent, with digital's share reaching 79.4 percent. *See* 2021 Ad Market Report.

[258] *See* Section IV.D., *supra*.

[259] *See, e.g.*, NAB 2018 Quadrennial Comments at 31-32; BIA Radio Study at 31-34.

commercial radio stations in Nielsen Audio markets 76 and below consistently earn but a fraction of the advertising revenues earned by stations in the 10 largest markets.[260]

Fixed costs are basic ones that must be met to run a station, including engineering, programming (including news), advertising and promotion, sales and general/administrative costs. Radio broadcasters that cannot, or barely, cover their fixed costs are unable to invest in improving their stations' programming, staff or technical facilities. These stations also necessarily play a limited competitive role in their local markets. The decline in radio stations' advertising revenues during the pandemic, and the likelihood of an only partial recovery in ad revenues going forward, will exacerbate many radio stations' struggles to cover their fixed costs and provide viable local services. AM stations, whose sustainability the Commission has long recognized as "threatened" and which have "struggled for decades with a steady decline in listenership," may face even greater threats to their viability in the future.[261]

In light of their growing financial challenges, radio broadcasters' ability to take greater advantage of economies of scale, especially in smaller markets, has become increasingly vital. As discussed in NAB's initial comments,[262] the BIA Radio Study found that increased economies of scale from relaxing the current local radio caps would improve the financial wherewithal of broadcasters and their ability to invest in their stations and

---

[260] *See* Section IV.D., *supra*; Attachment C, Radio Station Advertising Revenues by Market Rank; BIA Radio Study at 14. Comparing these BIA data from 2018 and 2020 also show that the average revenue earned by radio stations in all market size ranges fell substantially from 2018 to 2020.

[261] *Revitalization* of *the AM Radio Service*, Notice of Proposed Rulemaking, 28 FCC Rcd 15221, 15222 (2013); *All-Digital AM Broadcasting*, Notice of Proposed Rulemaking, 34 FCC Rcd 11560 (2019). NAB's initial comments and the BIA Radio Study documented in detail AM stations' competitive difficulties. *See* NAB 2018 Quadrennial Comments at 34-35; BIA Radio Study at 15-18, 34.

[262] NAB 2018 Quadrennial Comments at 32-33, 37-38.

services.[263] BIA examined actual examples of radio station groups currently constrained by the FCC's numerical caps in four different-sized markets and analyzed the financial impact of their acquisition of an actual smaller, unconstrained station group in their same markets.[264] The station groups in these hypothetical transactions, which are not currently allowed but would be permitted under NAB's proposal, all benefitted from improved cash flow.[265] These results were not surprising, as such combinations would permit radio stations to spread their significant fixed costs across more stations with greater combined revenues. Notably, the benefits of permitting additional station combinations are greatest in small markets, where radio stations most struggle to cover their fixed costs.[266]

It is likely, moreover, that BIA's analysis understates the benefits stemming from station acquisitions made possible by ownership reform. While BIA conservatively did not assume any station revenue increases after the combinations, it conducted a further analysis showing that larger radio groups appear better able to turn populations reached (*i.e.*, potential audience) into revenues.[267] Thus, the total financial benefits stemming from

---

[263] BIA Radio Study at 26-31.

[264] To be conservative, BIA did not assume any increase in revenue by the stations following their combination. Instead, BIA estimated the combinations' financial benefit by analyzing the increased efficiencies and decreased expenses due to economies of scale, and modeled the financial position of the stations before and after their combination to determine the effect on cash flows. *Id*. at 27.

[265] *Id*. at 26-31 (describing in more detail the combinations of constrained and unconstrained station groups in four markets of differing size and the improvements in cash flow from each combination).

[266] *See id*. at 30-31.

[267] *Id*. at 27, 31 and Appendix A. The BIA Study found that both the average and median FM stations in larger groups constrained by the FCC's ownership caps generated notably higher levels of ad revenue than FM stations in smaller unconstrained groups across all market sizes, even after controlling for the impact of the larger populations generally reached by constrained stations. Appendix A at 37-39 (examining 212 Nielsen markets with both constrained and unconstrained FM stations and conducting two analyses, one without controlling for population and one controlling for population).

ownership reform would likely be greater than the substantial improvements in cash flow derived solely from the cost savings and efficiencies gained from scale economies because revenue per station in larger combinations would be expected to increase as well.[268]

For these reasons, permitting additional station combinations would directly address the financial challenges facing many stations and enable them to become stronger competitors in their local markets. NAB previously explained that owning more stations locally incentivizes broadcasters to program each outlet differently to attract different audiences with differing tastes and interests.[269] This not only benefits the public by increasing the diversity of programming available in local markets, but also benefits stations by increasing the size and variety of their audiences and their attractiveness to potential advertisers.[270] As the Commission has recognized, "[t]o secure the highest [advertising] rates and to compete for advertising market share, [radio] stations strive to gain the largest audience of listeners possible to maximize the price of ad time sold by the station."[271] Permitting radio broadcasters to own more stations in local markets will allow them to

---

[268] BIA Radio Study at ii, 27, 31, 38-39.

[269] Numerous radio industry studies, as well as economists and courts, have recognized for decades that common ownership of broadcast stations promotes, not retards, the offering of diverse programming. *See* NAB 2018 Quadrennial Comments at 38-39; NAB 2018 Quadrennial Replies at 45-48; NAB Communications Marketplace Replies at 13-15.

[270] See NAB 2018 Quadrennial Replies at 40-41; NAB Communications Marketplace Replies at 9 n. 25, 13-15. Commenters also explained that allowing broadcasters to increase their scale will provide station owners with the resources to offer new or expand existing localized digital advertising products, thereby improving their competitiveness in the ad market. Joint Comments of Connoisseur Media, LLC, *et al*., MB Docket No. 18-349, at 21-22, 24-25 (Apr. 29, 2019). Station owners and executives submitted declarations explaining that, with additional stations and resources, they could expand their digital advertising products and services into more markets, including smaller ones. *Id*. at Exhibit C, Decl. of M. Kent Frandsen, Frandsen Media Co. at 2; Decl. of Michael Wright, Midwest Commc'n, Inc. at 2-4; Decl. of Erik Hellum, Townsquare Media, Inc. at 5; Decl. of Gary Shorman, Eagle Commc'n at 1; Decl. of Thomas Walker, Mid-West Family at 2.

[271] *Communications Marketplace Report*, 33 FCC Rcd 12558, 12633 (2018). *Accord 2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3089 (2020).

achieve greater scale efficiencies; expand and diversify their audiences; enable greater investment in the staff, digital ad products, data management tools and software necessary to take advantage of digital ad opportunities;[272] improve their ability to earn both OTA and digital advertising revenues; and enhance the public's radio service.

Given the well-documented economic challenges facing the industry and the benefits of increased local scale, radio broadcasters of all sizes across the country unsurprisingly have supported NAB's proposal for reforming the local radio rules.[273] Broadcasters with

---

[272] *See*, *e.g.*, Inside Radio, *"Significant" Growth In Radio's Digital Sales Efforts* (Jan. 18, 2019) (noting shifts among local advertisers that could "benefit radio companies that have strong digital ad products and a sales force trained in how to sell them); Gordon Borrell, CEO, Borrell Associates, *What Radio Buyers Are Doing* (Feb. 18, 2019) (explaining that radio is a "fantastic driver of digital action," as proven by software programs that link advertisers' website traffic to their radio ad schedule and show that as a radio "spot airs, traffic rises"); BIA Advisory Services, Press Release, *Small Businesses Will Buy Advertising Across Eight to 15 Different Platforms This Year*, *According to BIA's U.S. SAM Survey* (May 9, 2019) (stating that small businesses' desire for advanced targeting capabilities in advertising represents a "key pathway for traditional media sellers to secure new digital spend").

[273] *See* Joint Reply Comments of American General Media, Beasley Media Group Licenses, LLC, Bonneville Int'l Corp., Bustos Media Holdings, LLC, Claro Commc'n, LTD, Cumulus Media Inc., Davis Broadcasting, Entercom License, LLC, Galaxy Commc'n, LLC, Golden Isles Broadcasting. LLC, HEH Commc'n, LLC, HJV Limited Partnership, L.M. Commc'n, Mecca Commc'n, Inc., Meruelo Media, LLC, Monticello Media LLC, Oconee Commc'n Co., LLC, QBS Broadcasting, LLC, Radio Training Network, Inc., Roberts Commc'n, Inc., Southern Stone Commc'n, LLC, Tri-State Commc'n, Inc., Withers Broadcasting Companies/Dana Commc'n Corp., Woman's World Broadcasting, Inc., and Word Christian Broadcasting, Inc., MB Docket No. 18-349, at 2 (May 29, 2019) (Joint Replies of 25 Broadcast Licensees); Reply Comments of WBOC, Inc., MB Docket No. 18-349, at 1, 3 (May 29, 2019); Reply Comments of Grant Co. Broadcasters, MB Docket No. 18-349, at 1, 3 (May 13, 2019); Joint Comments of Connoisseur Media, LLC, Mid-West Family Broadcasting, Frandsen Family Stations, Neuhoff Commc'n, Patrick Commc'n, LLC, Townsquare Media, Inc., Midwest Commc'n, Inc., Cherry Creek Media, Eagle Commc'n, Inc., Legend Commc'n, LLC, MB Docket No. 18-349, at 26 (Apr. 29, 2019) (Joint Comments of 10 Radio Broadcasters); Comments of Reno Media Group, MB Docket No. 18-349, at 3 (Apr. 29, 2019); Comments of Alpha Media LLC, MB Docket No. 18-349, at 1 (Apr. 29, 2019); Comments of Vanguard Media, MB Docket No. 18-349, at 2 (Apr. 29, 2019); Comments of Galaxy Commc'n LLC, MB Docket No. 18-349, at 2-3 (Apr. 29, 2019); Comments of West Virginia Radio Corp., MB Docket No. 18-349, at 2, 6 (Apr. 15, 2019); Comments of Dick Broadcasting Co., Inc., MB Docket No. 18-349, at 1, 3 (Apr. 9, 2019); Written *Ex Parte* Communication of Zimmer Radio & Marketing Group, MB Docket No. 18-349, at 1 (Aug. 1, 2019); Comments of Radio Fargo-Moorhead, Inc., MB

stations in mid-sized, small and unrated markets have agreed with NAB's analysis of the economics of radio broadcasting in those markets,[274] and many small broadcasters – beyond supporting reform of the rules – have described the difficult competitive landscape in their specific markets under the current ownership caps.[275] In addition to the BIA Radio Study, the record is replete with comments showing the need for, and the significant benefits of, allowing all radio broadcasters to achieve increased efficiencies and scale

---

Docket No. 18-349 at 1, 5 (Sept. 11, 2019); Comments of Local Community Broadcasters, MB Docket Nos. 18-227 & 18-349, at 5-6 (Sept. 24, 2018); Comments of Puerto Rico Radio Broadcasters Ass'n, MB Docket No. 18-349, at 1 (Aug. 15, 2018). Other small broadcasters also have called upon the FCC to reform the local rules. *See* Letter from Aaron J. Leiker, President/General Manager, 25-7 Media, to FCC, MB Docket No. 18-349 (Apr. 30, 2019); Comments of Curtis Media Group, Inc., MB Docket No. 18-349, at 2-3 (Apr. 29, 2019).

[274] *See, e.g.,* Joint Replies of 25 Broadcast Licensees at 14-15 and Attachment B at 3 (updated BIA analysis of the Syracuse, NY advertising market finding that the "competitive impact of new media technologies" is "especially acute in medium and small markets").

[275] *See, e.g.*, Letter from Aaron J. Leiker, 25-7 Media (describing difficulties of maintaining radio stations' financial viability in a small Colorado town and urging FCC to "remove ownership restrictions on small, unrated markets"); WBOC Reply Comments at 1-3 (licensee of four FM and one AM stations in Delmarva Peninsula explaining that the "economics of small-market broadcasting" and growing competition make it "harder and harder to operate without achieving significant local scale"); Radio Fargo-Moorhead Comments at 2-4 (explaining that competitive trends in the advertising market "are most sharply felt by smaller, local broadcasters," and documenting that digital media accounts for the majority of local ad spend in Fargo-Moorhead, ND); West Virginia Radio Comments at 5-6 (agreeing with NAB that permitting greater economies of scale is very important for smaller broadcasters earning limited revenues and urging FCC to adopt NAB's proposal to remove all ownership limits in markets outside the top 75, especially in smaller and undefined markets such as those in West Virginia); Zimmer Radio *Ex Parte* at 1-2 (licensee of ten radio stations in mid-Missouri explaining importance of achieving greater economies of scale to survive in increasingly competitive market); Dick Broadcasting Comments at 1-2 (operator of stations in small and mid-sized markets in North Carolina, South Carolina and Georgia describing the problems experienced by broadcasters in smaller markets with fewer potential advertisers and limited revenues in hiring talented staff, providing strong programming and competing against other outlets for audiences); Grant Co. Reply Comments at 1-2 (independent broadcaster with FM stations in Kentucky and Ohio discussing the difficulties in obtaining funding for small radio station transactions); Decl. of Susan Patrick, Legend Communications of WY, LLC at 2, Exh. C attached to Joint Comments of 10 Radio Broadcasters (detailing loss of ad revenue in small markets and describing how some radio operations in Wyoming "are barely staying on the air, much less providing robust service and programming to their communities").

economies. Parties specifically explained how owning a greater number of stations in a local market enables cost savings that will boost cash flow and permit greater investment in programming and services to the public.[276] They emphasized that broadcasters in smaller markets with limited ad revenue potential particularly need to achieve local economies of scale.[277] Broadcasters also made clear that if they were permitted to own more stations in local markets, they would offer a wider range of programming and enhance local news and sports coverage.[278] Supported by this extensive record evidence, NAB calls on the FCC to adopt our balanced reform proposal, which provides the greatest regulatory relief for the radio stations most in need of it, and will promote "radio's ability to serve the public interest in the spirit of the Communications Act."[279]

B. The Continuing Transformation Of The Media And Advertising Markets, Including The Rapid Growth Of Ad-Supported Video Streaming Services, Presents Additional Significant Challenges To Local TV Stations

Although Section 202(h) requires the FCC's ownership rules to reflect the full range of media and advertising market participants and their competitive effects on broadcast TV stations, the local TV rule still imposes a top-four restriction originally adopted in 1999 and prevents ownership of more than two TV stations in all markets, regardless of those stations'

---

[276] *See, e.g.,* Joint Replies of 25 Broadcast Licensees at 16 (explaining that increased common ownership will enable elimination of multiple studios and office space, the combination of transmission facilities at common sites, and consolidation of back office services such as financial reporting, billing and accounts payable).

[277] *See, e.g.*, Joint Replies of 25 Broadcast Licensees at 17; WBOC Reply Comments at 1-3; West Virginia Radio Comments at 5-6; Galaxy Commc'n Comments at 6; Radio Fargo-Moorhead Comments at 2-3.

[278] *See, e.g.,* Joint Comments of 10 Radio Broadcasters at 22-23; *id*. at Exhibit C, Declarations of Jonathan Brewster, Cherry Creek Media at 2-3, Thomas Walker, Mid-West Family at 2-3, Erik Hellum, Townsquare Media, Inc. at 3-5, M. Kent Frandsen, Frandsen Media Co. at 2, Michael Wright, Midwest Commc'n, Inc. at 3-4; Joint Replies of 25 Broadcast Licensees at 18; Zimmer Radio *Ex Parte* at 1, 3.

[279] *Revision of Radio Rules and Policies*, 7 FCC Rcd at 2760 (relaxing local radio rules).

audience or advertising revenue shares and local competitive conditions. Because a competition-based local TV rule cannot rationally ignore actual competitive conditions in local markets, NAB repeats its call for the Commission to remove the *per se* restrictions that ban combinations among top-four rated stations and prevent ownership of more than two stations in all 210 DMAs. NAB has shown time and again – and the FCC recognized years ago – that competitive conditions vary widely among different-sized markets; that all stations in mid-sized and small DMAs face restricted revenue opportunities; that many stations' competitive positions in markets of all sizes are increasingly fragile; and that most DMAs are unable to economically support four separate local news operations.[280] *Per se* rules applicable to all stations in all markets do not reflect competitive reality and thus are contrary to Section 202(h) and the APA.

The current local TV rule effectively bans station combinations in markets where there are four or fewer full-power commercial TV stations, and very significantly impedes efficient station combinations in markets with only five or six stations – the very markets with disproportionately smaller economic bases to support station operations, including news. The BIA TV Study, moreover, specifically analyzed the competitive position of top-four

[280] *See* Section IV.D., *supra* (discussing how stations in mid-sized and small markets with limited advertising bases struggle to maintain local news operations); Attachment D, The Relationship Between Market Size and Advertising Revenue Per TVHH; 2017 Reconsideration Order, 32 FCC Rcd at 9836 (finding that small and mid-sized markets have less ad revenue to fund local programming, including news, and that the efficiencies of common ownership can often yield the greatest benefit in smaller markets); *Carriage of Digital Television Broadcast Signals*, Third Report and Order, 22 FCC Rcd 21064, 21092 n. 192 (2007) (finding that smaller market stations, stations affiliated with minor networks, independent stations even in the largest markets, and the fourth-ranked stations in DMAs 51-175 had "tenuous" economic health); *2002 Biennial Regulatory Review*, Report and Order, 18 FCC Rcd 13620, 13698 (2003) (finding that small market TV stations compete "for disproportionately smaller revenues than stations in large markets" and concluding that the "ability of local stations to compete successfully" in the marketplace is "meaningfully (and negatively) affected in mid-sized and smaller markets"); NAB 2018 Quadrennial Comments at 70-71, 75-76 and Attachment G; BIA TV Study at 20-21, 26-27.

stations in markets of all sizes, looking at both ratings and revenue shares, and dispelled the myth that top-four stations occupy a position of competitive power in most local markets. Instead, the Study found significant gaps in both audience and revenue share among the top-four stations in many markets, with the third and fourth ranked stations – and some second ranked stations – operating as competitive "also rans" to a high-performing top ranked station.[281] Without the ability to realize economies of scale through common ownership, these stations will struggle to generate the revenue to invest in programming, data-driven and automated ad sales operations and updated technology. Retention of the current rules therefore will only impede stations' ability to serve their local communities and compete more successfully for advertising and audiences, to the particular detriment of those members of the public most reliant on OTA television.

In earlier submissions, NAB described and provided extensive evidence detailing the digital revolution's impact on the media and advertising markets and how it has fractured the formerly mass audience for broadcast TV, harmed stations' ability to compete for ad revenues and placed increasing pressure on many stations' competitive positions.[282] NAB now updates information related to these issues and provides additional data about local TV stations' competitiveness, particularly in light of the pandemic and its wide-ranging effects on media consumption and the advertising market.

---

[281] *See* BIA TV Study at 1-3, 19-36. Revenue disparities among top-four stations were even greater than audience share gaps. For stations' competitive health and their ability to provide quality local service, revenue is more important than audience share. After all, stations cannot spend fractions of ratings points to pay employees or the electric bill, buy equipment, or acquire or produce costly programming.

[282] *See* NAB 2018 Quadrennial Comments at 43-54; BIA TV Study at 3-18; NAB 2018 Quadrennial Replies at 56-61; NAB Communications Marketplace Comments at 27-39; NAB Written *Ex Parte* Communication, MB Docket No. 18-349 (July 11, 2019); *see also* NERA Study at 12-27.

1. Local TV Stations Compete for Audiences Against a Vast and Still Growing Number of Other Outlets, Accessible Via a Range of Devices, in a Fragmented Marketplace

> "*The past year has categorically shifted the television viewing landscape*."[283]

In 2019, NAB documented that local TV stations face intense and increasing competition for audiences from an expanding array of content providers accessible via myriad digital devices. The pandemic accelerated these trends and has permanently changed how Americans consume video content.[284] Recent data reconfirm that more and more consumers have embraced digital video services and the devices that enable making that content accessible 24/7/365:

- As of this spring, 82 percent of U.S. TV households had at least one internet-connected TV device (*e.g.*, Smart TV, stand-alone streaming device like Roku, Amazon Fire TV stick, Chromecast or Apple TV, and/or connected video game systems or Blu-ray players), up from 30 percent in 2011, with a mean of 4.1 devices per connected TV household.[285] Daily viewership of video on a TV via these internet-connected devices has grown substantially over the past decade, with younger persons using those devices most frequently.[286] eMarketer recently increased its estimate of the CTV user base in the U.S., expecting 213.7 million people to use the internet through a CTV device at least monthly in 2021.[287] As of last summer, 55 percent of adults watched video on non-TV devices (including mobile phones, home computers, tablets and eReaders) daily.[288]

---

283 Nielsen, *The Gauge Shows Streaming Is Taking A Seat At The Table* (June 17, 2021).

284 *See* Nielsen Insights, *Tops of 2020*: *Nielsen Streaming Unwrapped* (Jan. 12, 2021).

285 Leichtman Research Group (LRG), Press Release, *39% of Adults Watch Video via a Connected TV Device Daily* (June 4, 2021).

286 *Id*. Thirty-nine percent of adults in U.S. TV households watch video via a connected TV (CTV) device daily, up from three percent in 2011. Among those ages 18-34, 54 percent watch TV via a CTV device every day, as do 43 percent of those ages 35-54. Sixty percent of adults watch video via a CTV device at least weekly, up from 10 percent in 2011.

287 N. Perrin, *CTV is still among the fastest-growing channels in digital advertising*, eMarketer (May 3, 2021).

288 LRG, Press Release, *78% of U.S. Households Have an SVOD Service* (Aug. 28, 2020).

- About 43 percent of all TV sets in U.S. households are connected Smart TVs, increasing from seven percent in 2014.[289] The Consumer Technology Association told the FCC last September that 90 percent of TVs sold in 2020 would be Smart TVs with internet connectivity.[290]

- Fifty-five percent of TV households have at least one stand-alone streaming device, up from three percent a decade ago.[291] Last fall, NCTA – The Internet & Television Association provided the FCC with information about the "substantial growth in the device marketplace."[292] It observed that the major manufacturers of video devices, including Roku, Apple, Google and Amazon, now have tens of millions of active users.[293] Broadcasters have reported that platforms such as Roku and Amazon Fire TV commonly require content providers like broadcasters to share a percentage (*e.g.*, 30 percent) of their ad inventory with the platform – and the platform then retains all the ad revenue for that share.[294]

Consumers have been incentivized to adopt this growing array of digital devices by the explosion in the number and variety of video streaming services that compete with broadcast TV stations for audiences and advertising revenues:

- In 2020, Nielsen reported that U.S. consumers had more than 300 different video streaming services to choose from, both subscription and ad-supported.[295] Between late 2019 and early 2021, streaming subscription options expanded to include Disney+, Peacock Premium, HBO Max, Paramount+ and Discovery+.[296] Subscribership to the leading services, including Netflix, Amazon Prime and Hulu, has grown exponentially over the past decade, while newer services, such as Disney+, have attracted tens of

---

[289] LRG, *39% of Adults Watch Video via a Connected TV Device Daily*.

[290] Consumer Technology Ass'n, *Ex Parte* Letter, GN Docket No. 20-60 (Sept. 4, 2020).

[291] LRG, *39% of Adults Watch Video via a Connected TV Device Daily*.

[292] NCTA *Ex Parte* Letter, GN Docket No. 20-60, at 1 (Nov. 6, 2020).

[293] *Id*. (pointing out that Roku's active users grew from nine million in 2015 to 46 million in 2020 and that those users streamed a total of 40.3 billion hours of video content in 2019, an increase of 633 percent since 2015). Roku's video footprint will only continue to grow, given that one-in-three smart TVs sold in the U.S. today comes pre-loaded with Roku's platform. *Id*. at 1-2.

[294] Attachment A, NAB Congressional Statement on Online Platforms and the Press at 15.

[295] Nielsen, *Beyond SVOD*: *Ad-Supported Streaming Is Starting To Stand Out As Video Options Multiply*, at 7 (2020) (Nielsen 2020 Streaming Report).

[296] I. Olgeirson and T. Lenoir, *Multichannel takes back seat to online video households in 2021 US forecast*, Kagan, a media research group within S&P Global Market Intelligence (May 25, 2021).

millions of subscribers in well under two years.[297] Even broadcast TV mainstays, such as live sports, have migrated in part to cable and are now migrating to streaming platforms.[298]

- As of this spring, 82 percent of U.S. households had at least one streaming video service from 11 top subscription video on-demand (SVOD) and direct-to-consumer (DTC) services.[299] Consumers added streaming services during the pandemic, with subscribers now having an average of four paid video streaming services, up from three prior to the pandemic.[300] Last fall, 60 percent of TV households had both pay-TV and SVOD services, thereby compounding the competition that local TV stations face for audiences.[301]

- A 2020 survey by Deloitte reported that 47 percent of U.S. consumers use at least one free ad-supported streaming video service.[302] Ad-supported video on demand (AVOD) continues to expand, especially with cost-conscious consumers. Current examples include the Roku Channel, Tubi, Pluto TV, Peacock, Crackle and Vudu.[303] AVOD services not only compete with broadcast TV for audiences but also for advertising directly. eMarketer predicts that Pluto TV, for example, will earn $786.7 million in net U.S. ad revenues this year, a 77.7 percent increase over 2020, and $1.14 billion in net ad revenues in 2022.[304]

---

[297] *See* Attachment H, Subscribers to OTT Video Services.

[298] *See* D. Byers, *Are you ready to stream some football? NFL has $100 billion that says you are*, nbcnews.com (Mar. 28, 2021) (reporting that NFL finalized media deals for 2023-2033 it says will "help transition fans from traditional television to streaming platforms," including a deal making Amazon Prime the exclusive home for Thursday Night Football). Amazon Prime now also will livestream the Academy of Country Music Awards, the first major awards program to move to a streaming platform. J. Lafayette, *Academy of Country Music Awards to Livestream on Amazon Prime Video*, Next TV (Aug. 19, 2021).

[299] LRG, Press Release, *27% of DTC Streaming Video Services are Shared* (Apr. 2, 2021).

[300] Deloitte, 14th Digital Media Trends at 8. A 2020 Nielsen survey found that, among U.S. consumers who subscribed to at least one SVOD service, 25 percent overall said they had increased their SVOD subscriptions in the last three months, while 40 percent of Hispanics and 27 percent of African Americans had increased their number of SVOD services. *The Nielsen Total Audience Report*: *Special Work From Home Edition*, at 16 (Aug. 2020).

[301] LRG, Press Release, *60% of TV Households Have Both Pay-TV and SVOD* (Nov. 6, 2020).

[302] Deloitte 14th Digital Media Trends at 11.

[303] Nielsen 2020 Streaming Report at 2, 4. As of November 2020, the following percentages of U.S. teens/adults watched these AVOD services: Roku Channel, 21 percent; Tubi, 15 percent; Peacock, 14 percent; Pluto TV, 12 percent; and Vudu, 8 percent. E. Haggstrom and N. Islam, *The wonderful world of free ad-supported video*, eMarketer (Mar. 9, 2021).

[304] Ross Benes, *Pluto TV will surpass $1 billion in US ad revenues in 2022*, eMarketer (Apr. 6, 2021).

- Due to the pandemic, usage of streaming video services and CTV devices grew exponentially last year. In January 2020, consumers in homes with at least one CTV device were using those devices for 12.5 billion hours per month. During the week of March 30, 2020, total hours spent with CTV devices had risen 81 percent year over year, equating to nearly four billion hours of CTV use per week.[305] The time Americans spent streaming video content the week of July 20, 2020 (well after much of the U.S. had emerged from quarantine) was up more than 33 percent from the time spent streaming the week of July 22, 2019.[306] In August 2020, Nielsen reported that streaming consumption across all video options had risen more than 74 percent from 2019.[307]

- Beyond subscription and ad-supported video streaming services, video gaming activities exploded during the pandemic, up 75 percent by some measures.[308] Twenty-nine percent of U.S. consumers say they are more likely to use free time to play a video game than watch a video,[309] and 20 percent of the total U.S. 12+ population (and 38 percent of those ages 12-34) have watched a live stream of a video game on services such as Twitch, YouTube Live, Facebook Live or Mixer.[310]

Amid this "vastly fragmenting sea of choice,"[311] TV stations face unprecedented challenges in attracting and retaining audiences. Nielsen's new monthly total TV and streaming snapshot called "The Gauge" reconfirms that broadcast TV is only one of three major platforms in the video universe, along with the rapidly growing streaming sector and cable.[312] The expansion of streaming can only be expected to continue apace, given recent

---

[305] CTV usage remained well above pre-COVID levels during the summer of 2020, when traditional TV usage had normalized. Nielsen, *Connected TV Usage Remains Above Pre-COVID-19 Levels As Traditional TV Viewing Normalizes* (June 4, 2020).

[306] Nielsen 2020 Streaming Report at 2.

[307] Nielsen, *Growth Spurt*: *Time Spent Streaming Ad-Supported Video Is Outpacing Big-Name SVOD Viewing* (Aug. 18, 2020) (noting that the growth and "stickiness" of streaming among adults 55+ indicates that streaming is "closer to ubiquity across consumer groups").

[308] Deloitte 14th Digital Media Trends at 12.

[309] *Id*.

[310] Infinite Dial 2021.

[311] Nielsen, *Growth Spurt*: *Time Spent Streaming Ad-Supported Video Is Outpacing Big-Name SVOD Viewing,* at 1 (Aug. 18, 2020).

[312] Nielsen Insights, *The Gauge Shows Streaming Is Taking A Seat At The Table* (June 17, 2021). The Gauge shows Total Usage of Television (TUT) for Broadcast, Cable, Streaming

trends in consumers' adoption of technology, as described above, and growing broadband subscribership.[313]

The erosion of consumers' engagement with linear TV generally – and with broadcast specifically – due to the growth of online video and other digital media options, as previously documented by NAB,[314] has not abated and continues to undermine the basis for the FCC's broadcast-only local TV rule. eMarketer has concluded that "digital video," rather than a shift away from watching TV-style content generally, "is the leading culprit" for the declining numbers of adult viewers of traditional linear TV.[315] While the combined time spent with TV and digital video by U.S. adults held steady from 2013-2019, digital video has been "stealing share from TV within that metric."[316] And the weekly reach of all linear TV

---

and "Other," which includes VOD, Gaming, DVD playback, *etc*. In its first snapshot (May 2021), The Gauge reported that, across all TV homes, only 25 percent of all time spent on TV (total day, persons ages 2+) was with broadcast, while 26 percent and 39 percent of TV time were spent with streaming and cable, respectively, with nine percent spent on Other.

[313] The implementation of 5G technology and continued growth in home broadband will further encourage adoption of video and audio streaming services. According to LRG, 86 percent of U.S. households, as of late 2020, had an internet service at home, and 83 percent of all households got a broadband internet service. LRG, Press Release, *86% of U.S. Households Get an Internet Service at Home* (Dec. 28, 2020). The largest cable and wireline phone providers in the U.S. acquired 4.86 million net additional broadband internet subscribers in 2020, the most broadband additions in any year since 2006. LRG, Press Release, *About 4,860,000 Added Broadband from Top Providers in 2020* (Mar. 3, 2021). These top providers added about two million more net additional broadband internet subscribers in the first two quarters of 2021. In total over the past two years, the top providers have added about eight million broadband subscribers. *See* LRG, Press Release, *About 890,000 Added Broadband in 2Q 2021* (Aug. 18, 2021); LRG, Press Release, *About 1,020,000 Added Broadband in 1Q 2021* (May 18, 2021).

[314] NAB 2018 Quadrennial Comments at 44-49 and Attachments C, D, & E; NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 2-6 (July 11, 2019); NAB Communications Marketplace Comments at 28-34 and Attachments A & B; BIA TV Study at 5-10.

[315] E. Cramer-Flood, *TV's weird 2020*: *Viewership plummeted*, *but time spent increased*, eMarketer (Feb. 11, 2021). The number of adult viewers of linear TV declined 2.3 percent in 2018, 3.9 percent in 2019 and 4.7 percent in 2020, with eMarketer forecasting another 2.4 percent drop in 2021. *Id*.

[316] *Id*.

(broadcast/cable/satellite, live + time shifted) among the U.S. population 18+ fell to 81 percent in Q4 2020 (down from 88 percent in Q1 2018), lower than the weekly reach of apps/web on smartphones (85 percent).[317]

According to Nielsen, broadcast TV's total share of prime time viewing (counting cable, DBS and broadcast) among the audience most coveted by advertisers (those ages 18-49) fell from 46 percent in 2003 to 31 percent in 2018, dropped to 26 percent in 2019 and declined to 25 percent in 2020.[318] Stated differently, among the average 22,382,589 million people ages 18-49 using TV[319] during any given minute of prime time in 2020, an estimated 5,572,089 million were viewing broadcast stations – and these 5,572,089 million people represent just 4.3 percent of the estimated total 129,120,000 million people ages 18-49 in U.S. TV households. Audience fragmentation also has eroded the ratings of even the most popular broadcast TV programs. The top-rated broadcast TV program during the 2020-2021 season received slightly over one quarter of the ratings received by the top-rated program during the 1985-1986 season.[320]

The increasingly crowded and fragmented media landscape places burdens on all parties trying to capture and keep audiences. One effective way for local broadcasters to

---

[317] *The Nielsen Total Audience Report*, at 4 (June 2021) (reporting Q4 2020 data). Eighty-two percent of Whites use traditional linear TV on a weekly basis, while only 67 percent of Asian Americans, 77 percent of Hispanics and 81 percent of African Americans do so. *Id*. Notably higher numbers of Asian Americans (88 percent), Hispanics (87 percent) and African Americans (85 percent) use apps/web on a smartphone than use linear TV on a weekly basis. *Id*.

[318] Nielsen, U.S. Live + Same Day 2003, 2018, 2019, 2020. Broadcast TV's share of total day viewing among those ages 18-49 was only 26 percent in 2018, 25 percent in 2019, and remained at 25 percent in 2020, down from 40 percent in 2003. *Id*.

[319] Counting broadcast, cable and DBS, but not streaming or SVOD. These figures overstate TV stations' share of all video viewing, because if streaming video and SVOD were included in the total, then broadcast's share would be smaller still.

[320] *See* Attachment I, Ratings of Top TV Programs.

meet this challenge is to offer locally-oriented content, including news, sports, weather and emergency journalism, which helps stations stand out among an array of video (and audio) options and thus attract audiences.[321] In fact, the recent explosive growth in other video (and audio) choices increases broadcast stations' incentives to produce and improve local programming, which can be their differentiating feature and a market niche they can fill in today's splintered media marketplace. The FCC has recognized the economic necessity of stations attracting advertisers by maximizing audiences,[322] which strongly incentivizes TV broadcasters to offer programming, including local, valued by their communities.

For these reasons, the Commission should no longer retain a local TV rule with *per se* bans and should permit local broadcasters to take advantage of vital efficiencies of scale and scope. NAB realizes that the achievement of greater local scale will not address all the competitive challenges presented by the diversion of audiences and advertisers to burgeoning streaming platforms, established cable/satellite channels and digital ad platforms. Reforming the local ownership rule, however, will directly assist local stations in an area where they enjoy a clear competitive advantage – the offering of locally-oriented content, including news, emergency information, sports and other locally-responsive

---

[321] *See, e.g.,* J. Nielson, *TV station ratings end 2020* on *an upward trend*, Kagan, a media research group within S&P Global Market Intelligence (Feb. 18, 2021) (observing that competition for audiences is growing from OTT and SVOD options but that TV stations remain "resilient" with local news and sports); S. Knopper, *Back To The Future: Townsquare Media's 'Local First' Approach To Radio May Be An Antidote To Streaming*, Billboard (Sept. 17, 2019) (observing that radio stations "are once again emphasizing superserving their communities").

[322] While TV stations' retransmission consent fees "have increased in recent years," TV broadcasters "continue to derive revenues primarily by selling time to advertisers," and the "amount of revenue generated depends largely on the size and demographic characteristics of the audiences that broadcasters reach." Broadcasters accordingly "seek to provide content that will attract viewers and maximize their audiences." *Communications Marketplace Report*, 33 FCC Rcd 12558, 12613 (2018).

programming.[323] As discussed in Section IV.C., TV broadcasting generally, and local news production specifically, are subject to strong economies of scale and scope, which allow broadcasters to spread the substantial costs of news production across more local outlets and better enable them to offer quality local news programming, especially in mid-sized and small markets.[324] Studies, moreover, have shown that local TV station combinations lead to increased station profitability, due to merger-generated cost savings (*i.e.*, economic efficiencies), and increased viewership.[325] Updating the local TV rule accordingly will

---

[323] Local TV stations provide an array of locally- and regionally-oriented content, including religious services; news coverage of, and specials about, local issues and national issues of local concern, including the coronavirus outbreak, racial justice, the opioid crisis, the 2020 election, environmental issues, and the U.S./Mexico border; investigative journalism; fact-checking initiatives; and extensive information about local events, institutions and community organizations. *See*, *e.g.*, wearebroadcasters.com; M. Stahl, *As Elections Near TV's Fact-Checking Surges*, tvnewscheck.com (Sept. 8, 2020); M. Stahl, *E.W. Scripps Spins Up Voter Resources To Counter Election Complexities*, tvnewscheck.com (Oct. 27, 2020); M. Stahl, *KUSA Takes Investigative To New Lengths*, tvnewscheck.com (Mar. 31, 2020); M. Stahl, *Gray Builds InvestigateTV Into An OTT Brand*, tvnewscheck.com (Sept. 16, 2020); M. Miller, *Hearst Stations To Explore Issues In Every State*, tvnewscheck.com (Oct. 9, 2019); P. Greeley, *Local TV Stations Push For Racial Equality*, tvnewscheck.com (Aug. 20, 2020); M. Stahl, *KNTV's Digital Rethink Pays Off*, tvnewscheck.com (Feb. 16, 2021); P. Greeley, *Nexstar 'Border Report' Tour Covers A Lot Of Ground*, tvnewscheck.com (Oct. 4, 2019).

[324] *See* Section IV.D. *supra*; OEA Study; BIA TV News Study.

[325] Stahl, *Effects of Deregulation and Consolidation of the Broadcast Television Industry*, at 2186-87, discussed in Section IV.C., *supra* (finding "no evidence" that the increase in TV station profitability from local combinations "came at the expense of viewers," and concluding that "within-market mergers, if anything, boosted viewership"). Earlier BIA studies reached similar conclusions. In a study for the 2006 quadrennial, BIA found that the acquired station in local-market combinations experienced an 11.0 percent increase in audience share and a 15.4 percent increase in revenue share, reconfirming a BIA study from the 2002 ownership review. BIA Financial Network, *Economic Viability of Local Television Stations in Duopolies*, at i (Oct. 23, 2006), Attachment H to Comments of NAB, MB Docket No. 06-121 (Oct. 23, 2006); *see also* BIA Financial Network, *Television Local Marketing Agreements and Local Duopolies: Do They Generate New Competition and Diversity?* (Jan. 2, 2003), Attachment A to Comments of Coalition Broadcasters, MB Docket No. 02-277 (Jan. 2, 2003). Other studies in previous quadrennial reviews found that common ownership of TV stations in the same local market results in more local news programming, FCC, 2007 Ownership Study No. 4, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, at 21 (July 24, 2007), and increases the likelihood of stations offering local news or public affairs

enhance the competitiveness of local TV stations and their programming including news, thereby benefitting local audiences, serving the FCC's localism goal and promoting Congress's goal of a competitively viable OTA broadcast service.

2. TV Broadcasters Compete for Vital Advertising Dollars Against Many Other Outlets in a Marketplace Increasingly Dominated by Digital Platforms

Given the growing dominance of the local advertising market by the digital sector and the significant competitive presence of cable TV operators in local ad markets,[326] the decline in the local TV station industry's ad revenues over time is hardly surprising. As shown in Attachment J, TV stations' OTA ad revenues fell 12.4 percent from 2000-2020 on a nominal basis (and 16.4 percent from their pre-recession peak in 2006).[327] But examining revenue over time without taking inflation into account is misleading. Inflation is often a significant component of apparent growth (or non-growth) in any series measured in dollars. Adjusting for inflation uncovers real growth, if any, or the real amount of any decline. On a real basis, local TV stations' OTA ad revenues have fallen by 41.6 percent since 2000.[328]

---

programming. M.G. Baumann and K.W. Mikkelsen, Economists Incorporated, *Effect of Common Ownership or Operation on Television News Carriage*: *An Update*, at 6-7, Attachment A, NAB Reply Comments, MB Docket No. 06-121 (Nov. 1, 2007).

[326] *See* NAB 2018 Quadrennial Comments at 50-54; NAB 2018 Quadrennial Replies at 59-61; NAB Written *Ex Parte* Communication, MB Docket No. 18-349, at 7-10 (July 11, 2019); NAB Communications Marketplace Comments at 34-39; BIA TV Study at 10-14; *see also* BIA Big Tech Study and NERA Study, discussed in Sections IV.B. and VI.A., *supra*. NAB also has documented the gains cable TV has made in local ad markets over time. *See* Attachment E, Cable Share of Local Broadcast TV Revenues, and Section VI.A, *supra*.

[327] eMarketer reported that ad spending on linear TV as a whole peaked in 2018, and that it did not expect linear TV ad spend to reach 2018 levels again, as digital ad spend continues to grow. N. Perrin, *TV and OOH ad spending has peaked,* eMarketer (Apr. 18, 2021).

[328] Attachment J, Nominal and Real Local TV Station Industry OTA Advertising Revenues and Nominal and Real Local Television Station Industry Revenue (Over-the-Air + Digital).

Even after including TV stations' digital ad revenues, their total (OTA+digital) advertising revenues have declined by 37.3 percent in real terms since 2000.[329]

Most TV station industry revenues, moreover, are still derived from advertising, rather than retransmission consent fees. For 2020, Kagan estimated that retransmission revenues represented 38 percent of TV stations' total revenues, and projects that portion to drop to 36 percent by 2026.[330] Declines in advertising revenues consequently have significant effects on TV stations' financial position and their capacity to serve local communities.

While broadcast TV station ad revenue is projected to decline this year, eMarketer forecasts that U.S. digital ad spending will increase 25.5 percent in 2021.[331] Industry analysts have documented the recent remarkable growth in CTV ad spending, which jumped 84 percent in the first quarter of 2021 compared to Q1 2020.[332] Analysts expect CTV advertising to continue its rapid growth, fueled in considerable part by advertisers and marketers shifting ad dollars away from linear TV and toward CTV.[333] Notably, CTV is poised

---

[329] *Id*. Other analysts have documented local spot TV's declining share of the local ad market over time, as digital's share of local advertising spend has expanded and continues to grow. *See*, *e.g*., NERA Study at 23-26.

[330] J. Nielson, *Complete picture of US TV station industry revenues, 2009-2026*, Kagan, a media research group within S&P Global Market Intelligence (June 17, 2021).

[331] N. Perrin, *US Digital Ad Spending 2021*, eMarketer (Apr. 14, 2021).

[332] Jon Lafayette, *CTV Ad Spending Up 84% in 1st Quarter*: *TVSquared*, Broadcasting+Cable (June 24, 2021). CTV advertising is digital advertising that appears on connected TV devices.

[333] R. Benes, *Pluto TV will surpass $1 billion in US ad revenues in 2022*, eMarketer (Apr. 6, 2021). CTV ad spending in the U.S. grew over 40 percent year-over-year in 2020, to more than $9 billion, and is expected to grow nearly 49 percent in 2021, reaching $13.4 billion, a figure forecast to double by 2025 (and thereby substantially exceed total TV station ad revenues). Predictably, advertisers have followed consumers who now spend more time with OTT video, especially video streamed to CTV devices. N. Perrin, *CTV is still among fastest-growing channels in digital advertising*, eMarketer (May 3, 2021). A recent survey of advertisers and marketers found that over 65 percent of respondents said they planned to increase their CTV spending by 5-20 percent in 2021, with another 20 percent planning to make increases of over 20 percent. J. Lafayette, *CTV Ad Spending Up 84% in 1st Quarter*.

to garner growing amounts of political advertising, at the expense of traditional TV.[334] The share of political ad spending on broadcast TV has already dropped from nearly 80 percent in 2014 to 59 percent in 2020, while digital's share rose from little more than zero to 18 percent, about equal to cable TV's political ad share.[335] Obviously, marketplace developments that shift political ad dollars toward digital platforms will impact the financial position of local TV stations.

The other major source of TV station ad revenues – retransmission consent fees – are also under pressure from cord-cutting and the decline of pay-TV subscribership, which has been called a potential "existential" crisis for news on local TV stations.[336] The Commission and industry analysts both have recognized that the growth in retransmission consent fees has slowed in recent years.[337] Recent data show that these marketplace trends have already substantially cut the rate of retransmission consent fee growth and that

---

[334] Sara Fischer, *The future of political advertising is connected TV*, Axios (Apr. 15, 2021) (reporting that increased CTV political spending seems to be a reallocation primarily from traditional TV, rather than other digital channels, and explaining that CTV can offer political advertisers a similar type of messaging platform as traditional TV but with more precise targeting and hardly any regulation). *See also* J. McCormick, *Midterm-Election Ad Spending Poised to Soar as Streaming TV Attracts Campaigns*, Wall Street Journal (July 19, 2021) (expecting ads in 2022 elections to increasingly appear via CTV devices).

[335] Fischer, *The future* of *political advertising is connected TV*.

[336] Tom Rogers, *Op-ed*: *Quality TV news could be casualty of the streaming wars*, CNBC (June 7, 2021); *see* Section IV.C, *supra*.

[337] *See 2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3497 (2020); *Communications Marketplace Report*, 33 FCC Rcd 12558, 12606 n. 191 (2018); *see also* NAB 2018 Quadrennial Replies at 67 (citing reports of declines in the year-over-year growth rate in TV stations' retrans revenues); George Winslow, *The Cost of OTT*: *18 Million Pay TV Subs Lost*, *2014-2020*, tvtechnology.com (July 10, 2021) (discussing how declines in pay TV subscribers have "reduced income from carriage fees and retransmission consent deals"); Atif Zubair, *Economics of broadcast TV retransmission revenue 2020*, Kagan, a media research firm within S&P Global Market Intelligence (Aug. 17, 2020) (revising downward projections of TV station owners' total retransmission fees from multichannel service providers due to the pandemic "fueling on ongoing trend in households dropping traditional multichannel video subscription in favor of cheaper virtual alternatives").

the growth rate of total retransmission consent revenue will approach zero and, in real terms, even become negative during the next five years.[338] Any assumption that local TV stations' struggles in the advertising market are unimportant due to their supposedly perpetually rising retransmission consent revenues is clearly mistaken.

Given the existing and future threats to local TV stations' revenues in a digital world, the Commission needs to rethink its analog ownership rules. Counting only broadcast TV stations as relevant competitors for purposes of its local TV rule – and maintaining a top-four restriction that effectively bans all or most station combinations in many markets – reflects a mindset from 1940, when the FCC prohibited common ownership of two TV stations in "substantially the same service area."[339] The Commission cannot rationally deny that MVPDs and online video providers directly compete with broadcast TV stations in light of its recent conclusion that these "three categories of participants . . . have defined the [video] market for the past decade" and continue to dominate it.[340]

The FCC also cannot, consistent with Section 202(h), the APA and the record in this proceeding, retain the current *per se* top-four and two-station restrictions that treat TV stations in Glendive, Montana as competitively equivalent to stations in New York City. *Per se* rules applying across-the-board to stations in all 210 DMAs do not, by definition, take proper – or, indeed, any – account of actual competitive conditions in vastly different local markets. The BIA TV Study, moreover, showed that the top-four rule does not comport with competitive reality, given that in a considerable majority of markets, the largest gaps in audience share and revenue share are between the first and second ranked, the second

[338] See Attachment K, Total Retransmission Fee Growth.

[339] Notice of Proposed Rulemaking, 7 FCC Rcd 4111, 4114 n. 27 (1992).

[340] *2020 Communications Marketplace Report*, 36 FCC Rcd 2945, 3047 (2020).

and third ranked, or the third and fourth ranked TV stations, rather than between the fourth and fifth ranked stations as the top-four restriction presumes.[341]

As explained in detail above, permitting common ownership of TV stations in local markets, while not solving all the competitive problems facing local broadcasters, clearly will help local stations exploit their comparative advantage in providing locally-oriented and community-responsive programming. NAB therefore again asks the Commission to remove or reform its *per se* local TV ownership restrictions that inhibit the achievement of greater local scale necessary for stations' continued competitive local presence in communities across the nation.

VIII. IN TODAY'S HYPER-COMPETITIVE MARKETPLACE, NO BASIS EXISTS FOR RETAINING – AND CERTAINLY NOT FOR INCREASING – THE CURRENT OWNERSHIP RESTRICTIONS ON TV STATIONS

NAB's previous comments in this and other proceedings explained that various factors, including TV stations' use of multicast technology, the advent of next generation TV and the completion of the broadcast TV incentive auction, provide no justification for maintaining the local TV rule, let alone making it more onerous.[342] In response to the FCC's inquires,[343] we reiterate and update our earlier comments.

A. Multicast Streams And Satellite And Low Power TV Outlets Continue To Serve The Public Interest And Do Not Warrant Treatment As Full-Service Stations Under The Local TV Rule

In its 2018 Notice, the Commission sought comment on whether there had been industry developments involving multicasting, satellite stations and low power TV stations that would warrant changes to the local ownership TV rule and/or the treatment of these

---

[341] BIA TV Study at 31-33 and notes 27-29; NAB 2018 Quadrennial Comments at 71-76.

[342] NAB 2018 Quadrennial Comments at 79-85; NAB 2018 Quadrennial Replies at 64-76; NAB Communications Marketplace Replies at 22-31.

[343] Public Notice at 4.

stations under the rule.[344] In its recent Public Notice, the FCC again asked how the increased use of these platforms or other innovations should inform its review.[345] While multicast programming streams, satellite stations and LPTV stations continue to enhance the quantity, quality and diversity of broadcast programming available to local audiences, no developments with respect to these services warrant their treatment as full-service stations for purposes of the local TV rule. Treating multicast streams, satellites and LPTVs as stations subject to that rule would be arbitrary and capricious because they are not and never have been equivalent to the full-service TV stations regulated under the ownership rules. Given the transformational competitive changes in the media and advertising markets discussed here and in NAB's earlier comments, Section 202(h) requires the local TV rule to be reformed to allow more common ownership, not less. Treating secondary services and multicast streams as the (false) equivalent of full-service stations so as to make the local TV rule more restrictive therefore would be contrary to the terms of Section 202(h) and congressional intent.

As the FCC previously determined in declining to adopt more restrictive local TV ownership limits in light of the technical ability to multicast, carrying an additional program stream on a station's six megahertz channel is distinct from owning a second separate station with its own full six megahertz channel.[346] Multicast streams do not qualify for mandatory carriage on cable or DBS systems, and they generate only a tiny fraction of the

---

[344] *See 2018 Quadrennial Regulatory Review*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111, 12137-38 (2018) (2018 Notice).

[345] *See* Public Notice at 4.

[346] *See* 2016 Ownership Order, 31 FCC Rcd at 9892 (observing that operating a multicast channel "does not typically produce the cost savings and additional revenue streams that can be achieved by owning a second in-market station").

revenue a full-power station earns.[347] The Commission observed that tightening the local TV ownership limits in light of multicasting "might prevent those broadcasters in markets where common ownership is permitted under the existing rule from achieving the efficiencies and related public interest benefits associated with common ownership." The FCC thus concluded it was "not appropriate to adjust the numerical limits as a result of stations' multicasting capability."[348]

The FCC also has recognized multicasting as a way to ensure that smaller markets have a full complement of major network affiliates.[349] Multicasting continues to serve this important function in many small markets. Currently, 88 "short markets" do not have separate stations affiliated with each of the four major networks.[350] Multicast channels fill the gap to provide at least one missing network affiliate in 83 of these markets.[351] In 19 markets, two network affiliates are made available via multicast channels.[352]

Most short markets (59.1 percent, or 52 markets) have fewer than four full-power commercial TV stations, so it would be impossible for each of the four major broadcast networks to be carried on a separate full-power station.[353] Of the remaining markets, almost

---

[347] *See* Attachment L, Multicast Revenue (including all multicast streams except those carrying major network affiliates, the revenue generated by stations' multicast streams are, on average, one percent of station revenue).

[348] *See* 2016 Ownership Order, 31 FCC Rcd at 9892.

[349] *See* 2016 Ownership Order, 31 FCC Rcd at 9892 (stating that a "significant benefit" of multicasting is the "ability to bring more local network affiliates to smaller markets, thereby increasing access to popular network programming and local news and public interest programming tailored to the specific needs and interests of the local community").

[350] *See* Attachment M, Short Markets. All but three of the 88 short markets are mid-sized to very small (ranked 50-210), and 80 of them are small or very small (100-210). *Id*.

[351] *Id.*

[352] *Id.*

[353] NAB Staff Analysis of BIA Media Access Pro Database, July 2021 (NAB Staff Analysis).

all have four, five or six full-power stations (33 markets).[354] Several stations in these smaller markets are affiliated with religious programming networks or air independent programming in English (15 stations across 13 markets).[355] In a number of short markets with large Hispanic/Latinx populations, some of the full-power stations are affiliated with Spanish-language networks such as Univision, Telemundo or UniMas or air independent Spanish language programming. For example, there are three full-power Spanish language stations in the Harlingen-Weslaco-Brownsville-McAllen, TX, DMA (ranked 85th by Nielsen but 10th in terms of Hispanic/Latinx households).[356] Similarly, Yuma AZ-El Centro, CA, ranked 166th by Nielsen but with the 30th largest number of Hispanic/Latinx households, has full-power stations affiliated with both Univision and UniMas.[357]

These data are consistent with the FCC's earlier determination that dual affiliations involving multicast streams did not warrant regulation because such affiliations were generally limited to small markets with fewer than four full-power TV stations and/or had other "unique marketplace factors" that did not give rise to a need to regulate them.[358] According to the Commission, these marketplace factors included where "a local station has

---

[354] NAB Staff Analysis.

[355] NAB Staff Analysis. Religious networks aired by stations in short markets include Christian TV Network, Daystar Television Network, Total Christian Television and Trinity Broadcast Network.

[356] *See* FCC, Office of Strategic Planning and Policy Analysis and Industry Analysis Division, Media Bureau, Hispanic Television Study, at 25 (May 2016), available at: https://docs.fcc.gov/public/attachments/DOC-339345A1.pdf (FCC Hispanic TV Study). This market has two stations affiliated with Univision and Telemundo and the third is an independent Spanish language station. NAB Staff Analysis.

[357] *See* FCC Hispanic TV Study and NAB Staff Analysis. Similarly, Monterey-Salinas, CA (ranked 124th by Nielsen but 28th in terms of Hispanic/Latinx population) has a full-power Univision affiliate, and Santa Barbara-Santa Maria-San Luis Obispo, CA (ranked 121st by Nielsen but 35th by Hispanic/Latinx population) has full-power Univision and Telemundo affiliates. *Id.*

[358] 2016 Ownership Order, 31 FCC Rcd at 9892 (citing 2014 Quadrennial FNPRM, 29 FCC Rcd at 4399-4400).

chosen not to affiliate with a Big Four network in favor of providing religious, foreign language, or locally oriented programming, and all remaining full-power commercial television stations in the market are already affiliated with a different Big Four network."[359] The FCC specifically concluded that there was "no benefit in either encouraging an independent station to carry network programming it does not want or in depriving a market of a local affiliate of a Big Four network," and accordingly declined to restrict multicast affiliations.[360] There is no factual or policy basis for departing from the FCC's precedent now. The multiple religious, independent and Spanish language stations in the minority of short markets that have four or more full-power stations supports the FCC's earlier reasoning, and there is still "no benefit" to depriving local communities of either "Big Four" network programming or other locally-valued programming by unnecessarily regulating multicast streams under the local TV rule.

Moreover, vastly expanding the local TV rule's reach by treating every multicast stream as a separate "station" would force hundreds of TV stations to drop thousands of their existing multicast streams to stay within the bounds of the rule's two "station" limit.[361] Such regulatory overreach would impede utilization of one of the major benefits of digital technology, impair TV stations' ability to maximize their audiences and harm consumers. OTA multicast streams now carry a wide array of "diginets" and other diverse programming, including content targeted to Spanish and other foreign-language speakers, African-

---

[359] 2014 Quadrennial FNPRM, 29 FCC Rcd at 4399-4400, n. 170.

[360] 2016 Ownership Order, 31 FCC Rcd at 9892 (citing 2014 Quadrennial FNPRM, 29 FCC Rcd at 4400 n. 170).

[361] As of February 2021, the 1,668 full-power digital, 174 Class A and 250 LPTV stations in the U.S. offered 7,251 OTA broadcast channels, with more to be launched. Peter Leitzinger, *TV station multiplatform analysis 2021*, Kagan, a media research group within S&P Global Market Intelligence (Apr. 6, 2021)

Americans, women and people of various age groups.[362] Broadcasters plan to enhance these myriad options still further, including by adding multicast news offerings.[363] Counting all these multicast streams as full-service "stations" under the local TV rule would effectively prohibit TV stations from airing most of them, to the detriment of local audiences, and contrary to Congress's goals of "promot[ing] the competitiveness"[364] and "preserving the benefits" of free, OTA local TV stations, especially for those most reliant on OTA services.[365]

Like multicast streams, LPTV stations also are not the equivalent of full-power stations and should not be treated as such. LPTV stations generally lack mandatory carriage rights (with a few exceptions in the cable context). They operate on a secondary basis and have limited coverage areas and restricted power.[366] For these reasons, the FCC has never applied its ownership rules to LPTV stations or any other secondary stations,[367] and there is no reason to change course now.

As NAB previously explained, pay-TV providers' position that multicast and LPTV affiliations with the four major broadcast networks are a problem to be solved[368] disregards

---

[362] *See, e.g.*, B. Adgate, *TV Stations Are Launching Multicast Networks As An Opportunity To Reach Cord Cutters*, forbes.com (June 10, 2021); J. Lafayette, *Nexstar To Launch Rewind TV, Digital Channel Airing Classics*, Broadcasting+Cable (Apr. 26, 2021); J. Lafayette, *Bounce to Cover Service for Rep. John Lewis*, Broadcasting+Cable (July 29, 2020).

[363] *See, e.g.*, Mark Miller, *Scripps To Offer Newsy As Free, OTA Network*, tvnewscheck.com (Apr. 6, 2021).

[364] H.R. Rep. No. 104-204, at 48 (1995), *reprinted in* 1996 U.S.C.C.A.N 10, 11.

[365] *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 647, 662-63 (1994).

[366] Because of their secondary status, LPTV stations must not cause interference to the reception of existing or future full-service TV stations, must accept interference from full-service stations, and must yield to new full-service stations where interference occurs.

[367] *See, e.g., Memorandum Opinion and Order*, MM Docket No. 97-234, FCC 99-74, at ¶ 75 (Apr. 20, 1999).

[368] *See* Comments of NCTA – The Internet & Television Ass'n, MB Docket No. 18-349, at 8-12 (Apr. 29, 2019); Comments of the American Television Alliance, MB Docket No. 18-349, at 14-21 (Apr. 29, 2019).

multiple congressional actions[369] and FCC decisions emphasizing the value of multicast affiliations and the potential harms of bringing multicast streams or LPTVs within the scope of the local TV ownership rule.[370] Pay-TV interests consistently ignore the long-standing positions of Congress and the Commission on these issues and cannot square their claims with the demonstrable public interest benefits resulting from those affiliations.[371] Far from "evading" the ownership rules, multicast and LPTV network affiliations are entirely consistent with repeated FCC decisions and continue to benefit the public. While pay-TV providers may support more restrictive ownership rules to hobble their TV station competitors, their anti-competitive interests do not equate to the public interest.

Finally, although TV satellite stations are full power, they rebroadcast all or much of the programming aired on a commonly-owned parent station, often in a rural area that cannot be reached by the parent's signal.[372] Subjecting satellites to the local TV rule would be contrary to long-standing precedent and harmful to the public interest. By definition,

---

[369] In the Satellite Television Extension and Localism Act of 2010 (STELA), Congress provided broadcasters with explicit incentives to use multicast streams and low power stations to ensure that short markets could receive the full complement of network programming. *See* Congressional Research Service*, How the Satellite Television Extension and Localism Act (STELA) Updated Copyright and Carriage Rules for the Retransmission of Broadcast Television Signals*, Summary, at 1, 15-16 (Jan. 3, 2013) (STELA "[c]reated an incentive for broadcasters . . . to use their digital capabilities to offer multiple video streams ('multicasting') by requiring satellite operators to pay royalty fees for the programming on the non-primary, as well as primary, video streams"; STELA also gave broadcasters the incentive to use multicasting "to offer otherwise unprovided network programming in so-called 'short markets'" by defining households as "served" if they can receive multicast signals, thereby prohibiting importation of distant signals to those households, and gave broadcasters incentives to use LPTV stations to air broadcast network programming).

[370] *See, e.g.,* NAB 2018 Quadrennial Replies at 73-74; NAB 2018 Quadrennial Comments at 78-81; NAB Communications Marketplace Replies at 24-27; 2016 Ownership Order, 31 FCC Rcd at 9892 (citing 2014 Quadrennial FNPRM, 29 FCC Rcd at 4399-4400).

[371] *See, e.g.,* NAB 2018 Quadrennial Replies at 72.

[372] *Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations*, Report and Order, 34 FCC Rcd 1539, 1539-40 ¶ 2 (2019).

satellite stations serve "underserved" areas that cannot economically support an independently-owned, full-service station.[373] There is no benefit in regulating satellite stations so as to prevent them serving audiences and communities in underserved areas.[374]

For these reasons, the FCC must refrain from altering the status of multicast streams and LPTV and satellite stations under its ownership rules. It would be arbitrary and capricious to treat these outlets as the legal, technical, financial or competitive equivalent to those full-service stations subject to the local TV rule.[375] Given vastly increased competition in the digital marketplace, Section 202(h) requires the FCC to relax the current rule, not make it stricter by expanding the types of entities covered by its restrictions.

B. TV Stations' Voluntary Adoption Of ATSC 3.0 Provides No Rational Basis For Retaining Analog-Era Ownership Rules

As the Commission knows, broadcasters are actively working to deploy services using the ATSC 3.0 transmission standard, a technological leap that will allow broadcasters to better serve viewers. Broadcasters have launched ATSC 3.0 service in dozens of markets, with additional deployments planned throughout the remainder of the year. As NAB has earlier explained, nothing about this voluntary transition to a new technology provides any basis for maintaining outdated structural ownership rules.[376]

---

[373] *See id*. at 1539-40 ¶¶ 2-3.

[374] *See*, *e.g.*, *2002 Biennial Regulatory Review*, 18 FCC Rcd at 13710 (finding that the FCC's satellite policy, by adding stations to local markets where stations otherwise would not have been established, "advances the same goals as those underlying our local TV ownership restrictions," and concluding that continuing to exempt satellites from the local TV rule "will not harm competition or diversity" because satellite stations are "licensed only if they cannot survive as standalone, independently operated stations").

[375] *See, e.g., Petroleum Communications, Inc. v. FCC*, 22 F.3d 1164, 1172-73 (D.C. Cir. 1994) (finding that the FCC did not justify its failure to take account of circumstances that warranted different treatment for different parties).

[376] *See, e.g.,* NAB 2018 Quadrennial Comments at 82; Comments of NAB, MB Docket No. 17-318, at 38-39 (Mar. 19, 2018).

Technological change and advancement in the communications sector has and will continue to provide enormous benefits to the viewing public. The Commission does not and should not treat technological advancement as a basis for, *inter alia*, revisiting its mobile spectrum holdings policies merely because wireless carriers shift from LTE to 5G technology. Similarly, broadcasters' efforts to enhance their ability to serve viewers in the same spectrum footprint offers no justification for keeping the current ownership restrictions, let alone for increasing restrictions on local TV stations. There is no rational basis for viewing improvements in technology as an excuse for more stringent regulation; indeed, it would be irrational to discourage innovation by doing so.

Instead, the Commission should acknowledge that broadcasters will need to make significant capital investments to continue the ATSC 3.0 transition, particularly in markets where the prospect of near-term revenue gains from ATSC 3.0 service are limited. As discussed above, asymmetric regulation of the broadcast industry will do nothing to enhance access to capital and may serve only to reduce such access, just as local broadcasters need it to usher in the future of television. Broadcasters are eager to move forward with ATSC 3.0 deployments to remain competitive with other services offering video programming; unbalanced regulatory restrictions only complicate those efforts.[377]

C. Completion Of The Broadcast TV Incentive Auction And Repack Provides No Basis For Failing To Reform The Local TV Rule

NAB wishes to dispel any remaining notion that the results of the broadcast spectrum incentive auction and subsequent repack of the television band have any implication for the

[377] *See* BIA TV Study at 2 (stating that implementing ATSC 3.0 will "require notable capital investments" by TV stations, and only stations able to afford those investments will be capable of offering ultra-HD programming, mobile services, interactivity, hyper-local content and other services enhancing local stations' ability to compete effectively).

FCC's analysis of any of its ownership restrictions.[378] More specifically, the Commission cannot properly rely on the very modest decline in the number of television stations stemming from the auction to justify retaining the current local television rule, let alone adopting a stricter one, given current competitive conditions and Congress's and the Commission's previous determinations that having fewer broadcast TV stations affirmatively benefitted the public.

As NAB has previously explained, the fact that some TV broadcasters would relinquish their spectrum was the intended outcome of the incentive auction.[379] Indeed, the FCC's clearly stated purpose for the auction was to persuade broadcasters "to relinquish some or all of their spectrum usage rights" and to "clear the highest possible amount of spectrum for broadband."[380] The Commission consistently touted the auction as a "once-in-a-lifetime" and "unique" opportunity for broadcasters to return spectrum for incentive payments.[381] Significantly, both the FCC and Congress concluded that this outcome – a decrease in the number of broadcast TV stations – was in the public interest. From the conceptual development of the incentive auction to congressional action to the adoption of specific auction rules, it was repeatedly and consistently determined that reducing the number of broadcast TV stations would benefit the public by reallocating spectrum to its

[378] *See* Public Notice at 5; 2018 Notice, 33 FCC Rcd at 12139.

[379] NAB 2018 Quadrennial Comments at 82-83.

[380] FCC Chairman Tom Wheeler, Blog, *Crafting Balanced Incentive Auction Rules in the Public Interest* (June 17, 2015).

[381] For example, in each of the first three paragraphs of the FCC's incentive auction order, the Commission referred to the "unique financial opportunity," "unique opportunity" and "once-in-a-lifetime opportunity for broadcasters" presented by the auction. *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions,* Report and Order, 29 FCC Rcd 6567, 6569-70 (2014) (Incentive Auction Order).

"highest and best use."[382] Indeed, Congress was aware when it passed the Spectrum Act that reallocation of spectrum via an incentive auction "could impact the number and diversity of broadcast 'voices' in a community or market."[383] Nonetheless, Congress *mandated* such an auction (and without directing the FCC to consider the maintenance of any number or type of TV stations in local markets), evidently concluding that repurposing broadcast TV spectrum for other uses was more important and beneficial for the public.

For its part, when setting the framework for conducting the auction, the FCC determined that it would not even consider the potential "loss of television service or specific programming" as a factor in accepting bids for stations to relinquish their licenses.[384] The Commission stated that the Spectrum Act required it to accept license relinquishment bids and that Congress had "adopted no restrictions on such bids, thus recognizing that loss of service might be a potential outcome" of the auction.[385] The FCC also specifically found that the public interest benefits of allowing stations to submit license

---

[382] *Id*. at 6570 (auction will be designed to allow reallocation of spectrum to "its highest and best use"); *id*. at 6724 (referring to FCC's "goal of allowing market forces to determine the highest and best use of spectrum"); *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Second Order on Reconsideration, 30 FCC Rcd 6746, 6753 (2015) (citing FCC's "central goal of allowing market forces to determine the highest and best use of spectrum"). *Accord Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, 12361 (2012) (Incentive Auction NPRM) (stating that the FCC's "central goals are to repurpose the maximum amount of UHF spectrum for flexible and unlicensed use in order to unleash investment and innovation, benefit consumers, drive economic growth, and enhance our global competitiveness"); Incentive Auction Order, 29 FCC Rcd at 6571 (stating that Congress, to free up UHF spectrum for new, flexible uses, authorized the FCC to reorganize the broadcast TV spectrum so that stations remaining on air after the auction would occupy a smaller portion of the UHF band); Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, at §§ 6403(a)(1), (c)(1)(A) (2012) (Spectrum Act) (mandating both a reverse and a forward auction to repurpose broadcast TV spectrum).

[383] FCC, *Connecting America*: *The National Broadband Plan*, at 91 (2010).

[384] Incentive Auction Order, 29 FCC Rcd at 6724.

[385] *Id*.

relinquishment bids, thereby utilizing market forces to repurpose spectrum for new, flexible uses, outweighed the detriments of potential service losses.[386] And it further recognized that broadcasters struggling financially may be interested in participating in the incentive auction, and found that "[t]heir exit from the business would reduce the overall number of broadcast television stations competing for the same limited pool of advertising revenue."[387] In short, relevant policymakers, while recognizing that the incentive auction would result in fewer TV stations, consistently concluded that "the substantial benefits of more widespread and robust broadband services would outweigh any impact from reallocation of spectrum from broadcast TV."[388]

Given these many public interest determinations strongly favoring fewer TV broadcasters, the Commission may not rationally assert that the expected and desired reduction in the total number of TV stations following the incentive auction raises any serious public interest concerns with implications for broadcast regulation, including the retention, let alone the tightening, of its ownership restrictions.[389] The modest decline in the number of full-power TV stations – a result previously determined to benefit the public – from 1782 to 1758 (a decrease of only 24 stations, or 1.35 percent) following the auction

---

[386] Incentive Auction Order, 29 FCC Rcd at n. 1092.

[387] Incentive Auction NPRM, 27 FCC Rcd at 12364. Responding to concerns from commenters that minority and female broadcasters often face financial difficulties and access to capital challenges, and thus would face pressure to exit the broadcast business, the FCC observed that participation in the auction, via a channel sharing, UHF-to-VHF, or high-VHF-to-low-VHF bid, "offers a significant and unprecedented opportunity for these owners to raise capital that may enable them to stay in the broadcasting business and strengthen their operations." Incentive Auction Order, 29 FCC Rcd at 6849-50.

[388] FCC, *Connecting America*: *The National Broadband Plan*, at 90 (2012).

[389] The FCC earlier determined to grandfather any existing station combinations that would otherwise no longer comply with its existing ownership limits as a result of the auction, rejecting arguments that doing so would harm ownership diversity. Incentive Auction Order, 29 FCC Rcd at 6847-48.

and repack[390] cannot now be viewed as somehow harming the public interest and certainly cannot justify, consistent with Section 202(h), retaining a local TV ownership rule that no longer reflects today's highly competitive media and advertising marketplaces.

IX. CONCLUSION

In our earlier submissions, NAB presented a compelling case for reforming the local radio and TV rules in light of profound competitive changes in the media and advertising markets. Marketplace changes over the past two years have only made the need for updated rules more urgent. The Commission must now fulfill Congress's deregulatory mandate in Section 202(h) and its even longer-standing goal of promoting a competitively viable broadcast service capable of effectively serving local communities in all-sized markets. As NAB has demonstrated yet again, the retention of asymmetric, analog-era restrictions on broadcast stations alone – especially in a marketplace increasingly dominated by the giant digital platforms – will disserve the FCC's goals of competition and localism and will not promote successful new entry into the broadcast industry.

Respectfully submitted,

---

[390] As of March 31, 2021, there were a total of 1,758 full-power TV stations in the country, compared to 1,782 full-power stations when the incentive auction began in late March 2016. *See* FCC News Release, *Broadcast Station Totals as of March 31, 2021* (Apr. 5, 2021); FCC News Release, *Broadcast Station Totals as of March 31, 2016* (Apr. 6, 2016). Obviously, the auction did not "radically reshape" local television markets. *Ex Parte* Communication of UCC OC, Inc., MB Docket Nos. 14-50, *et al*., at 4-5 (Nov. 9, 2017) (opposing relaxation of local TV ownership rule and faulting FCC for not considering impact of the incentive auction, "which will likely radically reshape the local television market"). Even including Class A TV stations, the FCC found that only 41 stations surrendered their licenses as a result of their winning bids in the reverse auction, representing less than 2 percent of the total 2,148 full-power and Class A stations that existed at the time. Public Notice at 5, note 32.

NATIONAL ASSOCIATION OF BROADCASTERS
1 M Street, SE
Washington, DC 20003
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Patrick McFadden
Larry Walke
Emily Gomes

Daniel McDonald
Terry Ottina
Loren White
NAB Research

September 2, 2021

Attachment A

"Online Platforms and Market Power, Part 1: The Free and Diverse Press"

United States House of Representatives

Committee on the Judiciary

Subcommittee on Antitrust, Commercial and Administrative Law

September 2, 2020

Statement for the Record

Gordon H. Smith

President and CEO, National Association of Broadcasters

Introduction and Summary

Thank you for soliciting our views on competition in digital markets and its impact on a free and diverse press, local journalism and radio and television broadcasters. I am pleased to submit this statement on behalf of the National Association of Broadcasters (NAB) and its more than 7,500 local television and radio station members who serve your constituents across the United States.

The history of journalism is the history of America. From our country's beginning, the right of the press to challenge the government, root out corruption and speak freely without fear of recrimination has been a central tenet of our democracy. For 100 years, broadcasters have served democratic values, the First Amendment and the listening and viewing public in beneficial, significant and unique ways that, even today, have no substitute. Broadcast stations continue to be among the most trusted sources of news and information for all communities throughout the U.S. because broadcast journalism is rooted in localism and the public interest. Most importantly, over-the-air radio and television are still free to the public and accessible to all Americans.

In today's media marketplace, trusted and fact-based news and local content that reflect America's diverse communities are more critical than ever. The current coronavirus pandemic has illustrated the value and demand for local broadcasting to educate and inform communities and help keep them safe. As during all emergencies or times of crisis, local broadcasters have not only served the public through continued reporting, but also through public service announcements (PSAs) and other myriad contributions, such as organizing food banks and blood drives, airing church services and high school graduations, enhancing children's educational programming and more. To date, TV and radio stations have aired NAB's COVID-19 PSAs more than 765,500 times for an estimated ad value of more than $156,500,000 – and these numbers do not include the likely much greater number of other coronavirus-related PSAs aired by NAB members.

Yet, even as the demand for free, local and reliable content remains high, its provision is being undermined on multiple fronts. In the short-term, the current pandemic has caused massive declines in the broadcast industry's advertising revenues, resulting in severe economic harm that threatens the continued viability of many TV and, especially, radio stations. In the longer-term, the revolution in digital technologies and the exponential growth of the internet have fundamentally altered the media and advertising landscape. This transformation has stacked the competitive deck against broadcast stations and other media providing news and information, especially local content, to communities across the country. As we explain in detail below, local journalism is now at risk due to the unchecked competitive position held by a handful of dominant digital technology platforms in today's marketplace.

As an initial matter, local news production is costly for broadcast stations. News costs consistently account for about one quarter of TV stations' total annual operational expenses, and stations also make major capital expenditures to support their news operations. Unsurprisingly, many studies have shown that TV stations earning higher revenue produce more local news programming. Because broadcast stations provide over-the-air (OTA) services free to the public, they – and their local news operations – must depend heavily (and, in the case of radio, almost entirely) on advertising revenues.

Unfortunately, over the past two decades, radio and TV station ad revenues have significantly fallen, as the advertising market has become dominated by a few giant digital platforms. This year, the U.S. advertising revenues of a single company – Google – are projected to exceed the *combined* ad revenue of *all* TV and radio stations in the country by over $8 billion. The market capitalizations of the largest radio and TV station groups are but a fraction of one percent of the market caps of Google, Facebook or Amazon, and stations increasingly struggle to compete for vital ad revenue against entities of this scale and scope.

Beyond diverting advertisers – and crucial revenue – away from local broadcast stations throughout the country, the digital platforms also control the technologies that power both content discovery (search) and digital advertising. Whether consumers use search engines, social networks, voice or video platforms, or even broadcasters' own apps to access news and other content, decisions made unilaterally by a few dominant digital technology giants impede local broadcasters' ability to connect with their audiences online. Earlier this year, for example, after many local stations added a COVID-19 category to their news apps, Google unilaterally flagged and removed some of those apps from its store, thereby undercutting stations' commitment to providing up-to-date local and state coverage of the pandemic.

The platforms' technological control and lack of transparency also permit them to impose advertising limits and policies that impede stations' ability to effectively monetize their own content online. For instance, the platforms unilaterally determine which content is eligible to be monetized and decide the share of revenue they retain versus the amounts passed on to the content providers that bear all the costs of producing the quality content that financially benefits the platforms. Due to the platforms' market power, local broadcasters, for example, see at best a little more than half of the revenue from video ads on YouTube, and Facebook reportedly offers the same revenue share for in-stream ads.

It is no answer to tell broadcasters that, if they feel disadvantaged by the policies and revenue opportunities offered by the dominant platforms, they can decline to publish their content on Google, YouTube or Facebook and forego availability via various apps or devices. Because hundreds of millions of U.S. consumers use Facebook, Google and YouTube, and own smartphones, tablets and smart speakers produced by companies like Apple and Amazon, local stations have no real choice. Beyond offering OTA services, broadcasters must be available on all major platforms and types of devices to remain relevant to audiences and advertisers in the digital age. As a result, TV and radio stations lack bargaining power when dealing with the digital giants that have become gatekeepers for content providers, including local media outlets, seeking to reach audiences and monetize their content online. The digital giants have clear financial incentives to keep consumers engaged with their own platforms, content and apps, and lack effective incentives to adopt policies and practices that promote or financially reward the providers of other content, including local news.

In short, the dominance of the leading digital platforms significantly and increasingly impairs broadcasters' ability to earn the ad revenues needed to support production of local news and information. Not only do stations struggle to attract advertisers, both on-air and online, while competing against digital giants that dwarf them in scale and scope, but those platforms' control of the technologies that power digital advertising further impede broadcasters from recovering the considerable costs of producing local content in the first place. The coronavirus pandemic and recession, moreover, have only exacerbated the structural economic problems facing ad-supported media outlets that consumers and communities rely on for local news and important coverage of emergency events.

As this Committee considers solutions to the competition problems presented by the digital platforms and their detrimental impact on a free, diverse and reliable press, we emphasize our support for laws and policies that adequately address the unique role of free and local OTA broadcasting and its value in a democratic society. We commend Chair David Cicilline and Rep. Doug Collins on the introduction of the Journalism Competition and Preservation Act. As our newspaper brethren have demonstrated, there are significant antitrust-related concerns for news publishers that directly affect the continued viability of local journalism. While both our industries face similar existential threats, potential solutions need to take account of the unique circumstances affecting radio and TV broadcasting and local stations' news operations.

I. Maintaining Local Broadcast News Operations and Producing Quality Local Journalism Requires Significant Financial and Staff Resources

Local news production is costly for broadcast stations. Over the period 2003-2018, news costs, on average, accounted for nearly 24 percent of TV stations' total expenses (and nearly 26 percent of the total expenses of ABC/CBS/Fox/NBC stations).[1] From 2013-2018, stations nationwide spent an average of over $3.0 million per year producing local news, with major network affiliates expending an average of nearly $3.6 million annually. Stations in larger markets with more resources spend much greater amounts. From 2013-2018, the average news expenses of TV stations in the ten largest markets reached almost $9.7 million annually, while ABC/CBS/Fox/NBC stations in the top ten markets spent an average of nearly $15.8 million annually on news.[2] In addition to these significant annual operational costs, stations also make major capital expenditures (*e.g.*, the purchase of satellite trucks) to support their news operations.

Given these high costs, many studies unsurprisingly have found that TV stations earning higher revenues offer more local news and/or public affairs programming.[3] Radio and TV stations in mid-sized and small markets earn but a fraction of the advertising revenues earned by large market stations, due to the smaller economic bases and limited available advertising revenues in those markets.[4] As a direct consequence of their limited ad revenues, broadcast stations in smaller markets can afford to hire fewer news personnel, and they offer lesser amounts of local news programming.[5]

---

[1] *See* NAB Television Financial Reports 2004 to 2019.

[2] *See* NAB Television Financial Reports 2014 to 2019.

[3] *See, e.g.,* J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 4, 45-46 and Table 8 (2011) (Economies of Scale Study), attached to Reply Comments of NAB, MB Docket No. 10-71 (June 27, 2011) (citing numerous empirical studies finding a "positive and statistically significant relationship between revenue and local news production"); *accord* FCC, D. Shiman, *The Impact of Ownership Structure on Television Stations' News and Public Affairs Programming*, Media Ownership Study #4, Section I, at 21 (2007); P. Napoli, *Television Station Ownership Characteristics and Local News and Public Affairs Programming*: *An Expanded Analysis of FCC Data*, 6 Info: The Journal of Policy, Regulation, and Strategy for Telecom., Information, and Media 112, 119 (2004).

[4] According to BIA, in 2018 the average radio station in the smallest Nielsen radio markets (201-265) earned only 7.1 percent of the amount of ad revenue earned by the average radio station in the top-10 markets. Similarly, the average radio station in markets 76-100, 101-150 and 151-200 earned only 13.4, 11.7 and 10.5 percent, respectively, of the average top-10 station. BIA Advisory Services, *Local Radio Station Viability in the New Media Marketplace*, at 14 (Apr. 19, 2019) (BIA Radio Study), Attachment A to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019). In 2017, the average TV station in the top-10 Designated Market Areas (DMAs) earned nearly 12 times the amount of ad revenues earned by the average station in the smallest DMAs (151-210) and about eight times the amount earned by stations in DMAs 101-150. *See* Attachment G to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019) (citing BIA data).

[5] According to the Radio Television Digital News Association's (RTDNA) most recent survey, the average TV news station aired 5.9 hours of local news on weekdays, with small market stations (DMAs 151-210) airing an average of 4.6 hours and stations in the top-50 DMAs airing about 6¾ hours per day. Notably, TV

Notably, RTDNA's surveys also reveal the economic pressures on local broadcast news operations. Over the past five years, only about three-fifths (60 percent) of TV stations have reported profitable local news operations, while many radio stations in markets of all sizes struggle to make local news programming financially viable.[6] Emergency journalism places particular financial stress on broadcasters, as local stations often cover disasters and crises 24/7, foregoing their regular advertiser-supported programming while incurring extra costs, such as overtime for employees.[7] And as TV and radio stations face ever greater financial challenges due to profound competitive changes in the advertising marketplace, they may be unable to maintain their current levels of local news production, let alone improve the quantity or quality of their local journalism.[8]

II. Competitive Dynamics in Today's Advertising Marketplace Are Undermining Broadcast Stations' Ability to Earn the Revenues Necessary to Support Local Journalism

Because broadcast stations provide over-the-air (OTA) services free to the public and cannot rely on subscription fees or pay walls, they – and their local news operations – depend heavily (and, in the case of radio, almost entirely) on advertising revenues. BIA has estimated that, from 2000-2018, local TV stations' total OTA ad revenue fell by 13.4 percent in nominal terms and by 40 percent in real terms (*i.e.*, after accounting for

---

stations with very small news staff (1-10 employees) aired only 1.2 hours of local news each weekday, while stations with very large news staff (over 50 employees) aired 8.6 hours per day. RTDNA, Bob Papper, *A Shocking Development*: *A Small Increase in Local TV Newsrooms* . . . *and a Record Amount of Local News* (May 15, 2019). The same holds true for radio stations. *See* RTDNA, Bob Papper, *Most Radio Stations Run Local News* . . . *and a Little More of It This Year* (May 15, 2019) (stating that the "bigger the staff, the more news a [radio] station runs," without exception).

[6] *See* RTDNA, Bob Papper, *The Business of News*: *TV* (May 15, 2019); RTDNA, Bob Papper, *Radio News Profits Edge Down but Budgets Edge Up* (May 15, 2019) (according to responding news directors/general managers with knowledge of their stations' finances, only 12.4 percent reported their stations earned a profit on news in 2018, consistent with the previous five years).

[7] *See* FCC, Steven Waldman, *The Information Needs of Communities*, at 79-80 (July 2011) (citing examples, including one TV station in New Orleans that stayed on air for 16 days straight without commercials during Hurricane Katrina).

[8] Beyond earning additional revenues, broadcasters also could better support their local news operations if they were permitted to achieve greater economies of scale and scope by acquiring more stations in local markets, thereby spreading the high costs of news production across more outlets. Multiple economists have found that TV broadcasting generally, and local news production specifically, are "subject to strong economies of both scale and scope," which are, by definition, "associated with falling unit costs of production" and "hence are *prima facie* welfare enhancing." Economies of Scale Study at 1-3 (concluding that placing undue limits on broadcasters' ability to achieve scale and scope economies "result[s] in higher costs, lower revenues, reduced returns on invested capital [and] lower output," including "significantly reduc[ed]" local news output); *accord* Decl. of M. Israel and A. Shampine, Comments of NAB, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014) (finding that economies of scale and scope exist in TV broadcasting and that both lead "to increased investment in news programming"). Decades-old FCC rules, however, prevent achievement of these beneficial scale economies by, among other restrictions, prohibiting broadcasters from owning more than one TV station in most DMAs.

inflation).[9] BIA data also show that the radio industry's total OTA ad revenues fell 25 percent from 2004 to 2018, even without adjusting for inflation.[10]

Rather than any temporary business cycle effects, the long-term and continuing declines in local stations' ad revenues reflect the transformation of the advertising marketplace due to digital technologies and the explosive growth of a small number of giant digital ad platforms. In just a few short years, these platforms have come to dominate the competitive landscape. As the ad revenues of traditional media fell, Kagan estimated that digital (online/mobile) ad revenues grew by a Compounded Annual Growth Rate of 17.7 percent from 2010-2019, with its share of the total U.S. advertising market growing from 12.6 percent in 2010 to 42.2 percent in 2019.[11] Kagan projects these trends will continue, with digital capturing 59.5 percent of overall U.S. advertising revenue by 2029, and – even more ominously for local TV and radio stations – predicts digital gaining still higher shares of local ad dollars.[12]

NAB and our members have attested to the real-world, local market consequences of this fundamental shift in the advertising market. At the Federal Communications Commission (FCC), radio and TV stations from across the country have recounted losing multitudes of local advertisers across all industry sectors, and large percentages of their ad dollars, to digital platforms, including Google, YouTube and Facebook,[13] which, according to Borrell Associates, has become the most popular marketing vehicle for local advertisers.[14] At a Department of Justice (DOJ) workshop on competition in TV and digital advertising last year, NAB and representatives of TV station groups, cable operators and online platforms all agreed – contrary to DOJ's woefully outdated view of the marketplace – that TV broadcasters, multichannel video providers and digital platforms directly compete for advertising.[15]

---

[9] BIA Advisory Services, *The Economic Irrationality of the Top-4 Restriction*, at 16 and Fig. 10 (Mar. 15, 2019) (BIA TV Study), Attachment B to Comments of NAB, MB Docket No. 18-349 (Apr. 29, 2019).

[10] *See* BIA Radio Study at 10-11 and Fig. 7.

[11] Kagan Market Intelligence, Derek Baine, *Rapidly changing video world impacts advertising market*, at 6-7 (2020) (estimating that radio and TV stations had a 4.7 percent and 7.1 percent share, respectively, of total U.S. advertising revenues in 2019).

[12] *See id*. at 8-10 (projecting higher growth rates for digital advertising in local markets than at the national level over the next decade and estimating that digital platforms will earn two-thirds of total local ad dollars in 2023 and surpass 70 percent later in the decade).

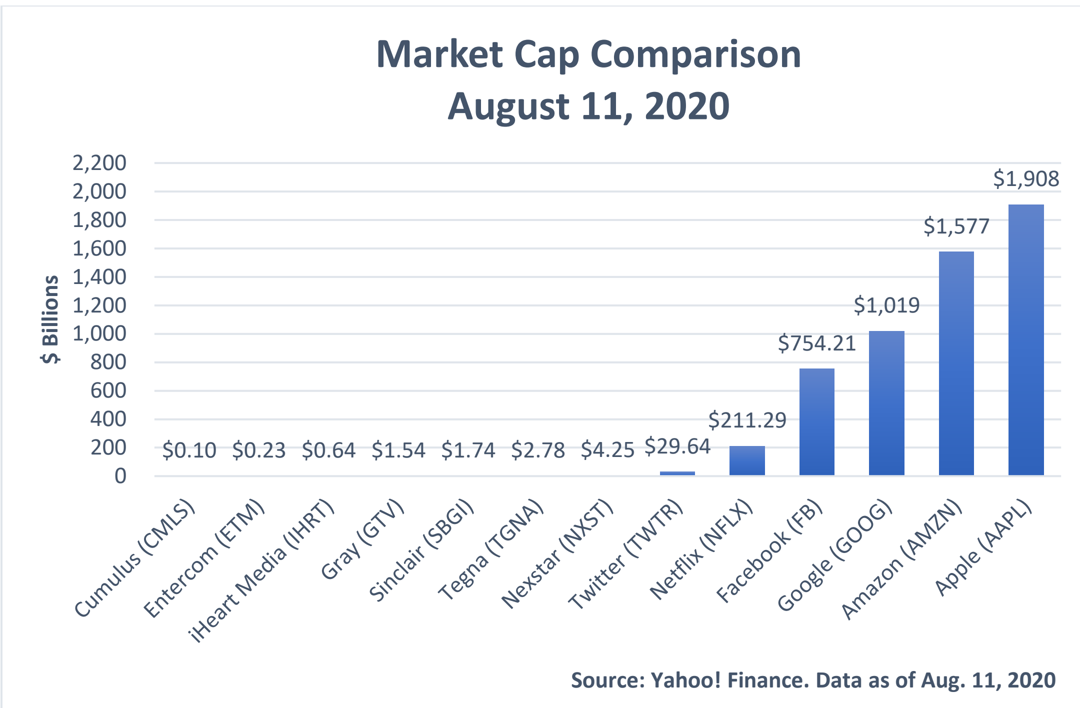
[13] *See*, *e.g*., Comments of Meredith Corp., MB Docket No. 18-349, at 2 (Apr. 29, 2019); Joint Reply Comments of Broadcast Licensees, MB Docket No. 18-349, at 10-13 (May 29, 2019); Comments of Connoisseur Media, *et al*., MB Docket No. 18-349, at Exhibit C (Apr. 29, 2019) (providing declarations from ten radio companies as to their losses of specific advertisers, *e.g*., auto/RV dealers; banks/credit unions; hospitals and various medical service providers; local and chain restaurants and bars; real estate companies; state lotteries; local colleges; and innumerable retail businesses and service providers, including home stores, garden centers, repair services, jewelry stores, dry cleaners, *etc*.).

[14] Borrell Associates, *2019 Benchmarking Local Media's Digital Revenues*, Executive Summary, at 4.

[15] *See* Remarks of Rick Kaplan, general counsel and executive vice president, NAB, "Executive Suite: Competitive Dynamics in Advertising: Does Local Broadcast Compete with Cable Spot and Online Advertising?", Panel at DOJ Antitrust Division, *Public Workshop on Competition in Television and Digital*

The massive shift in advertising to other platforms has profoundly affected local broadcasters. Stations in mid-sized and small markets with limited economic bases have been disproportionately impacted because any significant loss of revenue has an outsized effect on their ability to pay the largely fixed costs required to operate and to produce or acquire news and other programming.[16] Implementation of the next generation broadcast TV transmission system, ATSC 3.0 (Next Gen TV), will require notable investments by local stations. Only those TV stations with sufficient revenues will be able to make the necessary investments and offer the improved services that Next Gen TV enables, including ultra-high definition programming, better emergency alerting, mobile services, interactivity, hyper-local content and more.[17]

The sheer size and scale of the digital platforms that dominate the advertising landscape impair local stations' ability to compete effectively for vital ad revenue. The market capitalizations of the largest TV and radio station groups are but a fraction of one percent of the market caps of Google, Amazon and Facebook.



Advertising (May 2-3, 2019) (DOJ Workshop); Written Comments of NAB, DOJ Workshop (June 17, 2019). Inexplicably, DOJ continues to adhere to its analog-era view that broadcast TV stations compete for advertising only against other TV stations, refusing to recognize that the competitive world has changed since the mid-20th century. As a result, DOJ's merger and acquisition policies continue to prevent local TV broadcasters from achieving the vital economies of scale that would improve their long-term financial viability and provide much needed support for stations' local news operations. *See* note 8, *supra*.

[16] Broadcast stations have substantial fixed costs (*i.e.*, the basic costs of running a station, including engineering, sales, programming, *etc*.) that must be met before they can hire additional staff, upgrade equipment or expand their news coverage. *See*, *e.g.*, BIA Radio Study at 31.

[17] *See* BIA TV Study at 2.

In 2020, the U.S. advertising revenues of a single company – Google – are projected to exceed the *combined* ad revenues of *all* TV *and* radio stations in the country by more than $8 billion, and Facebook's advertising revenues will exceed the combined ad revenues of all broadcast stations by a small margin.[18] Industry observers routinely refer to digital advertising as dominated by the Facebook-Google "duopoly," which in recent years has controlled over 60 percent of U.S. digital spending, with Amazon, "[r]ather than disrupting the duopoly," now "looks to have joined it as a third giant."[19] The unregulated and unchecked growth of the advertising and technology giants is in stark contrast to the severe and archaic restrictions placed on the scale and scope of local media providing local news to the public.[20]

When asked about competition in its local market, a radio broadcaster in central New York state said last year:

> If you add all the radio money in the market, it's about 7 cents on the dollar… In five years, Facebook and Google have taken more money out of the marketplace than all the radio companies combined. There has been a pivot point on who the competition is. No longer is it the radio guy across the street.[21]

This statement incapsulates the serious challenges now facing radio and TV stations. Simply put, the structure of today's advertising marketplace, dominated by massive digital platforms present in every local market in the U.S., inhibits TV and radio stations from competing effectively for the ad dollars necessary to maintain their day-to-day operations and to sustain – let alone improve – local news, emergency journalism and other highly valued free, OTA programming.

The coronavirus pandemic and recession have only exacerbated the problems facing local broadcast journalism. The pandemic's shock to the advertising market caused stations' revenues to plummet. This past spring, radio broadcasters reported ad revenue declines between 40-70 percent and local TV stations experienced drops of 40-60 percent.[22] Broadcasters have been forced to reduce salaries and lay off or furlough

---

[18] eMarketer estimates that Google's and Facebook's U.S. ad revenues will be $39.58 billion and $31.43 billion, respectively, in 2020. eMarketer, *Google Ad Revenues to Drop for the First Time* (June 23, 2020). According to BIA, local TV and radio station ad revenues (counting both their OTA and much more limited digital revenues) will total $31.3 billion this year. *See* BIA Advisory Services, *BIA Revises Local Radio Advertising Estimates Down to* $*12.8B in 2020 Due to Pandemic* (June 25, 2020); BIA Advisory Services, *BIA Lowers 2020 Local Television Station Advertising Revenue Forecast to $18.5B* (May 21, 2020).

[19] Nicole Perrin, *Facebook-Google Duopoly Won't Crack This Year*, eMarketer (Nov. 4, 2019) (stating that "[d]igital ad market consolidation shows little sign of stopping," and projecting that in 2020 about 70 percent of U.S. digital ad dollars "will end up with one of the three leading ad sellers").

[20] For example, the FCC's newspaper/broadcast cross-ownership ban – adopted in 1975 – still prohibits common ownership of even a single radio or TV station and a newspaper in the same local market.

[21] David Menconi, *Five Independent Radio Broadcasters Discuss Their Strategies For Small-Market Success*, Billboard (Sept. 17, 2019).

[22] Radio Ink, *Just How Bad Is The Ad Revenue Decline?* (May 7, 2020); Harry Jessell, *Magid*: *Local TV To Feel* '*Devastating' Ad Impact*, TVNewsCheck (May 4, 2020).

employees, including news staff, and some radio stations have gone silent.[23] Ironically, these advertising-related layoffs occurred at the same time that viewership of local and national broadcast TV news significantly increased, as Americans sought a trusted source of information about the pandemic.[24] Given that the overall U.S. ad market took nearly a decade to fully recover from the last major recession in 2008-2009, the advertiser support for broadcast journalism – already undermined by the Facebook-Google duopoly – appears increasingly at risk.

III. The Dominant Digital Platforms Control Much of the Technology That Powers Both Content Discovery and Digital Advertising, Inhibiting Stations' Ability to Reach Consumers and Monetize Their Own Content

Beyond diverting advertisers of all types – and their crucial ad dollars – away from broadcast stations in local markets across the country, the dominant digital platforms also essentially control the technology that powers both content discovery (search) and digital advertising. This control of technology further increases the marketplace dominance of the leading digital platforms and exacerbates the struggles of broadcast stations to earn the revenues needed to fund local journalism or even to reach consumers with their content.

Today, the top platforms direct truly remarkable levels of consumer traffic. Google doesn't just lead the search engine market, "it dominates,"[25] with a 87.6 percent share of the market in the U.S. and around 92 percent globally.[26] YouTube (owned by Google) has nearly 70.6 percent of the U.S. online video platform market with about 74 percent worldwide,[27] and Facebook dominates the social media market, with a 61.3 percent share in the U.S. and around 74 percent globally.[28] Consumers access these platforms via smartphones, tablets, smart speakers and other devices designed by a few leading technology companies, such as Apple.

Given their usage by hundreds of millions of consumers, broadcasters must be available via all these platforms and devices to remain relevant to audiences and advertisers in the digital age. Local stations consequently lack bargaining power when dealing with the massive digital companies that essentially have become gatekeepers for content providers, including local TV and radio stations, needing to reach online audiences. These digital giants have clear incentives to keep consumers engaged with

---

[23] *See*, *e.g*., Inside Radio, *Coronavirus-Related Cuts At Saga*, *Alpha Media*, *Forever Media* (Mar. 30, 2020); Al Tompkins, *Tegna* f*urloughs local TV news staff*, *managers take temporary pay cut*, Poynter (Apr. 6, 2020); Inside Radio, *April Saw A Big Spike In Stations Going Silent* (Apr. 29, 2020).

[24] *See*, *e.g*., Lillian Rizzo, *Local TV Sees Spike in Viewers*, *Drop in Ads in Coronavirus Crisis*, The Wall Street Journal (Apr. 3, 2020); Rick Porter, *Network Newscasts Keep Up Ratings Momentum During Pandemic*, The Hollywood Reporter (Apr. 22, 2020).

[25] Sarah Berry, *2020 Search Market Share*: *5 Hard Truths About Today's Market*, WebFX (July 13, 2020).

[26] As of July 2020, statcounter GlobalStats, https://gs.statcounter.com/search-engine-market-share.

[27] https://www.datanyze.com/market-share/online-video--12/Datanyze%20Universe/youtube-market-share, accessed August 17, 2020.

[28] As of July 2020, statcounter GlobalStats, https://gs.statcounter.com/social-media-stats.

their own platforms, content and apps, and no effective incentives to adopt policies and practices that promote the providers of other content, including local news, or permit local stations and other media outlets to fully monetize their online content.

A. Platforms' Unilateral Decisions Heavily Impact Stations' Ability to Reach Consumers

Whether consumers use search engines, social networks, voice or video platforms, or broadcasters' apps to access news and other content online, decisions made unilaterally by a few dominant digital platforms impede local broadcasters' ability to connect online with their audiences. The ranking algorithms used by platforms determine what sources, articles and clips appear, or are "surfaced," to users. While the platforms constantly adjust and tweak them, those algorithms have consistently favored national sources over local sources; frequently favored controversial and polarizing content and opinion sources over high-quality journalism; and can often make it difficult for smaller, local publishers to reach audiences at all. The platforms' ranking changes – often made without consultation with broadcasters or other publishers – additionally can disrupt audience engagement with broadcasters' content, as well as stations' online revenue strategies.

National vs. Local Sources. National sources have a multitude of advantages over local sources online. Regardless of the popularity of a local news source within its market, the total number of page views, shares, followers or other aggregate metrics will necessarily be smaller than those of national outlets. Due to their relatively modest numbers of followers or page views, small market radio and TV stations often have found it difficult to meet the requirements to appear on the first page of search results or even appear at all on news aggregation sites, dramatically reducing their visibility to the online platforms' millions of users. While mid-size and large-market broadcast stations meet the platforms' minimum criteria, national sources are still likely to outrank those local sources due to their greater national followings, even for news stories with significant local components, such as major weather events or natural disasters.

Overall, local news does not seem to be a priority for the major online platforms. For example, even if consumers select local publishers specifically, those local sources do not appear prioritized in their news feed. Local broadcasters also struggle to gain placement on news-centric services. One NAB TV member, for instance, reports attempting to be placed on the Apple News platform for over eight months. During this time, the broadcaster has seen no progress in Apple's monetization review and, due to Apple's review policies, this broadcaster has been unable to gain distribution via Apple News even for non-monetized content.

App store platforms also have policies that heavily disadvantage local news sources. A consumer using their device's app store to install news apps will find national and international outlets' apps recommended at the top of the news category. They will have considerably more difficulty locating the app for their local broadcaster or newspaper, as apps with national reach and a larger potential market inevitably have more users and therefore rank higher in the news category in the platform app stores.

In one revealing case, NAB members report that Apple changed its App Store review guidelines to force station groups that offered a local-specific app to have a single national app. Ultimately, Apple reversed this decision, but notably the number of characters available to describe an app and enable users to search for it would not have been sufficient to include every callsign and/or market information for even mid-sized station groups.[29] Had Apple's initial decision prevailed, it would have been virtually impossible for a local station to reach its viewers or listeners via the broadcaster's own mobile app on Apple's phones.

This case clearly illustrates the power over content that companies like Apple exert through their control of digital technologies. As of early 2020, 85 percent of the total U.S. population ages 12+, or 240 million people, owned smartphones.[30] Apple is the leading brand of smartphone in the U.S., and it possesses the ability to push its own content (Apple TV+, Apple Music) to the millions of its phones and other devices in consumers' hands, to the disadvantage of other content providers, including broadcasters. Reportedly, Google also has been removing applications for duplicate content without considering the established local brands that separate applications serve.

In addition to the mobile and desktop environments, large platforms' decisions that favor national over local sources also manifest on televisions through over-the-top (OTT) video platforms, such as Amazon Prime Video, Apple TV and YouTube TV. The options that viewers see on televisions when accessing OTT platforms also depend on algorithms developed by these giant international platforms. The result is a consumer experience that favors national over local content, making it increasingly hard for viewers to find news stories and other content relevant to their local communities.

Similarly, voice platforms like Amazon Alexa and Google Assistant disadvantage local broadcasters relative to other, especially national, sources. With Amazon Alexa, stations can develop "skills," enabling listeners to access local stations on smart speakers or similar devices.[31] However, even if a station undertakes the effort to develop these skills, it can be difficult for users to activate them because skills are not surfaced based on geography. With Google Assistant, the only option for smaller station groups that wish to be accessed via the platform is to go through an aggregator, thereby inhibiting stations' ability to reach audiences more directly. Preliminary research conducted on behalf of NAB suggests that listeners of stations, particularly in small markets, often have difficulty accessing the intended radio station via a voice platform. Confusion can occur when there are multiple stations sharing the same frequency or common name (*e.g.*, 94.7 or "B101") in different markets, as the algorithms take into

---

[29] The Apple App Store limits titles to 30 characters, plus 30 characters for a subtitle, and 100 characters worth of keywords. *See* https://developer.apple.com/app-store/product-page/.

[30] Edison Research and Triton Digital, *The Infinite Dial 2020* (Mar. 19, 2020) (Infinite Dial 2020). Fifty-three percent of those ages 12+, or 149 million people, owned tablets by early 2020. *Id*.

[31] According to Amazon, a skill is "[a] set of actions or tasks that are accomplished by Alexa. Skills are like apps for Alexa, helping customers perform everyday tasks or engage with your content naturally with voice." https://developer.amazon.com/en-US/docs/alexa/ask-overviews/alexa-skills-kit-glossary.html#s.

account the popularity – rather than the geography – of stations in determining which station to play.

Consumers often access voice platforms via smart speakers, which Americans are rapidly adopting.[32] Smart speakers can influence media consumption, again to the disadvantage of local broadcast stations. For example, owners of smart speakers use Amazon Music more frequently than those without smart speakers, which is unsurprising given that Amazon Alexa is the leading brand of smart speaker.[33] Smart speakers also set default news providers, often major national outlets like CNN rather than local news sources.[34]

Reporting vs. Opinion and Controversy. Platforms have often placed a higher priority on stories that users interact with, rather than passively consume. In the case of news stories, this tends to result in amplification of stories users feel most strongly about, rather than those that are primarily informative.[35] Last year Facebook introduced a section specifically for News in an apparent attempt to offset this effect,[36] but its more-popular News Feed continued to rely on user engagement as a key metric to determine ranking. As a result, stories with strong opinions that elicit strong responses are often surfaced at the expense of trusted, fact-based news sources. Again, the platforms' biases negatively impact broadcast stations, which stress factual reporting of local/regional events. More recently, Facebook made another change to its algorithm to prioritize original reporting in its news feed ranking to try to counteract this problem, but it remains unclear how these changes will impact reach.[37]

Platform decisions that impact news coverage. When Facebook initially introduced its ad archive for all political ads,[38] it defined political ads to include any content relating to politics or issues of national importance, which immediately and adversely affected stations' promotion of their news content. Specifically, a publisher may often buy an ad on Facebook to increase the reach of its news story and drive traffic to its website. But if the story is related to coverage of a political campaign or a nationally important issue (*e.g.*, education or immigration policy), then Facebook would deem the publisher's promotional ad to be political, even if the article being linked to was pure fact-

---

[32] As of early 2020, 27 percent of the 12+ U.S. population (76 million people) owned a smart speaker, up from only seven percent in 2017. Infinite Dial 2020.

[33] *See* Edison Research and Triton Digital, *The Infinite Dial 2019* (Mar. 2019); Infinite Dial 2020.

[34] *See* Rachel Withers, *Is Getting Our News From Smart Speakers a Threat to Media Diversity?,* Slate (Aug. 7, 2018); Nic Newman, *Digital News Project*: *The Future of Voice and the Implications for News*, Reuters Institute, at 24-25 (Nov. 2018).

[35] See *Bringing People Closer Together*, Jan. 11, 2018, *available at* https://about.fb.com/news/2018/01/news-feed-fyi-bringing-people-closer-together/.

[36] Introducing Facebook News, Oct. 25, 2019, https://about.fb.com/news/2019/10/introducing-facebook-news/.

[37] *See* Prioritizing Original News Reporting on Facebook, June 30, 2020, https://about.fb.com/news/2020/06/prioritizing-original-news-reporting-on-facebook/.

[38] Making Advertising Transparent, October 23, 2018, https://about.fb.com/news/2018/10/inside-feed-making-advertising-transparent/.

based reporting. As a result, a station or other publisher would be required to enroll on Facebook as a political advertiser and include the ad promoting its own content in Facebook's political advertising archive. While Facebook has since reversed this policy and exempted most news publishers from its political advertising rules, this and other similar decisions remain solely at the discretion of the dominant platforms, and Facebook and Google are interested parties in the political advertising market. The Facebook-Google duopoly – which, according to eMarketer, "already control[s] 60.8% of the total US digital ad market" – "has an even tighter grip" on digital political ad revenues, "with a combined 77.6% this election cycle."[39]

Likewise, the dictates of the platforms' app stores can inhibit consumers' access to important local news coverage. Earlier this year, as state and local governments were rapidly changing policies and guidance around the coronavirus pandemic by issuing and adjusting stay-at-home orders, mask ordinances and school opening plans, many local stations added a COVID-19 category to their news app and included this new category in the app description. Google flagged and removed some of these apps from its store due to the mention of the coronavirus, as it did not consider local news apps to be an authoritative source of health information. Its action directly undercut stations' commitment to providing up-to-date local coverage of the pandemic and was contrary to Americans' increased reliance on local TV station news as a trusted source about the coronavirus outbreak.[40]

Ranking based on technology choices. Google developed a technology called Accelerated Mobile Pages (AMP), which enables pages to load faster on mobile devices. Currently, broadcast stations are *required* to use AMP to be eligible for the Top Stories category in Google search results. While enabling faster loading on mobile devices can be desirable for many reasons, the use of AMP also reduces the ability of a station both to uniquely brand and to effectively monetize content. In a key finding, a major report on digital platforms by the Australian Competition and Consumer Commission recently concluded:

> The Accelerated Mobile Page (AMP) format impedes the ability of media businesses to monetize content as effectively as on their own websites. It also creates difficulties with attribution, branding and the sharing of data.[41]

Google has announced it is working on a new ranking signal, Google Page Experience, which will replace the requirement for pages to use AMP. These changes, however, will not occur until sometime in 2021, and the impact to stations is still

---

[39] eMarketer, *Facebook Dominates 2019/2020 Political Ad Spending* (Feb. 24, 2020).

[40] *See*, *e.g*., Jon Lafayette, *Virus Crisis Bringing Young Viewers to Local Broadcast*, Broadcasting+Cable (Mar. 24, 2020).

[41] Digital Platforms Inquiry Final Report, available at https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf. In particular, the ACCC notes that AMP presents challenges in the areas of monetization by restricting the space available for advertising, diminishes brand awareness by reducing opportunities for publishers to create their own "look and feel," and enables Google to "retain[] users within its ecosystem and reduce[] monetisation opportunities for media businesses outside of AMP."

unknown.[42] Google's development of AMP illustrates how the dominant digital platforms' control of the technologies that publishers must use to reach audiences works to the competitive disadvantage of news providers, including local broadcast stations.

It is, furthermore, unsurprising that the giant digital companies may use their technological control to further their financial interests. Companies earning billions in advertising revenue have incentives to keep consumers engaged with their platforms, content and apps, thereby increasing their traffic and ad revenues. The power of the platforms, combined with their disincentive to promote the providers of other content including local news, results in unilateral decisions that have worked and continue to work to disfavor local media outlets trying to reach online audiences and compete for consumers' time and attention.

B. The Online Platforms' Advertising Limits and Policies Impede Stations' Ability to Effectively Monetize Content and Demonstrate the Platforms' Market Power

Beyond controlling the technologies that power content discovery, the giant digital platforms also control the technologies underlying online advertising and impose advertising policies that impair stations' ability to fully monetize their own content. Advertising on platforms such as YouTube and Facebook is strictly controlled through the platforms' monetization policies. NAB station members report that the determination of what content is eligible to be monetized, as well as revenue splits between the platform and the content owner, are determined *unilaterally* by the platform. This ability to impose the level of compensation that publishers receive clearly demonstrates that the platforms possess significant market power and undue bargaining power over content providers. With regard to local radio and TV stations specifically, the platforms' advertising policies can prove especially detrimental to local broadcasters compared to national sources and fail to provide the same opportunities that broadcasters have for monetizing content on their own websites.

One example of such an ad policy is the minimum content length to be eligible for monetization. Until very recently, Facebook required that videos be at least three minutes long to include advertising, while individual news stories are often less than three minutes. On June 30, Facebook announced that it is testing monetization opportunities for videos as short as 60 seconds, but these are limited to image ads or post-roll ads, which generate less revenue than the mid-roll ads available for longer-form content.[43] Facebook's policy – even assuming Facebook unilaterally determines to alter it – would still adversely impact local stations' monetization opportunities.

Another issue is the inability of broadcasters to sell their own ad inventory for their content placed on third-party platforms. When platforms sell ad inventory, they typically allow advertisers to select or exclude broad categories of content to run their ads against.

[42] Evaluating page experience for a better web, May 28, 2020, available at https://webmasters.googleblog.com/2020/05/evaluating-page-experience.html.

[43] https://www.facebook.com/creators/new-ways-to-monetize-on-facebook-instagram.

News publishers are bundled into a large “news” category that combines respected local broadcasters with clearly partisan and opinion pieces and even fictitious stories. NAB members state that this approach has a negative effect on ad rates for news content on YouTube compared to other categories of content that advertisers find less polarizing.

YouTube offers some more lucrative advertising options, but local broadcasters have generally been unable to avail themselves of these programs. One such program, called YouTube Select, is available to very large, “brand safe” publishers.[44] This invitation-only program does not appear to include local broadcasters. YouTube also offers some media companies the ability to sell their own ad inventories directly, but the criteria are opaque and the program is not available to all broadcasters, particularly those not owned by larger station groups or major networks.[45] Here again, the platforms’ unilaterally-set policies operate to the financial detriment of local TV and radio stations serving local communities.

Notably, the online platforms unilaterally decide the share of revenue to be retained by the platform versus the amounts passed on to the actual content providers, which, of course, bear all the expenses of producing the quality content that financially benefits the platforms. As a result of the platforms’ market power, local broadcasters see at best 55 percent of the revenue from video ads on YouTube,[46] and reportedly Facebook offers the same revenue share for in-stream ads.[47] This revenue split, coupled with the depression of revenue opportunities resulting from inclusion within an online news category encompassing unreliable “news” sources, results in limited revenue opportunities for broadcasters on these digital platforms.

Even those platforms such as Amazon Fire TV and Roku, which allow publishers to sell their own ad inventory, commonly require publishers to share a percentage of their ad inventory with the platform, in lieu of sharing their ad revenue.[48] This practice effectively forces publishers to surrender control of their own ad inventory to the platforms as a form of payment. Television broadcasters observe that, overall, the terms available on Roku are better for content creators than the terms on other large platforms, including Amazon Fire TV.

Significantly, much of the technology supporting online advertising is owned by the large platforms. Broadcasters and other publishers rely on the third-party technology platforms to manage and serve relevant ads, based on fees set by the platforms for those

---

[44] https://www.youtube.com/ads/youtube-select/.

[45] https://support.google.com/youtube/answer/7438625.

[46] https://adage.com/article/digital/youtube-ad-revenue-disclosed-google-first-time-topped-15-billion-2019/2233811.

[47] https://digiday.com/media/facebook-video-ad-breaks-creators/.

[48] *See* Roku advertising policy available at https://developer.roku.com/docs/features/monetization/video-advertisements.md (requiring that 30 percent of adv inventory be dedicated to Roku with Roku maintaining 100 percent of the revenue on that share). *See also* Amazon Fire TV advertising policy at https://developer.amazon.com/docs/policy-center/fire-tv-advertising.html (requiring that 30 percent of ad impressions be provided to Amazon with Amazon retaining all revenue from those impressions).

services. The proportion of online ad spending that goes to the tech and software intermediaries to execute advertising transactions is quite high according to estimates.[49] These fees are additional costs for local publishers struggling to recover the substantial expenses of producing news and other content relevant to local communities.

When considering the dominant role of the digital platforms in today's advertising and media landscape, it is no answer to tell broadcasters that, if they feel disadvantaged by the policies and opportunities offered by Google, YouTube, Facebook, Amazon and Apple, they can decline to publish their content on those platforms and forego availability on various apps or devices. Because millions of consumers of all ages use digital platforms and devices including smartphones, tablets and smart speakers, local broadcast stations in fact have no real choice. Broadcasters must be available on all major platforms and via all types of devices to remain relevant to audiences and advertisers in the digital age. As a result, local stations lack bargaining power when dealing with the digital giants that are effectively gatekeepers for content providers, including local media, seeking to reach online audiences. Unfortunately, as described above, these platforms' technologies and unilaterally-set policies hurt local providers of quality journalism and prevent stations from effectively monetizing their own content online. Receiving cents on the dollar does not enable TV and radio stations to recover the considerable costs of producing local content in the first place.

IV. Conclusion

At its core, radio and television broadcasting is about localism and serving American communities. Broadcasters take seriously our mandate to serve the public interest and provide viewers and listeners across America with the information and facts they need to be informed citizens. The value of broadcasting and local journalism in an increasingly digital world has never been more obvious; so too, the threat that the digital platforms' power poses to news publishing and the continued viability of local media outlets has never been greater.

The dominance of the leading digital platforms significantly and increasingly impairs TV and radio stations' ability to earn the ad revenues needed to support production of news and other locally-oriented content. Not only do stations struggle to attract advertisers, both on-air and online, while competing against digital giants that dwarf them in scale and scope, but those massive platforms' specific policies also impede broadcasters' and other media outlets' efforts to derive revenue from their content that consumers access via the platforms. Local journalism is now at risk due to the overwhelming competitive position of a handful of technology companies in today's digital marketplace.

NAB appreciates the opportunity to discuss these issues and looks forward to continuing to work with this Committee.

---

[49] *See* eMarketer, *eMarketer's New Ad Tech Tax Estimates Show One-Third of Spending Goes to Intermediaries* (Aug. 5, 2019), *available at* https://www.emarketer.com/content/emarketer-s-new-ad-tech-tax-estimates-show-one-third-of-spending-goes-to-intermediaries.

Attachment B

BIA ADVISORY SERVICES

Economic Impact of Big Tech Platforms on the Viability of Local Broadcast News

Contents

Contents i

Executive Summary ii

Introduction 1

Major Tech Platform Business Practices Harm Local Broadcasters 2

The Rise of the Tech Platforms is Hurting Local News Ecosystems 2

Sizing the Tech Platforms 4

Local Broadcast Digital News Content and Maintaining Viability 7

Tech Platform Terms to Broadcasters Often Are Not Negotiable 8

Focusing on Google and Facebook 9

Google 9

Facebook 11

Interviews with Local Broadcast Executives About Tech Platforms 12

Economic Model: Tech Platforms' Monetization of Broadcaster Content 14

Facebook News Feed Value Model 15

Google Search and Zero Click Value Model 17

Google Search Algorithm and Local News Weighting Value Model 18

Conclusions 20

Appendix A: Tech Platform Terms and Revenue Share Policies 23

Figures

Figure 1. Tech Platforms Market Cap and News Services 5

Tables

Table 1. Comparing Market Caps of Big Tech and Local TV Groups 5
Table 2. Estimation of Facebook Revenue from Broadcaster Content 15
Table 3. Estimation of Google Search Revenue from Broadcaster Content 17
Table 4. Estimation of Additional Revenue from Improvement in Google Algorithm Content 20
Table 5. Google Platform Services and Broadcaster Revenue Share 23
Table 6. Facebook Platforms and Broadcaster Revenue Share 24
Table 7. Apple Platforms and Broadcaster Revenue Share 24
Table 8. Amazon Platforms and Broadcaster Revenue Share 25

Executive Summary

Radio and television stations' local content – particularly news – provides great value for audiences on the major technology platforms. However, broadcasters are not fairly compensated for this valuable content because of the way the markets currently operate. The reason for that is simple – these tech platforms have substantial market power in their provision of services, and they use that power for advancing their own growth and benefit to the detriment of local broadcast journalism.

Local news produced by local broadcast stations continues to be the most trusted, highly consumed and valued news source. Local news is very costly to produce, and yet its consumption and the advertising dollars that support it are shifting to technology platforms where broadcasters cannot fully recoup their investment or earn the economic benefits they create for the platforms because of unequal bargaining power. This competitive imbalance puts a severe strain on the economics of local broadcasters and threatens their continued investment in local journalism.

- Based on our qualitative research interviewing broadcast group executives and our economic modeling of just a few high economic impact practices of the major tech platforms, we conclude:

    - **No Technology Platform Currently Offers a Viable Economic Model for Broadcast News:** There is no viable revenue model from the technology platforms that pays or enables broadcasters to earn equitable revenue, as shown in our economic models for Google Search and Facebook News Feeds, under their current practices.

    - **Algorithms Do Not Properly Weight Local Broadcast News Value:** The platforms exercise great control of content "reach" and how content is exposed and discovered. Unfortunately, this can result in amplifying misinformation and controversial content.

    - **Broadcast News is Not Properly Identified:** Homogenization in the presentation of broadcaster content is a core issue for stations. Broadcasters invest heavily in their local news brands only to see their premium content surface in search returns and news feeds alongside non-professional journalism, or worse, sites with disinformation.

    - **Under the Guise of User Privacy, Google Gains Even More Market Power:** While Google has recently sought praise for changing their user tracking practices, a deeper dive demonstrates that this is not as clear cut as it seems. Google has announced plans to restrict sharing data with third parties, including other advertisers. They do not intend to cut the use of their own data about consumers, however. This move will make them even more powerful in comparison, consolidating their dominance in interactive advertising to the detriment of broadcasters and other ad-dependent local media.

- **BIA's Economic Models Estimate Significant Loss for Broadcasters**

    - Based on BIA's economic models for the value that local broadcasters create for tech platform users but are not able to monetize themselves, examining just Google Search and Facebook News Feed, ***we estimate a total annual loss of value equal to $1.873 billion.***

    - Facebook News Feed lost value: $455 million with a range of between $325 million to $585 million.

    - Google Search – zero click lost value: $1,289 million with a range of between $921.1 million to $1,658 million.

    - Google Search – improper local news algorithm weighting: $128.6 million with a range of between $91.9 million to $183.8 million.

    - The immediate impacts on local broadcasters from other platforms, namely Apple and Amazon, are not yet as dire, but the potential for future harm is likely as these platforms also have immense market power.

Introduction

The rise of the major tech platforms has shifted the paradigm for how local audiences organize, discover and consume the local news they value. This shift creates a market distortion for broadcasters producing local news that limits their ability to fully capture the economic benefits of the content they provide to the tech platforms. Given the market power that these tech platforms enjoy, this creates a severe problem for local broadcasters and challenges the economic foundation for their continued provision of local news and information.

The Pew Research Center produces respected and authoritative trend studies of audience relationships with news media. A consistent finding is that local TV and radio stations remain leading sources of news for viewers and listeners.[1] Local audiences also trust local broadcast outlets more than any other platform. For example, a TVB-sponsored survey of registered voters in ten battleground states following the 2020 election found that 73 percent of respondents trusted local broadcast TV news, making it the most trusted news source, with only 33 percent saying they trusted social media.[2]

The economic structure of the media industry overall and in the distribution and consumption of local news specifically is being restructured with secular shifts by audiences towards more digital media consumption and by advertisers targeting their spending to reach local audiences. Local newspapers have been particularly hard hit with newspapers failing, cutting news staff and losing readership.

Nonetheless, nearly three-quarters (71 percent) of Americans think their "local news media do well financially" even though most do not pay for it themselves. This misperception has been damaging to the local news industry, especially for local newspapers. The tech platforms' negative impacts on journalism has now reached broadcasting, as the platforms leverage stations' premium news content without providing commensurate economic benefits that can help sustain local broadcast news.

Recent research from Pew shows that Americans increasingly prefer digital devices for getting their news.[3] Nearly nine in ten Americans (86 percent) get their news from "a smartphone, computer or tablet," as compared to 68 percent from TV and 50 percent from radio. Print trails at 32 percent. Advertising spending has followed news audiences from traditional to digital platforms.

According to BIA Advisory Services, in 2021 local TV and local radio stations will generate $15.7 billion and $12.6 billion respectively in advertising revenue.[4] However, mobile ($23.4 billion) and online ($23.3 billion) platforms collectively will generate over $46 billion in advertising spending targeting local audiences. The shift toward increased advertising spending on digital platforms will continue through 2024, according to BIA.

---

[1] https://www.journalism.org/2019/03/26/for-local-news-americans-embrace-digital-but-still-want-strong-community-connection/
[2] "The 2020 Voter Funnel Study," TVB, https://www.tvb.org/Public/Political/TheVoterFunnel.aspx. Press release issued December 8, 2020.
[3] https://www.pewresearch.org/fact-tank/2021/01/12/more-than-eight-in-ten-americans-get-news-from-digital-devices/
[4] http://www.biakelsey.com/bias-u-s-local-advertising-forecast-2021-reveals-little-growth-across-media-even-without-political-advertising/

Google (a unit of Alphabet), Facebook, Apple and Amazon are the largest tech platforms in terms of market capitalization and annual revenue. Beyond the economics, these tech platforms also have outsized roles in determining what connections are made between publisher content and audiences. The four leading tech platforms have substantial market power in the relationships they create and mediate between publishers and their audiences.

In this report, we focus on the value that radio and television broadcasters' news and other local content creates for audiences on these platforms that is not fully recognized due to the way these markets currently operate. The tech platforms have restructured the news ecosystem in ways that threaten the viability of local broadcast news.

Major Tech Platform Business Practices Harm Local Broadcasters

The primary goal of this research is to provide estimates of lost revenue or economic harm (direct and indirect) to broadcasters from the business practices of the major tech platform providers. Where feasible, we estimate direct and indirect monetary harm to local broadcasters from the platforms' practices.

The four major tech platforms we examine in this study are **Google** and **Facebook,** along with **Apple** and **Amazon,** because of their market dominance in setting the terms for distributing and monetizing digital content over the Internet.

The Rise of the Tech Platforms is Hurting Local News Ecosystems

Tech Platforms Create Marketplaces

Tech platforms create economic value for producers and consumers by hosting and supporting a distribution pipeline in a two-sided marketplace. At their best, tech platforms bring efficiency and support value creation for both producers and consumers while providing a neutral transactional venue. However, the current tech platforms have created a less than ideal environment for promoting competition or enhancing consumer value.

To get a sense for how tech platforms operate, consider this conclusion based on the Geoffrey Parker et al. study of network effects and the rise of the tech platforms, Platform Revolution[5]:

> *When platforms grow big enough, they have the potential to cease being mere participants – serving to match existing supply with existing demand – and actually begin manipulating individual users and even entire markets through their great size and reach.*[6]

[5] Geoffrey G. Parker, et al., *Platform Revolution: How Networked Markets are Transforming the Economy and How to Make Them Work for You.* W.W. Norton & Company. 2016, page 5.
[6] Parker et al., *Platform Revolution*, page 251.

How Tech Platforms Hurt Competition

What has transpired with the four tech platforms considered in this study – Google, Facebook, Apple and Amazon – is that they have become more than neutral platforms and distribution pipelines. They have grown beyond their roles of "enabling value-creating interactions between *external producers* and consumers"[7] by becoming their own *internal producers*.

This changing role enables the tech platforms to increase their own value by controlling participants in their platform marketplaces where they control the governance and resulting value creation and capture in ways opaque and harmful to external producers. More specifically, the tech platforms enable and compete with other producers for audience and advertising dollars and do so based on terms they create to favor themselves, such as with their use of local broadcasters' news content. In short, the tech platforms are using unfair data and technology advantages from their own platforms to outcompete the other players they host on their platforms, including local TV and radio stations.

The big tech platforms essentially have restructured the media and news functions in society. They have hit local broadcasting where it hurts most, in its ability to produce and serve audiences with quality journalism and generate advertising revenue to maintain viability and competitiveness in the market.

The Tow Center for Digital Journalism issued results from its continuing research into the evolving relationship between news publishers and the tech platforms. Publishers need the tech platforms to get to market. The tech platforms need the quality journalism provided by publishers to attract and engage users to their platforms and services.

The Tow Center's report, FRIEND & FOE: The Platform Press at the Heart of Journalism concluded that: "This evolving publisher-platform partnership is unequal, however.[8] Platforms wield more power over formats and data and earn significantly more advertising dollars in aggregate than publishers, even as platform choices increasingly inform publishers' editorial strategies, distribution strategies and workflows."

Advertising revenue is the lifeblood of local broadcasting and supports local news production, both on-air and in digital forms. The pandemic accelerated an already growing trend towards more advertising on digital platforms, with over half of all U.S. ad spending being spent on digital ads in 2020 (and with nearly two-thirds of all digital advertising dollars being spent on Google, Facebook and Amazon alone).[9]

According to the *Wall Street Journal,* this milestone is "just the latest proof of digital advertising's meteoric rise, a development that has concentrated ad spending with several tech giants at the expense of other platforms, including newspapers, local television and magazines.[10] And an analysis by major ad agency GroupM similarly concluded that, "The growth in online advertising last year came as every other kind of ad spending shrank, with double-digit declines in television, newspapers and billboards.

[7] Parker et al*., Platform Revolution*, page 5.
[8] https://academiccommons.columbia.edu/doi/10.7916/d8-15pq-x415
[9] https://www.wsj.com/articles/google-facebook-and-amazon-gain-as-coronavirus-reshapes-ad-spending-11606831201.
[10] Google, Facebook and Amazon Gain as Coronavirus Reshapes Ad Spending," *Wall Street Journal*, December 1, 2020. https://www.wsj.com/articles/google-facebook-and-amazon-gain-as-coronavirus-reshapes-ad-spending-11606831201.

And those online gains flowed heavily to the tech giants rather than to digital media sites and publishers that sell online ads."[11]

The *Wall Street Journal* also has noted that the "Internet platforms have long been interested in news as a way to engage users,"[12] but have been less eager, especially in the absence of regulatory pressure, to compensate news publishers for using their content. The platforms' use of broadcasters' and other local media's news content is in fact disrupting the provision of local news and information. Market disruptions in local journalism can have outsized consequences for American society and democracy.

This all adds up to an urgent problem for policymakers to consider as they weigh the paradigm shifts in the local news ecosystem and its ability to continue producing and distributing highly valued content.[13]

Sizing the Tech Platforms

Of the four tech platforms we studied, only Facebook falls just short of reaching a trillion-dollar market capitalization (Figure 1). Each company has its core strength: Google in search, Facebook in social, Apple in devices and apps, and Amazon in ecommerce and video.

The most recent earnings reports from these companies boasted revenue, growth and profit numbers that greatly exceeded Wall Street's expectations, leading one media business report to conclude that the "tech giants show no sign of slowing down."[14]

By comparison, the local broadcast industry is much smaller than the four big tech platforms. When comparing these platform companies to four of the largest pure-play local TV groups in terms of market cap (April 30, 2021 market close) we can see the figures and comparative bubble chart in Table 1.

For the bubble chart, ***the combined market cap of these four TV groups is the size of the period at the end of this sentence and does not even appear in the data plot.***

[11] https://www.wsj.com/articles/how-covid-19-supercharged-the-advertising-triopoly-of-google-facebook-and-amazon-11616163738.

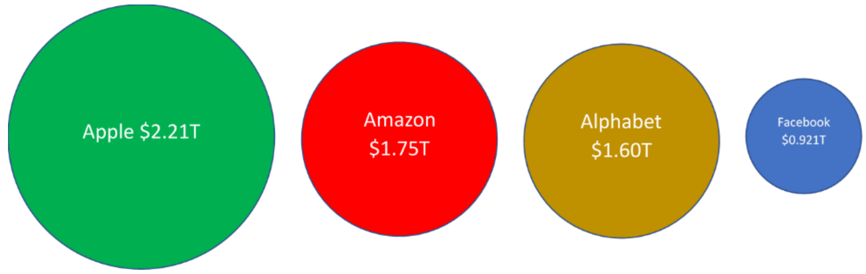
[12] "Google, Facebook, Amazon, Apple and Microsoft. Call Them Tech Frenemies for Life." Wall Street Journal, April 1, 2021. https://www.wsj.com/articles/tech-giants-cooperate-while-competing-frenemies-for-life-11617293819.

[13] For example, a 2018 Notre Dame-UIC study examined the relationship between the loss of print news and municipal bond ratings, due in part to lack of coverage and exposure of local government inefficiencies.

[14] Sara Fisher, "Tech Giants Show No Sign of Slowing Down," Axios, April 30, 2021. https://www.axios.com/big-tech-earnings-apple-facebook-microsoft-amazon-4f0c98fd-28ab-497a-91f8-bdc61fb6c3de.html?utm_source=newsletter&utm_medium=email&utm_campaign=newsletter_axioslogin&stream=top.

Table 1. Comparing Market Caps of Big Tech and Local TV Groups

Company	**Market Cap ($Billion)**
Google	$1,595,552
Facebook	$923,772
Amazon	$1,747,984
Apple	$2,206,963
Nexstar	$6,395
TEGNA	$4,425
Gray TV	$1,927
Sinclair	$2,402



Source: BIA Advisory Services and market caps as of market closing on April 30, 2021.

In search of higher user satisfaction and engagement, and revenue growth from ad-supported and premium digital news services, each of these tech platforms has become a significant player in the digital news ecosystem.

Existing news publishers, including local broadcasters, have been forced by practical circumstances to adapt to the business models used by the tech platforms due to the market power of these platforms. The platforms are simply too big to just walk away from or try to ignore. These business models are changing the face and the economics of the digital news marketplace. For broadcasters, the tech platforms' reshaping of the news marketplace imposes hefty penalties that impedes their abilities to produce high quality local news.

Figure 1. Tech Platforms Market Cap and News Services

Google	Facebook	Apple	amazon
Mkt Cap: $1.60T 28.9% digital ad share News Services: -Google Search -Google News -YouTube -News Initiative -Play Store	Mkt Cap: $923B 25.2% digital ad share News Services: -News Feed -Instant Articles -Facebook News -Facebook Live	Mkt Cap: $2.21T News Services: -App Store -Apple News -Apple News Plus	Mkt Cap: $1.75T 10.3% digital ad share News Services: -Amazon News -Fire TV News -Appstore for Android

Sources: BIA compilations, digital ad shares from eMarketer, April 2021. Market caps are as of 4/30/2021.

These tech platforms also play both sides. The operate as massive gateway *platforms* hosting two-sided markets for content discovery and distribution, and they operate as *participant* publishers with their own aggregations of third-party content.

For broadcasters seeking to reach and serve audiences in the digital domain, agreeing to terms to distribute and monetize premium broadcast news content across these platforms is a business necessity.

Each of the major tech platforms has its own business models for dealing with broadcasters and their news content. In each case, the primary path to monetization for broadcasters is generating referred traffic to their websites and apps where they can serve ads. Some of that advertising revenue could be shared between broadcasters and the tech platforms according to varying, often complicated and typically non-negotiable terms.

For example, broadcasters can directly sell ads on their websites and keep 100 percent of the gross revenue but must pay ad tech fees from those proceeds. If broadcasters have ad inventory sold on Google AdX ad exchange, Google keeps 10 percent of the gross revenue in addition to the ad tech fee for platform services.

An analysis of Google ad tech fees across its ad platforms including DV360, Google Ads and Google Ad Manager concluded that, "When an advertiser's $1 in media spend starts and ends with Google, publishers receive 69 percent of every dollar. Google takes the other 31 percent, according to 2019 aggregate data…The ad network charges advertisers on a cost-per-outcome basis but pays publishers on a CPM basis, so the average varies."[15]

During 2020, the key impact year of the pandemic and a major political election year, news consumption rose dramatically. According to research from the Pew Research Center, 18 percent of U.S. adults said the "most common way they get their political and election news" is from social media such as Facebook and YouTube, compared to 16 percent for local TV and 8 percent for radio.[16] A quarter (25 percent) of U.S. adults got their political and election news most commonly from news websites or apps.

The tech platforms including Facebook and Google's YouTube do not produce local news, but they do serve vital market functions in the discovery and distribution of news content served to their audiences along with revenue producing ads they sell.

When considering the value of broadcast news content to the tech platforms and their users, quality matters significantly, and broadcasters adhere to high standards of journalistic integrity. This quality in broadcast news content results in value creation for the tech platforms that is not fully captured in user traffic and advertising metrics.

Broadcasters and other news publishers go to great lengths to produce premium quality news content. Further, original reporting often comes at great peril to the physical well-being of reporters. According to recent research from the Radio Television Digital News Association, "20% of television news directors said that their employees experienced attacks in 2020. 86% of these directors said that they had taken

[15] https://www.adexchanger.com/platforms/google-opens-its-black-box-and-shares-fees-across-dv360-google-ads-and-google-ad-manager/.
[16] https://www.journalism.org/2021/02/22/americans-who-mainly-got-news-via-social-media-knew-less-about-politics-and-current-events-heard-more-about-some-unproven-stories/

steps to protect employees, including purchasing bulletproof vests and gas masks and sending security teams with reporters."[17]

Recently, there has been much consideration of these tech platforms and local news issues around the world. The U.S. can learn from these initiatives. For example, the Digital Platforms Inquiry report from the Australian Competition and Consumer Commission (ACCC) highlighted that, "The content produced by news media businesses is also important to digital platforms.[18] For example, between 8 and 14 per cent of Google search results trigger a 'Top Stories' result, which typically includes reports from news media websites including niche publications or blogs."

With such broad use of tech platforms' social media, news sites and apps, broadcasters cannot rely solely on their over-the-air platforms for providing news to their audiences. They must go to where audiences are and provide digital news services. And to get the broadest distribution and largest opportunities to monetize their news content, broadcasters must come to terms with the tech platforms to access their user bases.

Tech platforms offer both vital distribution scale and monetization options for broadcasters seeking to serve audiences and recoup their deep investments in high quality journalism. Because of the terms with which they must comply, and how frequently those terms change, broadcasters often feel their ROI (return on investment) from their collaborations with tech platforms does not reflect their true value to users.

Local Broadcast Digital News Content and Maintaining Viability

Broadcasters make their ad-supported digital news content available for free to audiences who visit their stations' websites or use their mobile applications (apps). These websites and mobile apps often are referred to as owned and operated (O&O) digital assets, as they are under the direct control of the stations. The ad revenue local broadcasters can achieve for their digital news content is critical to the viability of these services.

Local broadcasters offer premium content, and when audiences opt in through broadcast news websites and mobile apps, the content and ads can be tailored more appropriately. Broadcasters also publish their proprietary content on third-party websites and apps including Google Accelerated Mobile Pages (AMP), Facebook sponsored pages, Facebook Instant Articles, Amazon Fire News and Apple News.

Stations' digital news content includes video, audio and text. The digital news may have been broadcast in whole or part over the stations' airwaves. In some cases, the digital news content may be unique to digital distribution channels as more broadcast news operations adopt "digital first" news strategies for best serving the needs of their audiences.

---

[17] https://www.poynter.org/business-work/2021/1-in-5-local-tv-stations-reports-attacks-on-journalists-in-2020-survey-finds/
[18] https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf

Tech Platform Terms to Broadcasters Often Are Not Negotiable

To do business with the tech platforms and the range of services they offer on their platforms, broadcasters must comply with a myriad of terms before they can distribute their local news products. The tech platforms have a collection of services that broadcasters may opt into. Some of these services offer revenue share opportunities. Each service has a set of terms and conditions with which broadcasters must comply.

The range and diversity of tech platform services and associated terms, conditions and business models are both complicated and evolving. We summarize a range of platform services, terms and revenue sharing available to publishers including local broadcasters in Appendix A: Tech Platform Terms and Revenue Share Policies.

Broadcasters have three basic models to develop paths to revenue for their news content with the tech platforms: distribution agreements or licensing, subscription and advertising.

- *Distribution Agreements*: The Amazon news app on Fire TV is an example of a distribution agreement this tech platform has with several major TV groups. Google recently announced $1 billion in distribution deals with over 600 publishers globally to be part of their Google News Showcase platform.[19]
- *Paid Subscriptions*: Apple News Plus and Google News are examples of how news publishers can collaborate with the tech platform to monetize content via paid subscriptions from which there is a revenue share between the platforms and publishers. For example, Apple News Plus typically shares 70 percent of subscription revenue with news publishers but in some cases that rises to 85 percent.
- *Direct Sold and Remnant Ad Inventory*: The third content revenue model is monetization via advertising. "Ad inventory" basically refers to some measure of user traffic or engagement associated with publisher content. For example, using a cost per thousand (CPM) model, publishers charge for ads based on the thousands of user impressions they deliver to an ad buyer. If a publisher charges a $10.00 CPM, every time they deliver 1,000 impressions to an advertiser, they earn $10.00. In other ad models the currency metric could be Click-Through Rate (CTR), Call-To-Action (CTA), or several other options. For CPM models, ad buyers are charged for impressions served to the user on their screen. For CTR, the user must click on the ad for the publisher to earn revenue. And for CTA, the user must do something, such as fill out a form, for the publisher to generate revenue. Publishers generate ad revenue from their digital news assets (websites and mobile apps) either by directly selling that ad inventory with their own efforts or allowing the tech platforms to fill publishers' remnant (i.e., unsold) ad inventory with their programmatic exchanges.

In addition to revenue-sharing terms with the tech platforms, as we highlight below, news publishers must agree to a range of terms including journalistic content policies; formatting requirements for news and ad content; and producing or hosting content on the tech platform servers versus publisher services

[19] https://brandequity.economictimes.indiatimes.com/news/digital/google-says-not-up-to-us-to-dictate-how-news-companies-spend-its-1-billion/81814988

for superior user experiences in faster content loading and rendering, particularly for mobile users (e.g., Google AMP and Facebook Instant Articles). In some cases the tech platform terms demand that the broadcaster use that tech platform's ad server. These terms are take it or leave it with no negotiation, where the broadcaster only has the option of "click to accept" on a standardized publisher agreement.

Focusing on Google and Facebook

At this writing, Google and Facebook are the most consequential of the big four tech platforms for assessing the continued viability of local broadcast news in today's digital environment. Based on BIA's broadcast group executive interviews, it quickly became clear that Google and Facebook occupy much of these executives' current focus in terms of producing and monetizing their digital news content. Thus, for our purposes of investigating how major tech platforms are disrupting the local news ecosystem and distorting how local broadcasters create value versus their ability to monetize that value and maintain on-going viable news operations, focusing on Google and Facebook is a priority.

It is also clear, particularly with recent initiatives such as Apple News, Apples News Plus and Amazon's Fire TV News platforms, that Amazon and Apple will have increasingly strong impacts on the economics of local broadcast journalism in the near future.

Apple News and the Apple Search Ads (ASA) platforms will see strong growth, according to equity analyst firm Cowen & Company. Cowen concludes, "Apple News+ had about 11 million paid subscribers in 2020, generating revenue of about $550 million."[20] Going forward, Sankar believes that "Apple News+ could reach 19 million subscribers by 2023. That could rake in $1.14 billion in subscription revenue and $1.02 billion in digital ad revenue from ad impressions, resulting in a total of $2.2 billion.[21]

Sandeep Gupta, vice president of Amazon Fire TV, recently said, "Adding access to local news is the latest step in our commitment to helping our customers stay informed. We've been amazed by the popularity of Amazon's news app and view local news as the next indispensable piece for our customers."[22] As of March 18, 2021, Fire TV provided local news from 88 markets based on distribution agreements with leading local TV station groups.[23]

Google

Google is a dominant actor in the digital advertising market at all levels including participating in the demand, supply and content aggregation components of the ecosystem. Google's primary revenue comes from Search and Display advertising networks.

---

[20] https://appleinsider.com/articles/21/04/06/apple-news-could-reach-19m-subscribers-22b-in-revenue-by-2023-analyst-says
[21] https://appleinsider.com/articles/21/04/06/apple-news-could-reach-19m-subscribers-22b-in-revenue-by-2023-analyst-says
[22] https://mspoweruser.com/amazon-local-news-channels-to-news-app-on-fire-tv/
[23] https://www.theverge.com/2021/3/18/22337922/amazon-fire-tv-free-local-news-streaming-app

Google operates on both the “buy-side” and “sell-side” of the advertising market. Given its buy-side and sell-side data, or what is called in the industry “bidstream data,” Google has the means, motive, and opportunity to manipulate ad bid pricing. Bidstream data is used by ad buyers and sellers to negotiate and settle on terms in real-time auctions using Google and other ad platforms.

Given the outsized role of Google’s advertising platforms, broadcasters must source demand for their ad inventory through Google’s ad platforms or risk their access to a huge source of demand and resulting substantial loss of revenue. In other words, if broadcasters do not expose their ad inventory on the Google ad exchange, they will miss access to a significant number of advertisers (i.e., Supply Side Platform – SSP) demand and likely receive lower prices for their ads. Nexstar’s experience as reported in the Wall Street Journal highlighted what happens when broadcasters opt out of participating in Google’s AdX – an immediate and severe revenue decline.[24]

Another way Google can punish publishers is by ranking them lower in search results. As reported by the Wall Street Journal, a recent antitrust suit by the Daily Mail against Google’s parent (Alphabet) alleges that “the tech giant manipulates search results and advertising auctions in ways that harm online publishers…Google punishes publishers in search rankings if they don’t sell enough advertising space through Google’s marketplace.”[25]

In an antitrust suit filed by Texas against Google, it was alleged that “Google used its access to data from publishers’ ad servers—where more than 90% of large publishers use Google to sell their digital ad space—to guide advertisers toward the price they would have to bid to secure an ad placement.”[26] The complaint concluded that Texas charges Google’s “Project Bernanke” allowed it to “unfairly compete against rival ad-buying tools and *pay publishers less on its winning bids for ad inventory*.”[27]

For broadcasters to have their content discovered, the Google search platform is unquestionably where their digital news must be accessible and prioritized in Search Engine Results Pages (SERPs). Once users click on a link in a search return that brings them to the broadcaster’s site, broadcasters can place display ads in their news content which they may sell through Google’s ad exchange.

The three major Google programs for publishers are Ad Manager, AdSense and AdMob. Details for each program can be found here.[28]

Here is a summary of how Google describes each solution:

- **AdSense**: “AdSense acts as an ad network, providing you access to demand from advertisers and helping you set up your ad inventory. AdSense is best for publishers who want more automation for their ad solutions, and have a small, dedicated ad management team.”

---

[24] https://www.wsj.com/articles/how-google-edged-out-rivals-and-built-the-worlds-dominant-ad-machine-a-visual-guide-11573142071?mod=article_inline
[25] https://www.wsj.com/articles/daily-mail-owner-files-antitrust-suit-against-google-11618925778
[26] https://www.wsj.com/articles/googles-secret-project-bernanke-revealed-in-texas-antitrust-case-11618097760
[27] https://www.wsj.com/articles/googles-secret-project-bernanke-revealed-in-texas-antitrust-case-11618097760
[28] https://support.google.com/admanager/answer/9234653

- **AdMob**: "AdMob is a mobile ad network and monetization platform for mobile developers who want to earn money from ads, gain actionable insights, and grow their app business. As a network, AdMob allows you to monetize your mobile apps by helping you serve ads globally. As a monetization platform for developers who work with multiple ad networks, AdMob helps you maximize ad revenue across all of your third-party network partners."
- **Ad Manager**: "Google Ad Manager is an ad management platform for large publishers who have significant direct sales. Ad Manager provides granular controls and supports multiple ad exchanges and networks, including AdSense, Ad Exchange, third-party networks, and third-party exchanges."

Beyond these advertising revenue terms and policies, broadcasters collaborating with Google must agree to other terms as publishers including:

- Google News Policies[29] speaks to how Google strives "to make it easy for users to find news from publishers that consistently produce independent and original work, containing a significant source of fresh, original and purposeful content." Publishers are referred to Google's Webmaster Guidelines[30] and other news policies with which they must comply to be on Google's news platforms and surfaces.
- Google for Publishers[31] provides an overview for how publishers can earn money from their online content. The programs include AdSense, Google Ad Manager and AdMob.
- Another document for publishers is Google's Understand the Google Publisher Policies and Google Publisher Restrictions.[32] This document covers Google's publisher policies and restrictions, including advertising program policies for its AdSense product.
- Google AMP[33] is a Google component framework to which broadcasters can create content according to AMP specifications for hosting on Google's servers. The benefit is much faster rendering of content and AMP-specific features in search results, such as higher ratings in mobile SERPs. But broadcasters lose the direct relationship with the news consumer they would have when hosting their own sites, and instead give that over to Google.

Facebook

Facebook is by far the dominant social platform in the U.S., accounting for two-thirds (65.84 percent) of social media traffic before including its other properties such as Instagram.[34] This rises to 70.74 percent of social media traffic on smartphones. Most users access Facebook from their mobile devices, and mobile advertising sales are Facebook's dominant revenue engine.

---

[29] https://support.google.com/news/publisher-center/answer/6204050?hl=en
[30] https://developers.google.com/search/docs/advanced/guidelines/webmaster-guidelines?visit_id=637535738292957499-2217624352&rd=1
[31] https://www.google.com/ads/publisher/
[32] https://support.google.com/adsense/answer/10008391?hl=en
[33] https://developers.google.com/amp
[34] https://gs.statcounter.com/social-media-stats/all/united-states-of-america

Facebook has two monetization platforms: (1) selling ads served in their own News Feeds and other services they offer and (2) sourcing demand from third-parties and placing Facebook ads into those websites and apps via the Facebook Audience Network.

To gain access to the Facebook platform services, broadcast partners must comply with Facebook Monetization Policies[35] and Content Monetization Policies.[36]

The Facebook Audience Network is the dominant social advertising platform for accessing advertising spending on both Facebook's own feeds and in third-party websites and apps looking to sell ads through Facebook's ad exchange. As Facebook describes this platform service, "Audience Network extends Facebook's people-based advertising beyond the Facebook platform. With Audience Network, publishers can make money by showing ads from Facebook advertisers in their apps." The Facebook Audience Network terms for publishers are presented here.[37]

Based on our executive interviews with broadcasters, other Facebook distribution opportunities such as Instant Articles and Facebook News are not popular because broadcasters cannot see a viable path forward for their news business models.

Interviews with Local Broadcast Executives About Tech Platforms

Before presenting our estimates of the economic harm to broadcasters due to the market power of the tech platforms, it is important to review the circumstances broadcasters face when dealing with these platforms. Through numerous interviews with broadcasters specifically involved in the delivery and monetization of their digital content, we were able to determine some of the key issues they face.

Here is a summary of representative comments we obtained in our executive interviews across several topic areas.

Tech Platforms Terms – Fair Market and Negotiability

- **Fair Market and Negotiability:** "Here's the high-level point. The vast majority of our interaction with the tech platforms is whether or not to click on a checkbox on a page. There is no paper between us and Google. Just a click on some dashboard that gives Google the right to use our content."
- **Platforms Dominate in Scale and Scope, Broadcasters Must Play:** "Google is so integrated, they have it all. We can't afford not doing business with them." One digital broadcast executive called out that Google has Google News, YouTube and a programmatic ad business that runs on both the DSP (Demand Side Platform) and SSP (Supply Side Platform), all at massive scale.
- **Platforms' Attitude Is that Broadcasters Do Not Matter, Users Do:** "The only way for broadcasters to work with Facebook and Google is with government action. Broadcasters do not matter to Google and Facebook."

---

[35] https://www.facebook.com/business/help/169845596919485?id=2520940424820218
[36] https://www.facebook.com/business/help/1348682518563619?id=2520940424820218
[37] https://www.facebook.com/ads/manage/audience_network/publisher_tos/

- **Broadcasters Have Trouble Getting Heard by Tech Platforms:** A major group digital leader pointed out that while groups and their local stations are major players in the media ecosystem, they are like mom-and-pop businesses to the tech platforms. Even top broadcast groups do not seem to be big enough to warrant serious attention.
- **Platform Terms Are a Mixed Bag:** Given the scale at which the platforms operate in terms of generating referred audience traffic and ad revenue, all the broadcasters we interviewed concluded that to remain competitive in the marketplace, they had to accept the terms offered by the platforms. Broadcasters must enter deals with the platforms to achieve audience development goals and remain viable as local news operations. Referred traffic from Google and Facebook can often reach 50 percent or more of total traffic to broadcast sites and apps.
- **Appeals Process Is Unilateral and Not Transparent**: Platform terms and conditions are complicated, changing and violations can be immediate and harsh. Broadcast executives told us that their stations sometimes get flagged and penalized by the platforms. The ability to appeal is going to a web page and completing a form. There is no negotiation or understanding of exceptions.
- **Platform Terms Create Higher Cost Structures for Broadcasters**: The terms set forth by the tech platforms to broadcasters include content rendering and hosting, ownership and access to key data, programmatic ad exchanges and pricing, policies related to acceptable editorial and advertising content, and a variety of other special terms and conditions.
- **Algorithms Are Complex, Opaque, Change Constantly and Can Cause Negative Value Impacts:** "Algorithms are black boxes and changes are not communicated to us but often have negative consequences." "Algorithm changes lead to less referral traffic for us. That means less targetable impressions, less to sell and we become less competitive." Broadcasters are forced to live and die by algorithms they cannot see or influence.

Tech Platform Versus Broadcaster Valuation Metrics and Performance

- **We Only Make Money from Links Back to Our Sites, Not the Platforms:** "Our number one grievance is that we are getting paid only for links to our sites and apps where we can serve ads. We don't get fair credit for the value we create for the platforms."
- **Zero Clicks Mean Platforms Get Value but Broadcasters Do Not:** Often a Google search return or a Facebook shared link can contain enough content from a broadcast news item that the user feels adequately informed by the search return or social post without clicking through to the station's web site or mobile app where that user could be served ads and monetized. This phenomenon is known in the industry as "zero click."
- **Facebook Click-Through-Rate:** "We went through a third-party vendor to analyze link clicks from Facebook. We looked only at Linked Posts. Based on 1-month of data, the assumed CTR came out to be 3.5 percent." This means that most of the broadcaster content appearing in Facebook News Feeds has no chance of being monetized even though users find local news to be valuable.
- **Video Has High Value but No Monetization:** "We have to have video to get ranked high. But the monetization for our most valuable content isn't there." "We put video on Facebook. We have to or lose rank. But there is no monetization for us."

- **Video Publishers Are Not Making Money with the Platforms:** Under non-disclosure, BIA was informed that a major consulting firm was hired to meet with publishers to analyze relationships and economics with one of the major video platforms. Confirming the publishers' suspicion, the study concluded it was a losing proposition to produce and try to monetize video on the tech platform. Not one of the publishers was earning a profit given the expenses required to participate.
- **Broadcast News Providers Are Key Part to the Digital Ecosystem:** "We are digital news providers - a key part of the digital ecosystem. We create awareness but don't get the benefit. Google and Facebook do. We might be the news source, but the traffic flows to Google and Facebook."
- **Local Broadcasters Enhance Value of Tech Platforms with Local News:** "We are a premium local news publisher bringing reliable and reputable news. We are a trusted brand in the community. That brand helps build value for the tech platforms."
- **Does Facebook Know We Are a TV News Station?** "We're trying to find out if Facebook knows, and appropriately ranks, content from our stations when they use branding other than their call letters."
- **Broadcasters Need Google AdX to Create Ad Inventory Value on Their Own Sites and Apps:** Google's Ad Exchange (AdX) is a predominant advertising marketplace where digital ad inventory is bought and sold and creates demand and sets pricing for third-party sites.
- **Facebook Instant Articles, News Tab Have Low Value to Broadcasters:** "Most of our stations don't do Instant Articles. It's extra work and the costs aren't worth it." "No one uses the Facebook News Tab. It's a waste of our time. It's the News Feed that gets all the use." "Facebook is a lost cause for us, just wasted effort. We spent a lot of time analyzing data and trying to figure out the algorithm."
- **We Make No Money on Apple:** "For Apple, we make no money. We get no referrals. We get no data from the App Store." "A lot of stations do development with Apple but for no return. Apple doesn't see the value." "Apple News is minimal. We're not doing anything." "I tell my local stations to do nothing with Apple News. Nothing there for us, they get all the value."
- **Amazon Alexa Can't Be Monetized:** "We can't monetize Alexa. We build apps for smart speakers but there's no revenue."

Economic Model: Tech Platforms' Monetization of Broadcaster Content

As part of the value-producing ecosystem of these platforms, broadcasters provide news and information content to platform users typically in the form of search results (Search Engine Results Pages – SERPs) in Google's case and links provided in Facebook's News Feeds.

The core value of this content is it enables the tech platforms provide relevant and timely information to their users using artificial intelligence, machine learning and data science. This content is prioritized and selectively served to users based on highly complex and constantly changing proprietary and opaque algorithms.

The tech platforms surface relevant information to users with brief content summaries and links to deeper content either on their own assets (i.e., Google AMP, Facebook Instant Pages) or via external referral links to third-party sites such as those operated by broadcasters. When users click on these external links and land on broadcasters' websites and apps, broadcasters benefit from generating advertising revenue from these user sessions.

Unfortunately, the CTRs are not high, as many users find the information provided with the links on these platforms sufficient. Hence, almost all the value and revenue generated from this broadcaster content on these tech platforms is not realized by broadcasters, but is retained by the platforms.

Data obtained from several top broadcast groups, along with other publicly available information, enables us to estimate the amount of revenue generated by these tech platforms from this broadcaster content. In the models that follow some numbers are rounded.

We then analyzed a reasonable payment to the broadcasters for this content, depending on the appropriate allocation between the tech platforms and the originator of that content (i.e., the broadcasters).

Facebook News Feed Value Model

- Facebook utilizes the content from local broadcasters through its News Feed service. Links to the broadcaster websites include information that the broadcaster has created on local news items. Facebook sells advertising accompanying that news feed that includes that broadcaster content.
- To estimate the amount of advertising revenue, we obtained information from several of the top broadcast groups as to the number of times their content is seen on Facebook and the number of times that Facebook users click through to the stations' websites and apps. Along with publicly available information on the rates that Facebook charges, we can estimate an appropriate amount that Facebook should be paying broadcasters for their content which generates revenues for Facebook. That model is shown in the table below.

Table 2. Estimation of Facebook Revenue from Broadcaster Content

Facebook Model Steps	
1. Station Monthly Impressions from Facebook per Person 18+	0.5138
2. Assumed CTR from Facebook	3.5%
3. Monthly Facebook Impressions Just Reading User Feed Content per Person 18+	14.17
4. Average Facebook CPM	$ 8.85
5. Average Number of Posts in News Feed Between Sponsored Posts	3
6. Facebook Monthly Revenue from Station Content in News Feed per Person 18+	$ 0.04
7. Facebook Yearly Revenue from Station Content in News Feed per Person 18+	$ 0.50
8. Number of News Producing TV and radio stations Per Market	5
9. Total 18+ Population	259,249
10. Facebook Yearly Revenue from Station Content in News Feed ($000s)	$ 650,000
11. Distribution of Attributable News Feed Revenue to Stations	70%
12. Missing payment for News Feed Content to Stations ($000s)	$ 455,000

Explanation of Facebook Model by Step:

1. Using the actual number of impressions various broadcasters receive from Facebook reported to us, we estimate the number of impressions per month for the 18 and older populations served by these broadcasters.
2. This Click-Through-Rate (CTR) was provided by the broadcasters and was quite similar between the various broadcasters that provided us with information.
3. This number of impressions are the estimated number of News Feed impressions from broadcasters that the user did NOT click through to the station website (Step 1 divided by Step 2 minus Step 1).
4. This is the average for Facebook CPMs across the four quarters of 2019. (Source: "Paid Media Q1 2021 Benchmark Report," ADStage, p.7).
5. This is an average number of posts between sponsored posts in the News Feed.
6. This is a calculated value of the monthly revenue that Facebook is generating from the broadcaster content included in the News Feed that the user does NOT click through to the stations' websites. (Step 3 is multiplied by Step 4, divided by 1,000, and then divided by Step 5).
7. This is a calculated value of the annual revenue that Facebook is generating from the broadcaster content included in the News Feed that the user does not click through to the stations' websites. (Step 6 is multiplied by 12).
8. This is the number of local TV stations within each market providing news content. This varies by market (e.g., large markets have more than 5 stations, smaller markets have less than 5) and includes the local television stations with news operations as well as the local radio stations airing news,[38] talk,[39] and sports[40] and other formats that include local news and information.
9. Total 18+ Population for 2019. (Source: Woods Poole Economics).
10. This is a calculated amount of the estimated annual amount that Facebook is generating from the broadcasters' content included in the News Feed that the users do NOT click through to the stations' websites. (Step 7 is multiplied by Step 8 multiplied by Step 9).
11. Assumed distribution between Facebook and broadcasters for the revenues generated by Facebook from broadcaster content.
12. This is a calculated amount of the amount that Facebook would remit to broadcasters for the use of their content. (Step 10 is multiplied by Step 11).

As shown in the model above, Facebook generates a considerable amount of user value and revenue from the content that broadcasters provide. The exact amount of revenue depends on the number of factors mentioned above (e.g., number of posts between sponsored posts in the News Feed, share of revenue distribution between Facebook and the broadcasters, etc.). Changing some of those inputs leads to a range of between $325 million to $585 million, with the $455 million shown above in the middle of that range.

---

[38] According to BIA's Media Access Pro database of all radio stations, there are 929 radio stations airing news programming in the U.S.
[39] According to BIA's Media Access Pro database of all radio stations, there are 316 radio stations airing a talk format.
[40] According to BIA's Media Access Pro database of all radio stations, there are 686 radio stations airing a Sports format in the U.S.

Google Search and Zero Click Value Model

Google Search is another important platform which utilizes broadcaster content. Much like Facebook's News Feed, broadcaster content appears with short summaries in Google search results. These summaries provide substantial value for users looking for relevant search returns to the point that many do not click through to the stations' websites as a result.

In the search industry, this phenomenon of Google search returns providing enough information so that users do not click through are called, "Zero Click" searches. According to one study by SimilarWeb in 2020, two-thirds (64.82 percent) of Google searches were zero click searches, i.e., a search that "ended without a click to another web property."

As SimilarWeb concludes, "Zero-click searches may mean that users' queries are resolved right on the results page. By displaying ads or its own products, Google can extract value from zero-click searches, while other sites might not. This can be especially troublesome considering Google sources much of the content that appears on its results pages from publishers, and as the proportion of zero-click searches increase, publishers may be losing out on traffic."

For broadcasters we can estimate the value lost due to the zero click problem in news search results, even as Google gains a substantial benefit from that content through advertising revenue.

We estimate that revenue in the model shown in the table below.

Table 3. Estimation of Google Search Revenue from Broadcaster Content

Google Search Model Steps	Average
1. Station Monthly Referrals from Google Text Search per Person 18+ Per Station	0.655
2. Assumed CTR from Google Text Search	7.83%
3. Total Number of Monthly Station Search Zero Click Results Listings per Person 18+ Per Station	7.71
4. Total Number of Yearly Station Search Zero Click Results Listings per Person 18+ Per Station	92.53
5. Total U.S. 18+ Population (000s)	259,249
6. Total U.S. Yearly Number of Station Search Zero Click Results Listings 18+ Population (000s)	23,989,281
7. Total Number of Google Searches 2020 Daily (000s)	3,500,000
8. Total Number of Google Searches 2020 Yearly (000s)	1,277,500,000
9. % Broadcaster News Zero Click Search Result Listings	1.88%
10. Google Search Revenue 2019	$ 98,100,000
11. Broadcasters Related Content Revenue	$ 1,842,151
12. Distribution of Google Search Revenue to Stations	70%
13. Payment for Station Content to Stations ($000s)	$1,289,506

Explanation of Google Search Model by Step:

1. Using actual number of referrals impressions provided to us by various broadcasters that they receive from Google Search, we estimate the number of impressions per month for the 18 and older populations served by these broadcasters.
2. This CTR from a search results page was provided by some broadcasters and was quite similar to other publishers' CTRs, which tend to be higher than non-search results page CTRs due to the users specifying a particular topic/issue in their search query.
3. This number of Google Search Results are the estimated number of search results from broadcaster content that the user did NOT click through to the station website (Step 1 divided by Step 2 minus Step 1).
4. This is a calculated annual amount of the annual number of search results from broadcaster content that the user did NOT click through to the stations' websites. (Step 3 is multiplied by 12)
5. Total 18+ Population for 2019. (Source: Woods Poole Economics)
6. This is a calculated amount of the annual nationwide total of search results from broadcaster content that the user did NOT click through to the stations' websites. (Step 4 is multiplied by Step 5).
7. This is an average number of daily Google searches (Source: https://www.internetlivestats.com/google-search-statistics/).
8. This is a calculated amount of the annual number of Google searches. (Step 7 is multiplied by 365).
9. This is a calculated amount of the percentage of all Google searches attributable to broadcaster content that were NOT clicked through. (Step 6 is divided by Step 8).
10. This is the 2019 value of the revenue generated by Google search (Source: https://abc.xyz/investor/static/pdf/2019Q4_alphabet_earnings_release.pdf?cache=79552b8).
11. This is a calculated amount estimating the value of broadcaster content to Google search revenue total (Step 9 multiplied by Step 10).
12. Assumed distribution between Google and broadcasters for the revenues generated by Google from broadcaster content.
13. This is a calculated amount of the amount that Google would remit to broadcasters for the use of their content. (Step 11 is multiplied by Step 12).

Much like Facebook, Google generates a considerable amount of revenue from the content that broadcasters provide. The exact amount of revenue depends on the number of factors mentioned above (i.e., CTRs of broadcaster content in search results feeds, share of revenue distribution between Google and the broadcasters).

Changing some of those inputs leads to a range of between $921.1 million to $1,658 million, with the $1,289 million shown above in the middle of that range.

Google Search Algorithm and Local News Weighting Value Model

While broadcasters do generate revenue from click throughs in Google Search, many times their search results are ranked very low in the Search Engine Results Pages, and thus, are not clicked through.

This lower ranking is especially disturbing to broadcasters on search topics of local interest (e.g., local weather emergencies, other local news events) because they invest heavily to produce a premium local news product they conclude is not sufficiently recognized and prioritized by Google's search algorithms.[41]

If Google would adjust their algorithm when users search on local topics, users would benefit from the localness of the results, and broadcasters would generate more click throughs.

Broadcasters understand that their search rankings are influenced in part by their own Search Engine Optimization (SEO) strategies and therefore devote significant resources to the SEO initiatives to drive high search listing results.

However, Google's search algorithms are numerous, complicated and fast changing. As Google describes it, "these ranking systems are made up of not one but a whole series of algorithms."[42] These algorithms and a "rigorous" standards process are described in a 175-page document produced by Google.[43]

For broadcasters and others in the SEO business, it is nearly impossible to keep pace with the hundreds of changes Google makes each year to its search algorithms.

The algorithm changes can be very consequential with devasting economic impact to broadcasters. In our broadcast group executive interviews, many referred to a specific period in August-September 2020 where an apparent change in Google's search algorithms led to a roughly 50 percent decline in referred search traffic.

The model below shows the potential impact of a change in Google algorithms that would more appropriately weight the value of local broadcaster produced news in search queries.

[41] A recent study showed that national news outlets tend to dominate SERPs. The authors of that study conclude, "This likely diversion away from local news has the possibility of shrinking the local information environment, which in turn can produce normatively undesirable effects on political and civic behaviour." https://www.nature.com/articles/s41562-020-00954-0.epdf?sharing_token=MfPYk01P7EPTsmYvgsa58dRgN0jAjWel9jnR3ZoTv0MimfX8OANCMb6lxjJSl-oZO3jLNvOa3cj5hFy4zBHVaKa8ULpeJ5DoMekQC9zu8BSuEt-y2sNm4qWvG2b49cMw9tB51sH4d3pHy1verRBpG--22SD0BjFXc7fq9YYbKY-01AxcW4AHEIoMDMSGgp9jMwz1EVB7WbUKkEPlfuST92zKXcVMXP9IdPpsZW4X4TB5v5YRyHqJ2DDIRpTOJ2xB1hSaD7SxPc6QQDfRxcw_URgPWfDkT4OJarsq7mY9trS8fkYauw8-KThIqq7mR--kqaAyXP0PdXkBjoC72MkWdQ%3D%3D&tracking_referrer=www.washingtonpost.com

[42] https://www.google.com/search/howsearchworks/algorithms/

[43] https://static.googleusercontent.com/media/guidelines.raterhub.com/en/searchqualityevaluatorguidelines.pdf

Table 4. Estimation of Additional Revenue from Improvement in Google Algorithm Content

1. Station Existing Yearly Referrals from Google per Person 18+	7.15
2. Average Station User Session Revenue	$0.01984
3. Yearly Advertising Revenue per Person 18+	$0.14
4. Assumed CTR improvement in from Local Emphasis Algorithm	70%
5. Yearly Advertising Revenue per Person with Improved Local News Weighting in Search Algorithms	$.24
6. Total 18+ Population	259,249
7. Average Number of Stations Per Market	5
8. Yearly Increase in Revenue from Algorithm Improvements ($000s)	$128,646

Explanation of Improved Google Algorithm Model by Step:

1. Using actual number of referrals impressions various broadcasters receive from Google Search, we estimate the number of impressions per year for the 18 and older populations served by these broadcasters.
2. Using actual revenues generated by visits to broadcasters' websites reported to us, we calculate the average revenue per session.
3. This calculated amount is the annual amount broadcasters are generating per population age 18 and over. (Step 2 is multiplied by step 1).
4. This is an assumed increase in the Google search algorithm that would improve the listing of local publishers on local search topics.
5. This is the calculated yearly advertising revenue per person with improved local news weighting in search algorithms (Step 3 is multiplied by Step 4 and added to Step 3).
6. Total 18+ Population for 2019. (Source: Woods Poole Economics)
7. This is the number of local broadcasters within each market providing news content. This varies by market (e.g., large markets have more than 5 stations, smaller markets have less than 5) and includes the local television stations with news operations as well as the local radio stations airing news, news/talk, and sports and other formats that include local news.
8. This is the calculated amount that broadcasters would benefit from an improved Google algorithm that would emphasize local publishers with local search topics. (Step 6 * Step 7 * (Step 5 – Step 3)

The exact amount of increased revenue depends on the improvement in the algorithm. Changing that improvement to either 50% to 100% leads to a range of between $91.9 million to $183.8 million, with the $128.6 million shown above in the middle of that range.

Conclusions

Based on our qualitative research interviewing broadcast group executives and our economic modeling of just a few high economic impact practices of the major tech platforms, we conclude:

- **BIA's Economic Models Estimate Significant Loss for Broadcasters.** Based on BIA's economic models for value that local broadcasters create for tech platform users but are not able to monetize themselves for just the examples of Google Search and Facebook News, we ***estimate a total annual loss of value equal to $1.873 billion.***
    - Facebook News Feed lost value: $455 million with a range of between $325 million to $585 million.
    - Google Search – zero click lost value: $1,289 million with a range of between $921.1 million to $1,658 million.
    - Google Search – improper local news algorithm weighting: $129 million with a range of between $91.9 million to $183.8 million.
- **No Platform Currently Offers a Viable Economic Model for Broadcast News:** There is no viable revenue model from the platforms that pays or enables broadcasters to earn equitable revenue as shown in our economic models for Google Search and Facebook News Feeds under their current practices.
- **Algorithms Do Not Properly Weight Local Broadcast News Value:** The platforms exercise great control of content "reach" and how content is exposed and discovered. Broadcasters imperatively rely on the tech platforms to reach and serve their audiences with premium local news content. However, the discovery and presentation of valued local broadcast news content summaries and referred links is subjugated by complex, opaque and rapidly changing tech platform algorithms that are not optimized to properly weight the value of local news content. A MIT Technology Review article reported that Facebook's algorithms are designed to increase user engagement including logging in regularly, posting things and viewing, commenting, liking or sharing items in their news feed. The issue is, as the article concludes, "The models that maximize engagement also favor controversy, misinformation and extremism: put simply, people just like outrageous stuff."[44]
- **Broadcast News is Not Properly Branded:** Homogenization in the presentation of broadcaster content is a core issue for broadcasters. They invest heavily in their local news brands only to see their premium content surface in search returns and news feeds alongside non-professional journalism or even worse, disinformation sites.
- **Under the Guise of User Privacy, Google Gains Even More Market Power:** Broadcasters rely on referred (i.e., in-bound from Google, Facebook) and direct (i.e., users navigating directly to local station websites and apps) for audience development and content monetization. Once on their owned sites and apps, broadcasters optimize users' news experience to deepen engagement and station loyalty encouraging users to return. Google, Facebook and the other platforms are imposing restrictions on data sharing with third parties, including advertisers, allegedly in the name of privacy, but presumably for competitive reasons. Loyalty conversion and the inability to move audiences from the platform to a place where monetization does occur is severely curtailed by the "zero click" problem that Google and Facebook practices cause for broadcasters.

---

[44] Karen Hao, "How Facebook Got Addicted to Spreading Misinformation," MIT Technology Review, March 11, 2021. https://www.technologyreview.com/2021/03/11/1020600/facebook-responsible-ai-misinformation/.

- **Tip of the Iceberg**: In this study, we limited our detailed investigation and quantitative economic model to just three areas where Google and Facebook impact the ability of local broadcasters to produce and earn fair value for their local news. The roles of Amazon and Apple in the local news ecosystem also are increasingly impactful. And even though we looked at Google and Facebook in terms of major and quantifiable impact areas, many of their services and terms beyond the scope of this study have major impacts on local news media. This influence will only grow in the future unless these tech platforms are constrained, most likely by government action.

Appendix A: Tech Platform Terms and Revenue Share Policies

Table 5. Google Platform Services and Broadcaster Revenue Share

Google Platform Service	Broadcaster Revenue Share	Terms
Search Network	No	• Broadcasters are not compensated by Google when their content appears in the search results. • Google sells Google Ads as a source of revenue in Search Engine Results Pages. • Google argues that its search returns refer valuable direct traffic to broadcasters' digital news websites and apps where then can monetize these audiences. • Broadcasters are challenged by the "zero click" problem with Google Search. This refers to the situation that a Google Search return includes enough publisher content that the user is satisfied without clicking ("zero click") on the Search link to be referred to the publisher site where the publisher's ads can be served from its own site to monetize its content.

AdSense	Yes	• AdSense is a service that uses Google's contextual content algorithms to insert ads in publisher webpages.
		• Google has two types of revenue shares available to publishers:
		  ○ For displaying ads with AdSense for content, publishers receive 68% of the revenue recognized by Google in connection with the service.
		  ○ For AdSense for search, publishers receive 51% of the revenue recognized by Google.

AdMob	Yes	• AdMob is a Google-owned mobile app ad network that allows broadcasters to monetize their station owned mobile apps. • Google shares 60 percent of AdMob revenue with publishers and retains 40 percent.
Ad Manager	Yes	• Ad Manager: Google describes Ad Manager as an ad management platform for large publishers who have significant direct sales. Ad Manager provides granular controls and supports multiple ad exchanges and networks, including AdSense, Ad Exchange, third-party networks, and third-party exchanges.
Google News	Yes	• The Publisher Center for Google News allows broadcasters to generate ad revenue or to monetize their content directly (i.e., subscriptions).
Google News Showcase	Yes	• Google licenses curated content from publishers to provide to Google users for free.
Google News Initiative	Yes	• The Google News Initiative provides funding and other support to encourage publisher participation on its platforms.
Google Play	Yes	• Effective July 2021, publishers receive 85% for first $1M in sales, then 70% of subsequent sales.
Google AMP	Yes	• Google Accelerated Mobile Pages (AMP) refers not to an ad channel that publishers can monetize but rather to an open web component framework initiative that Google helped initiate and support. Publishers can produce mobile web pages using the AMP framework so that content loads faster and creates a better user experience. • Publishers can monetize their AMP pages including Google or other ad exchanges. There are pros and cons with AMP pages for publishers to consider.

Source: Compiled by BIA Advisory Services from Google and other sources, April 2021.

Table 6. Facebook Platforms and Broadcaster Revenue Share

Facebook Platform Service	Broadcaster Revenue Share	Terms
Facebook News Feed	No	• The Facebook News Feed is the main feed Facebook provides to users based on its proprietary and changing content ranking algorithms. • Broadcaster content can appear in the News Feed based on a user's social graph, e.g., what sources they follow, friends and family recommendations or if it is content Facebook algorithms rank as likely to be interesting to the user. • Publishers are not allowed to serve ads in users' News Feeds. • Users may click on News Feed links to go directly to the publishers' sites, or to Facebook Instant Articles that are publisher content optimized by Facebook for mobile users. • Publishers can purchase sponsored posts in the News Feed.
Facebook Instant Articles	Yes	• Broadcasters may sell ads in Instant Articles and keep 100 percent of their direct sold ads. • Remnant inventory can be monetized via the Facebook Audience Network. • Instant Articles are publisher produced content produced to Facebook standards to optimize the experience for Facebook mobile users.
Facebook Audience Network	Yes	• Broadcasters have a variable revenue share with Facebook Audience Network. • Facebook's position is, "We believe that the Audience Network provides a mobile advertising experience that will better help publishers and developers monetize their apps, but we cannot commit to a specific revenue share at this point. Real-time reporting and expected payout are available in the "Audience Network" section in your app settings page." • Facebook Audience Network serves Facebook ads to third-party apps and content.
Facebook News	Yes	• Facebook in the past has licensed content from news publishers it qualifies for the program. More recently, Facebook has begun striking news deal such as the licensing arrangement with News Corp to license media content in Australia.
Facebook Watch	Yes	• Video creators keep 55 percent of Watch revenue, Facebook keeps 45 percent.
Facebook Live	Yes	• Fan subscriptions. In-stream video ads.

Source: Compiled by BIA Advisory Services from Facebook and other sources, April 2021.

Table 7. Apple Platforms and Broadcaster Revenue Share

Apple Platform Service	Broadcaster Revenue Share	Terms
Apple News	Yes	• Apple shares 100 percent of ad revenues with broadcasters from their direct sold and 30 percent of "back fill" ad inventory Apple sells. Publisher may also earn 50 percent of "pooled" ad revenue sold outside but near publisher content. • Apple News is organized by channels (publications) and assigned to topics that users can follow. • The Today feed in the app is based on an algorithm for matching channels and topics to user interests. • Broadcasters apply to be accepted to Apple News and submit content in Apple News Format so it renders on Mac, iPhones, and iPad devices. • Publishers must follow Apple News Ad Guidelines and Apple News Ad Guidelines

Apple News Plus	Yes	• Apple News Plus is a news subscription for users to access publisher content behind a paywall. This is most typical for print publishers not broadcasters. • Apple's standard fee is 30 percent of the publisher's subscription fees. • Beginning in December 2020, Apple introduced a new program for smaller businesses and reduced its revenue split to 15 percent for those qualifying.
Apple App Store	Yes	• There are four typical App Store revenue models: Free (ad-supported), Freemium (free with ads with options to upgrade with in-app purchases), Subscription, Paid App (pay once). • Publishers receive 70 percent of App Store revenue in most cases, but some smaller publishers may be eligible to receive 85 percent. For subscriptions, Apple's revenue share to publishers increases in subsequent years.
Apple Search Ads	Yes	• Apple Search Ads promote iOS apps in the App Store. • App publishers keep 100 percent of the ad revenue they produce.

Source: Compiled by BIA Advisory Services from Apple and other sources, April 2021.

Table 8. Amazon Platforms and Broadcaster Revenue Share

Amazon Platform Service	Broadcaster Revenue Share	Terms
Amazon News	Yes	• Publishers monetize their content in Amazon News via Amazon Publisher Services (APS). (See Amazon Publisher Services row in this chart).
Fire TV News App	Yes	• Broadcasters may license content via a distribution agreement for Amazon News. • Amazon News is a free ad-supported service offered on Amazon's Fire TV platform. • Fire TV users access the "Local News" tab within their Fire TV news app. Fire TV will automatically detect the closest metro area and add the local news station (or stations) within the tab. • Amazon has done distribution deals with ABC O&O Stations, CBSN, Tegna, Cox, and The E.W. Scripps Company. • Revenue share to stations is 55 percent.
Amazon Publisher Services	Yes	• Amazon Publisher Services (APS) comprises a suite of cloud-based publisher platform services including Transparent Ad Marketplace, Unified Ad Marketplace, and Shopping Insights Service. • The APS terms and conditions are presented here. • APS provides publishers access to Amazon's web and mobile app programmatic ad marketplace and services. • Amazon Publishers Services does not charge publishers a revenue share or monthly fees. SSPs pay a nominal $0.01 CPM per impression served.
Amazon Appstore	Yes	• Amazon Developer Services revenue opportunities vary according to specific publisher agreements with Amazon, e.g., for Alexa Voice Services, Mobile Ad Network, etc.

Source: Compiled by BIA Advisory Services from Amazon and other sources, April 2021.

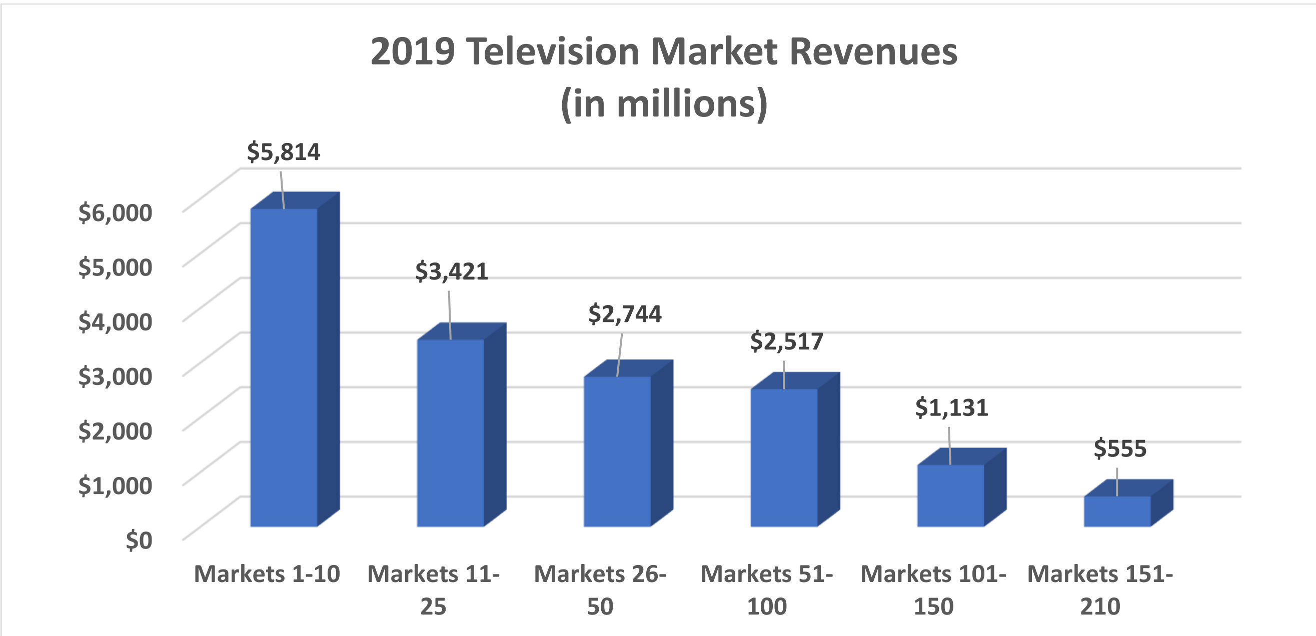
Attachment C

2020 Radio Station Advertising Revenues by Market Rank								
	Nielsen Audio Market Size Ranges							
Column1	Markets 1-10	Markets 11-25	Markets 26-50	Markets 51-75	Markets 76-100	Markets 101-150	Markets 151-200	Markets 201-253
Number of Commercial Stations	584	701	811	720	626	967	860	754
Average Rev. per Station (000s)	$4,154	$2,026	$1,479	$895	$601	$505	$487	$317
Source: BIA Media Access Pro, June 2021								

Attachment D

The Relationship Between Market Size and

Advertising Revenue Per TVHH

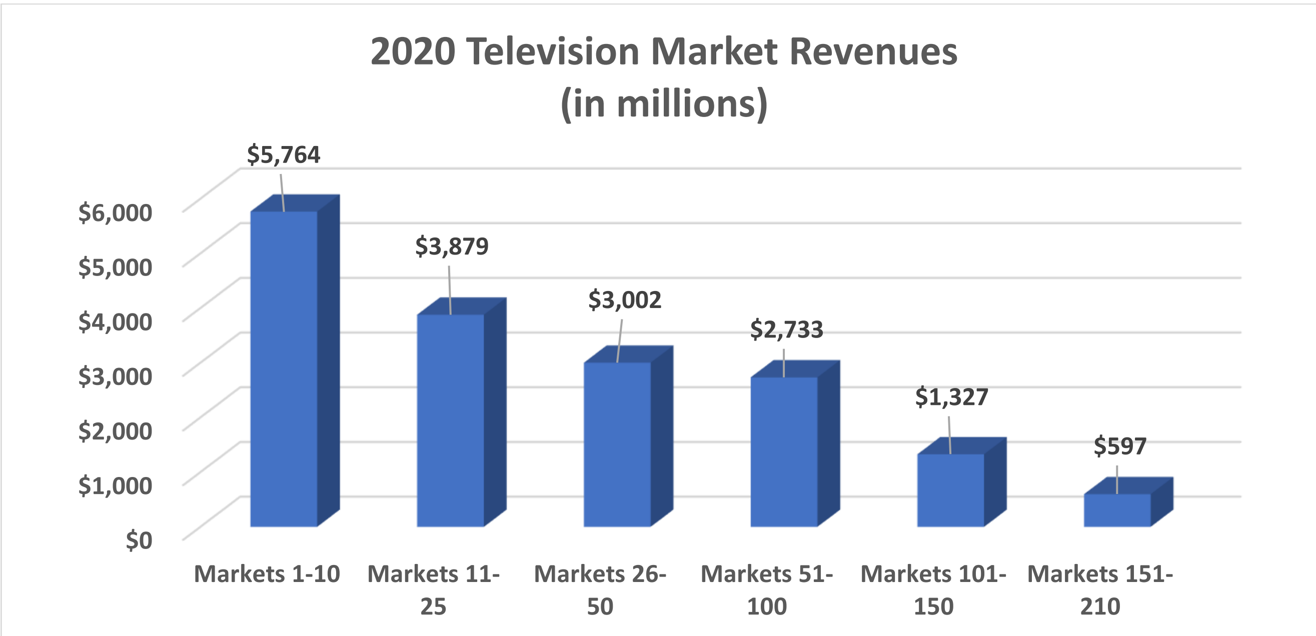


	Markets 1-10	Markets 11-25	Markets 26-50	Markets 51-100	Markets 101-150	Markets 151-210
Number of Commercial Stations	151	157	206	328	226	163
Avg. Revenue per Station (000)	$38,505	$21,790	$13,320	$7,675	$5,003	$3,403
Avg. Revenue per TV HH in Market	$161	$141	$123	$116	$104	$114

Source: Analysis of BIA Media Access Pro data as of October 1, 2020.

The Relationship Between Market Size and

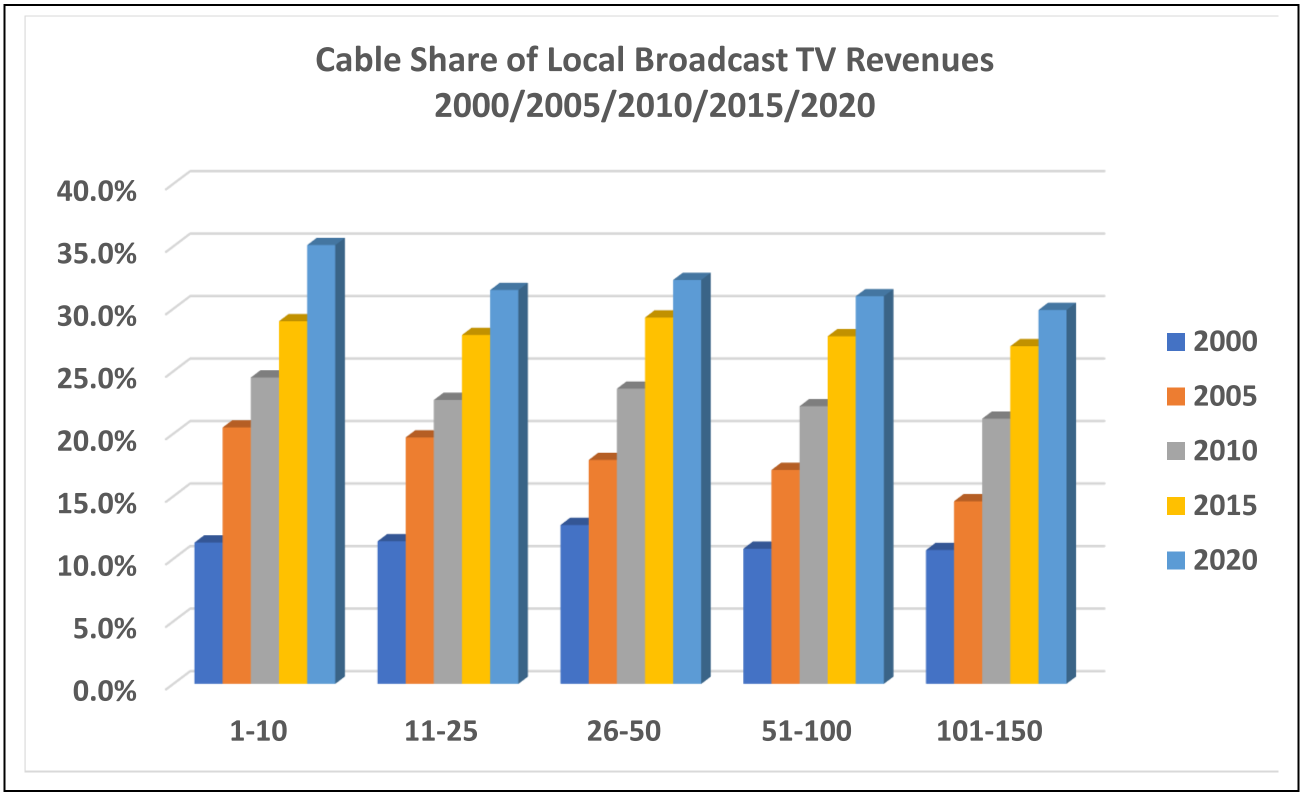
Advertising Revenue Per TVHH



	Markets 1-10	Markets 11-25	Markets 26-50	Markets 51-100	Markets 101-150	Markets 151-210
Number of Commercial Stations	151	158	205	328	226	162
Avg. Revenue per Station (000)	$38,169	$24,553	$14,644	$8,332	$5,870	$3,682
Avg. Revenue per TV HH in Market	$158	$155	$132	$121	$117	$112

Source: Analysis of BIA Media Access Pro data as of June 10, 2021.

Attachment E



Source: Bond & Pecaro estimates. Data for 2000-2015 were included in editions of *The Television Industry: A Market by Market Review*.

Growth of Cable Share of Local Broadcast Television Ad Revenues

As demonstrated in the chart above, local cable made significant gains between 2000 and 2020 with their advertising revenues growing as a proportion of the ad revenues generated by broadcast television in local markets. In Top 10 Nielsen Designated Market Areas (DMAs), the advertising revenues of local cable grew from an amount that was approximately 11.3 percent of the ad revenues that local broadcast TV stations generated in these markets in 2000, to an amount that was 35.1 percent of local broadcast TV station revenue in those markets in 2020. In total, local cable ad revenues in the Top 10 markets reached approximately $1.87 billion in 2020. To put this figure into context, the average of $187 million in local cable ad revenues per each

Top 10 market was the equivalent of having nearly five additional TV stations in each market, based on average TV station ad revenues* in these markets in 2020.

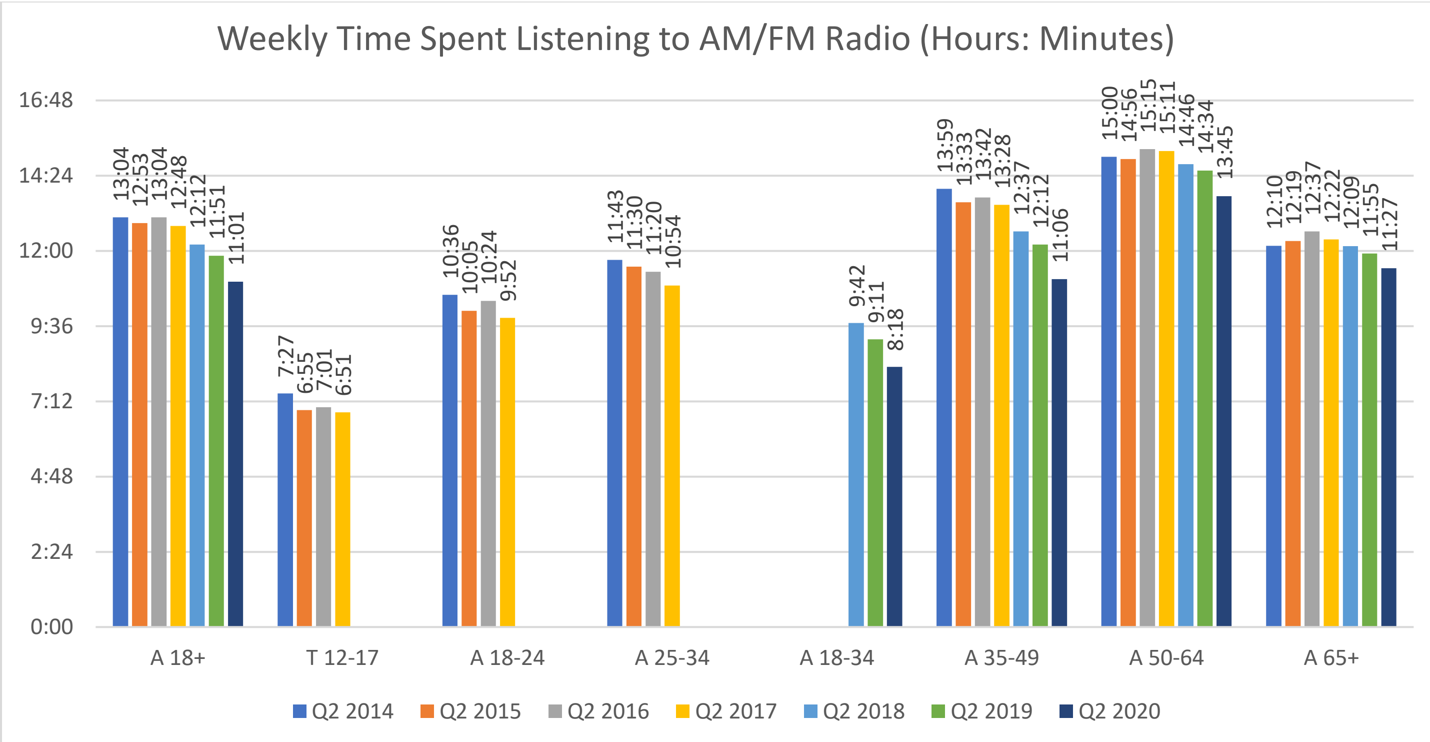
In markets ranked 11-25, the ad revenues of local cable rose from an amount that was 11.4 percent of local broadcast TV station ad revenues in 2000 to an amount that was 31.5 percent of local broadcast TV ad revenues in 2020. The average advertising revenues earned by local cable was approximately $69 million per market in DMAs 11-25 in 2020, representing roughly the equivalent of nearly three additional broadcast TV stations per market, based on average TV station ad revenues in those markets. Local cable's ad revenues in markets 26-50 increased from 12.7 percent to 32.2 percent of the ad revenues generated by local broadcast TV stations, with cable's 2020 revenues per market equating to more than two additional broadcast TV stations in each market. For markets 51-100, cable's local ad revenue per market in 2020 equaled nearly two additional broadcast TV stations in each market. Local cable's ad revenues as a proportion of local broadcast TV station ad revenues in markets 101-150 also increased, growing from 10.7 percent in 2000 to 29.9 percent in 2020**.

In short, these figures point to the erosion over time of broadcast TV stations' position in local advertising markets, and demonstrate the significant competitive presence of cable operators in the local advertising marketplace.

---

* Source: BIA Media Access Pro.
**Insufficient data was available for markets 151-210. Therefore these markets are excluded from this analysis.

Attachment F

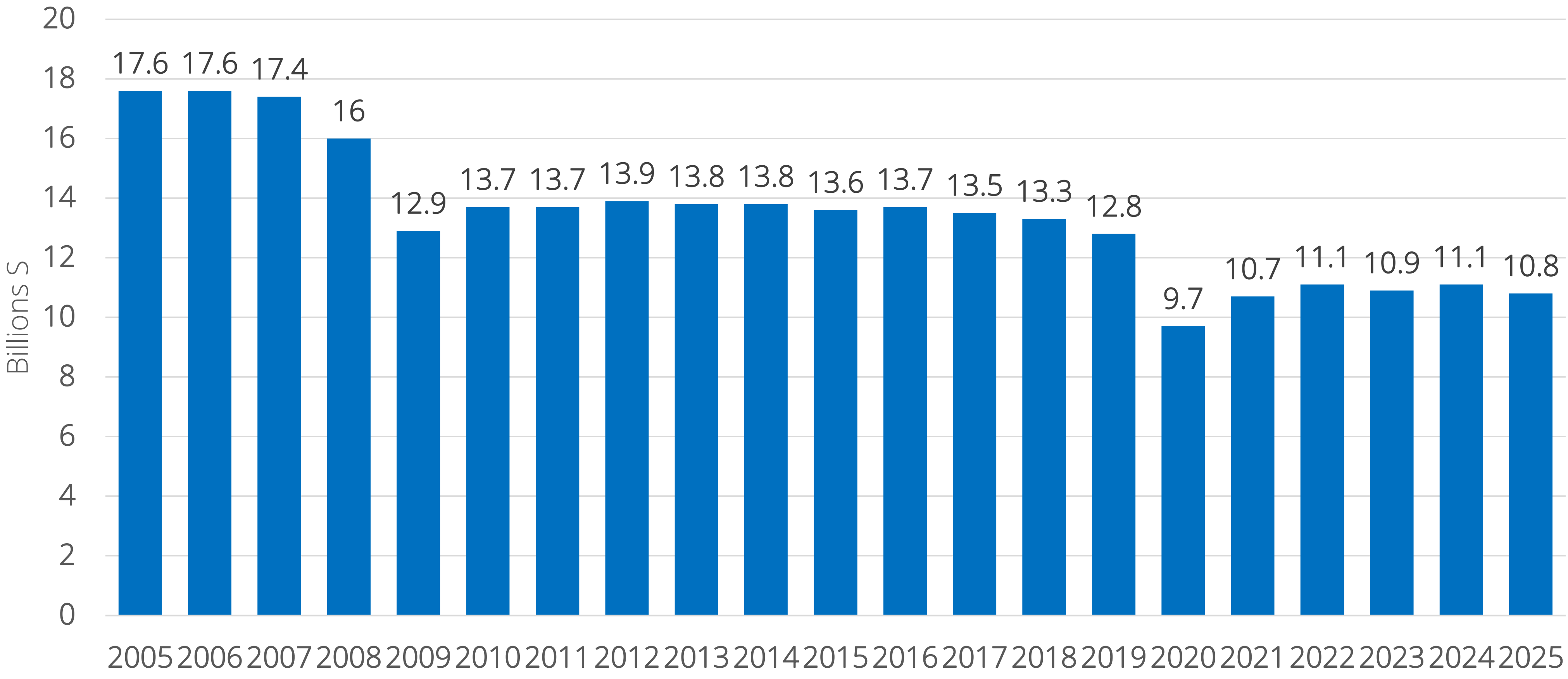


Sources: Nielsen Total Audience Reports: Q2 2014-Q2 2020

*Starting in Q2 2018, Nielsen Total Audience Reports no longer provide separate breakouts for A18-24 and A25-34. They now only report a single A18-34 age breakout.

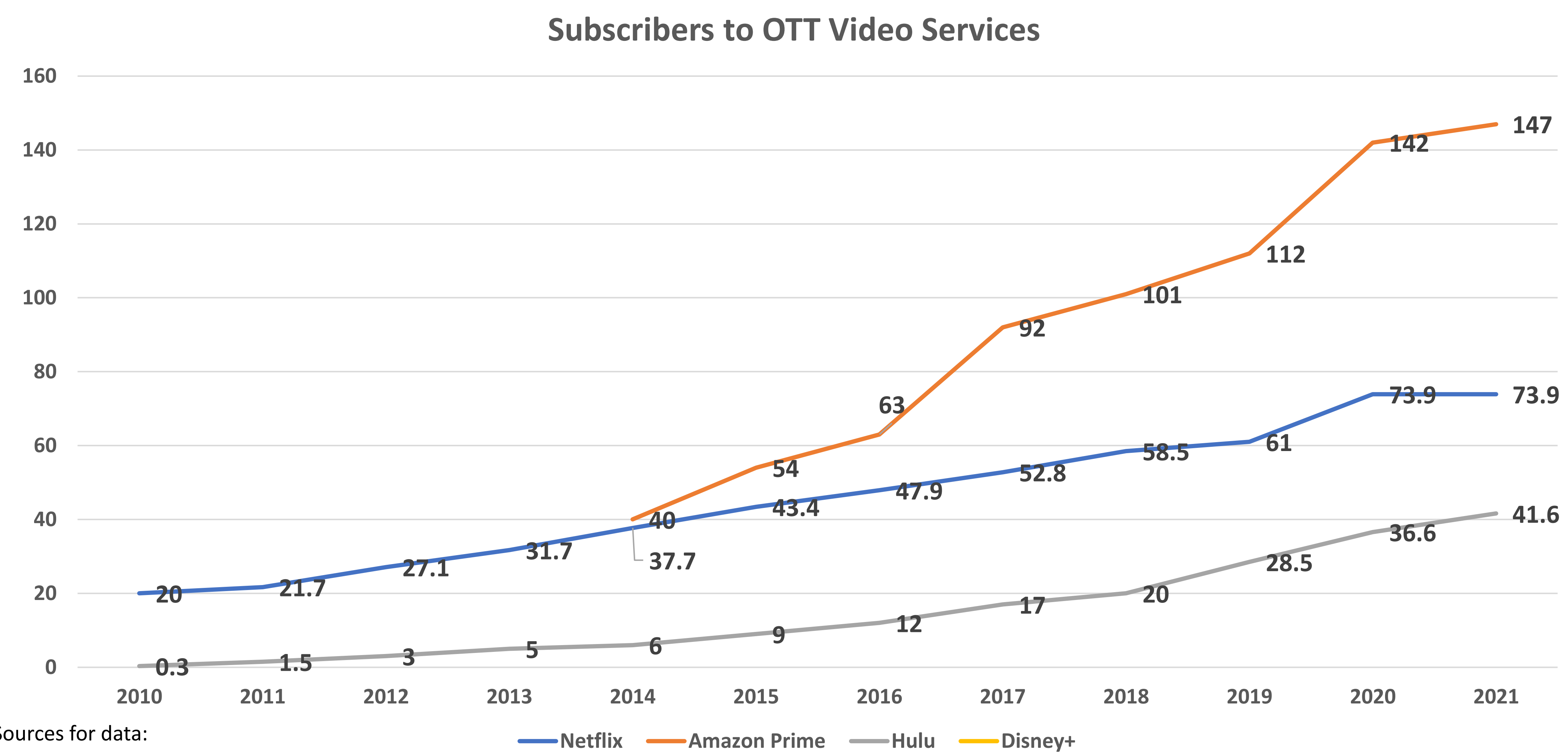
Attachment G

Local Radio Station Over-The-Air Revenue



Source: BIA, 2021

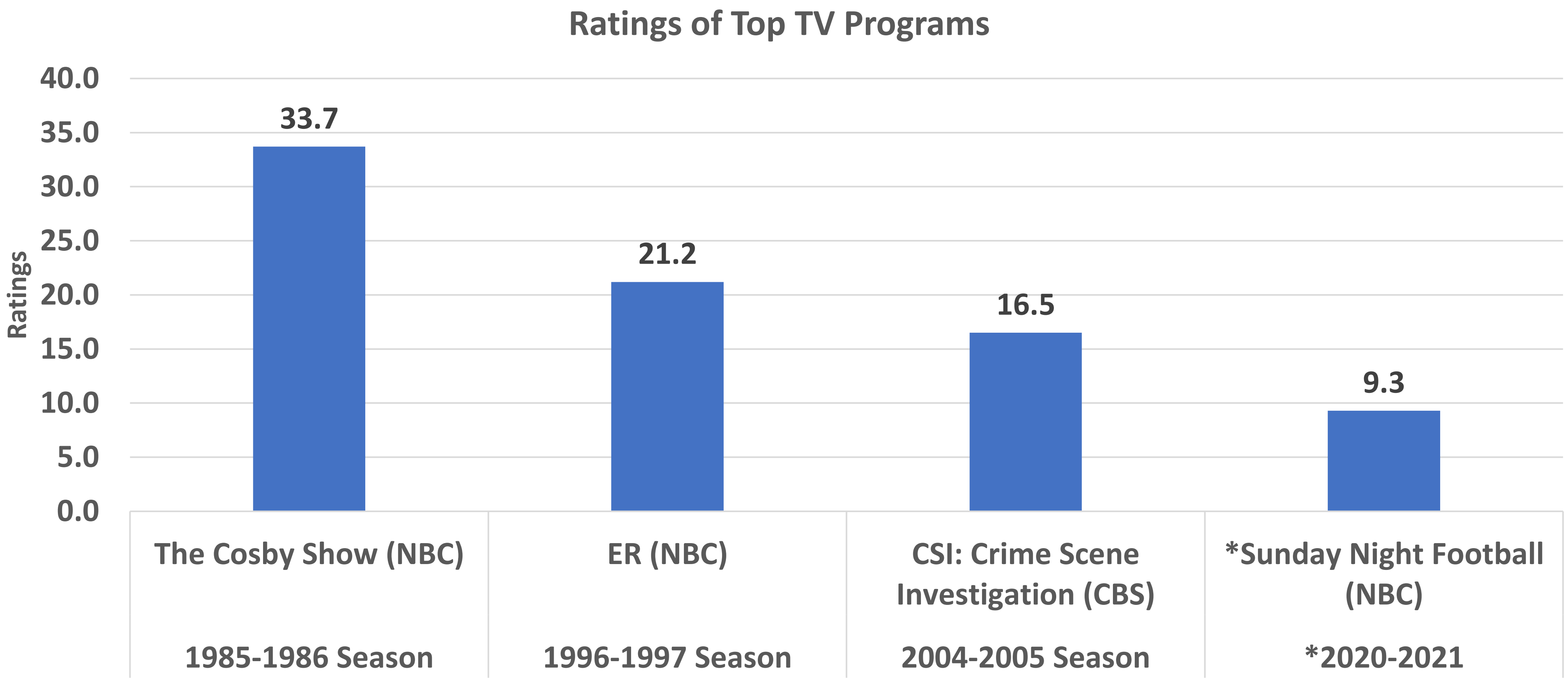
Attachment H



Sources for data:

- Netflix: Retrieved from Statista. Original source Netflix.com. Includes U.S. and Canada subscribers. Note 2010-2020 is Q4; 2021 is Q2.
- Amazon Prime: Retrieved from Statista. Original sources Consumer Intelligence Research Partners; Digital Commerce 360. Includes all U.S. Amazon Prime subscribers even those who do not view video. All years Q4 except for 2016 (Q2) and 2021 (Q1).
- Hulu: Retrieved from Statista. Includes paying subscribers in the U.S.. Note: 2010-2012; 2017; 2019; 2020 are Q4. 2013 is Q3. 2014-2016; 2018; 2021 are Q2 subs.
- **Disney+** is estimated to have approximately 38 million U.S. and Canada subscribers as of June 2021. Source: The Information July 2, 2021.

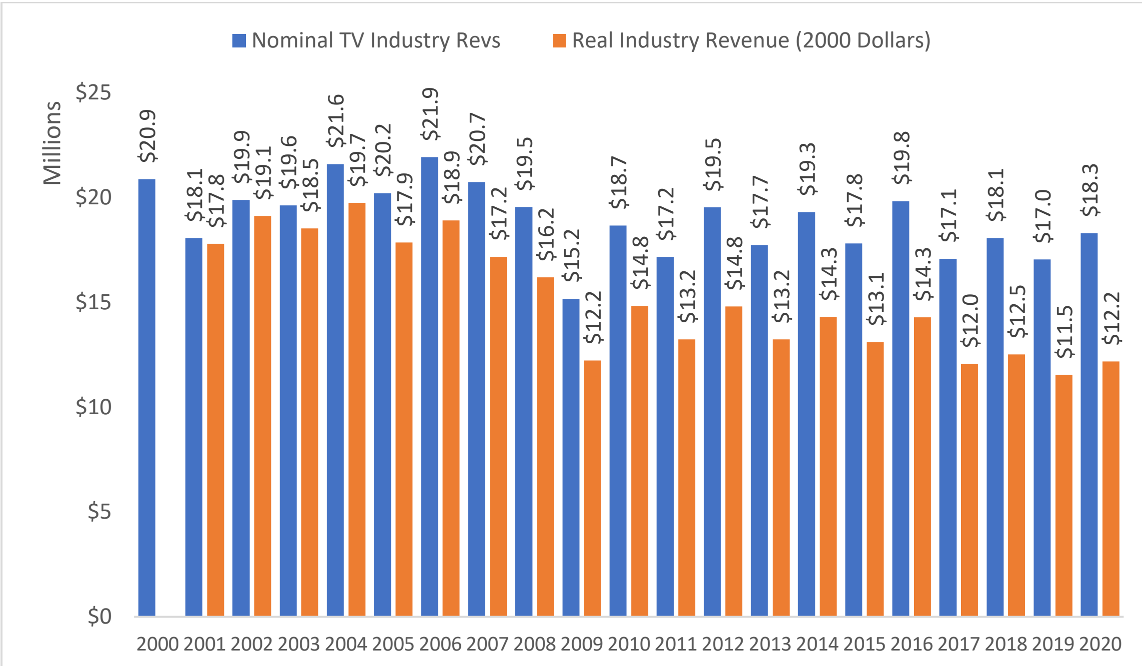
Attachment I



Sources and Notes:
1985-1986, 1996-1997, 2004-2005 Seasons*: Complete Directory to Prime Time Network and Cable TV Shows, 1946-Present.* Household ratings based on Live-Only viewing*;*
*2020-2021 Season: *Nielsen,* Live +7 Day viewing, September 10, 2020-May 19, 2021. Regularly scheduled program; excludes pre- and post-shows.

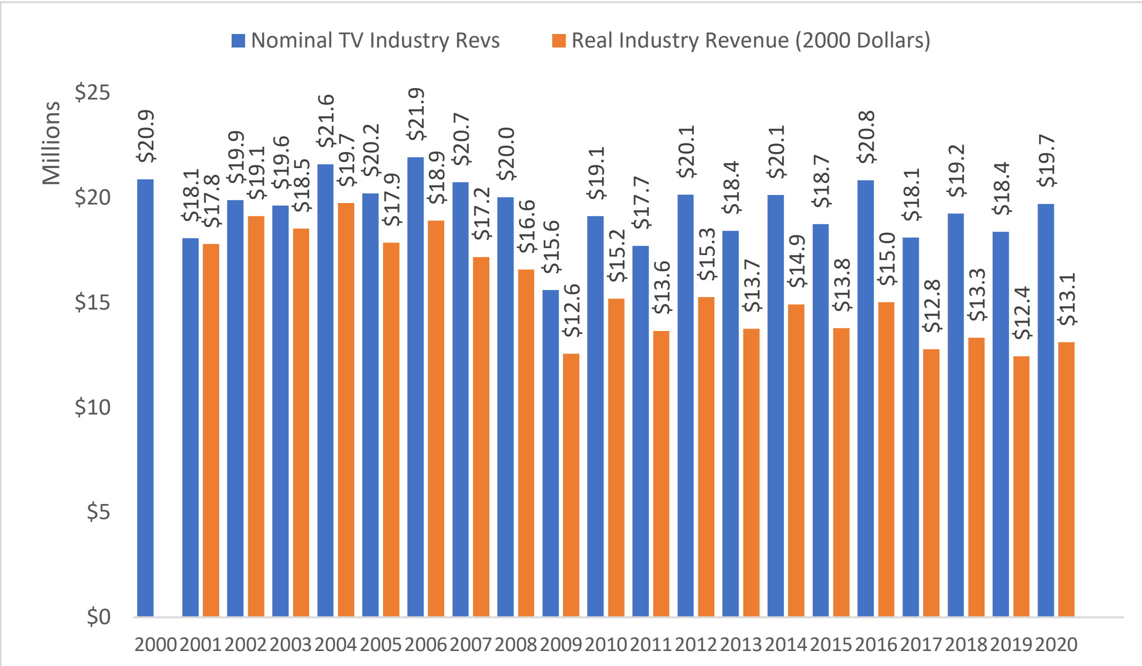
Attachment J

Nominal and Real Local Television Station Industry OTA Advertising Revenues



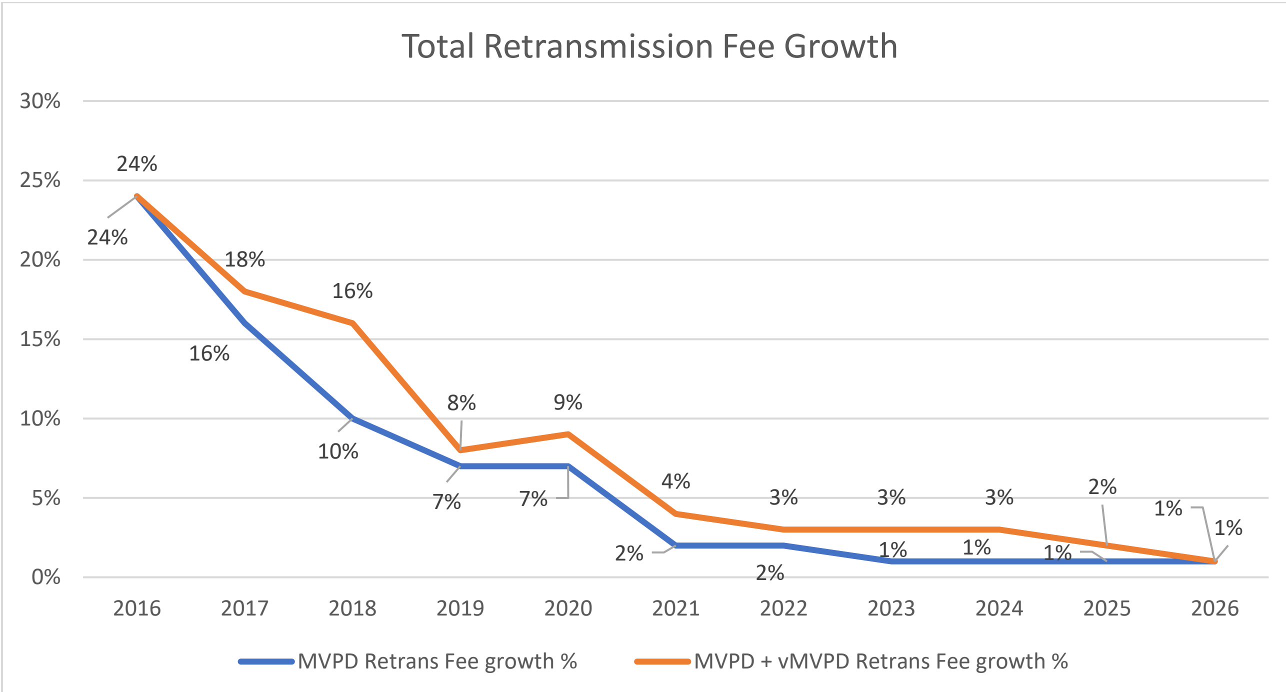
Source: BIA Advisory Services, LLC

Nominal and Real Local Television Station Industry Revenue (Over-the-Air + Digital)



Source: BIA Advisory Services, LLC

Attachment K

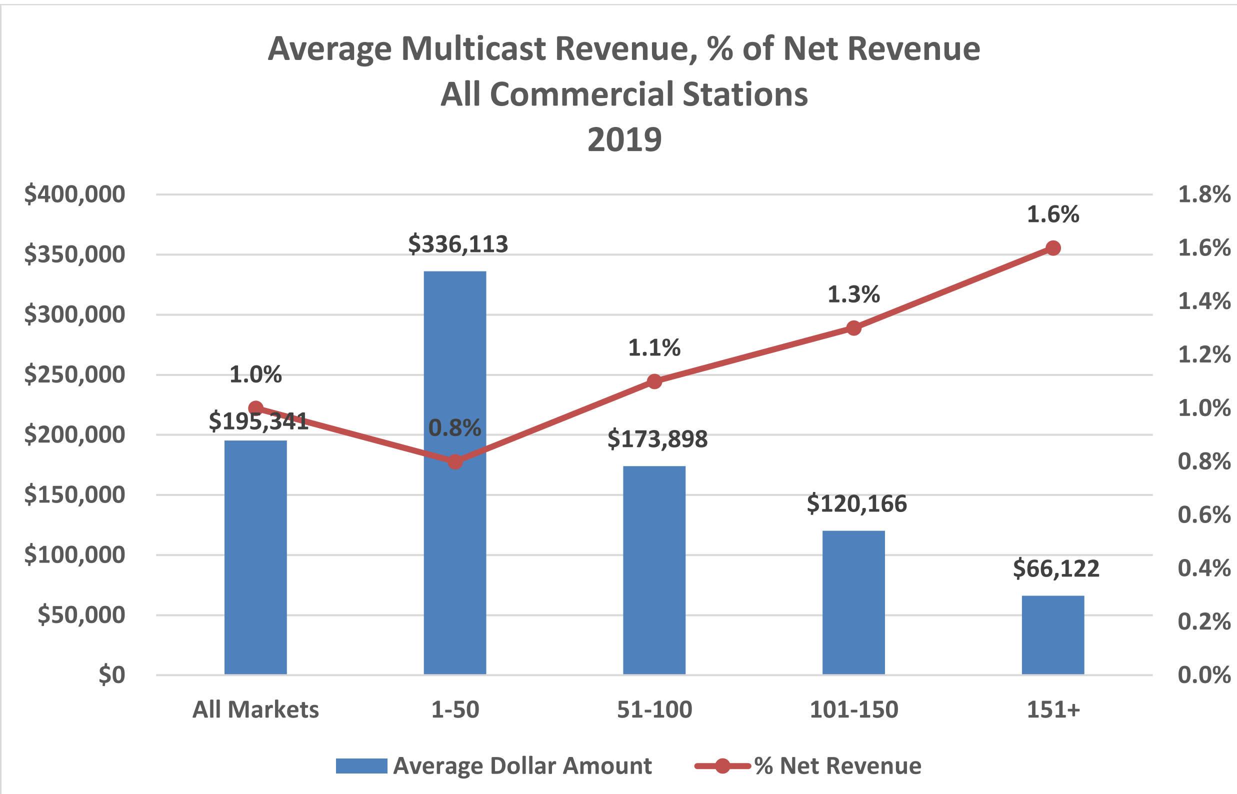


Source: SNL Kagan's TV Station Retransmission Projections, as of June 17, 2021

Attachment L

Multicast Revenue

Market Size	Multicast Revenue[1] 2019 Average Dollar Amount All Commercial Stations	% of Net Revenue[2]
All markets	$195,341	1.0%
1-50	$336,113	0.8%
51-100	$173,898	1.1%
101-150	$120,166	1.3%
151+	$66,122	1.6%



[1]Data derived from the 2020 NAB Television Financial Survey database. Multicast revenue is defined as any revenue that is derived directly from a station's subchannels for non-affiliated programming. Data does not include revenue from major affiliates (ABC, CBS, Fox, NBC) carried on a station's subchannel.

[2]Net revenues is defined as the total of gross advertising revenues, plus trade-outs and barter plus other broadcast-related revenues, less agency and rep commissions.

Attachment M

Short Markets
(excluding Big 4 Multicast Affiliations)
As of March 4, 2021

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
10	Boston, MA	NBC	NBC
45	Birmingham, AL	ABC	ABC
48	Albuquerque-Santa Fe, NM	FOX	FOX
74	Springfield, MO	ABC	ABC
85	Harlingen-Weslaco-Brownsville-McAllen, TX	CBS, FOX	CBS
88	Chattanooga, TN	FOX	FOX
89	Charleston, SC	ABC	ABC
98	South Bend-Elkhart, IN	ABC, FOX	FOX
100	Tri-Cities, TN-VA	ABC	ABC
106	Evansville, IN	FOX	FOX
108	Tallahassee, FL-Thomasville, GA	FOX	FOX
111	Ft. Wayne, IN	NBC	NBC
112	Augusta, GA	NBC	NBC
114	Fargo-Valley City, ND	CBS	CBS
116	Springfield-Holyoke, MA	CBS, FOX	FOX
119	Youngstown, OH	FOX	FOX
120	Macon, GA	ABC	ABC
121	Santa Barbara-Santa Maria-San Luis Obispo, CA	CBS, FOX	CBS, FOX
122	Lafayette, LA	NBC	NBC
123	Peoria-Bloomington, IL	ABC	ABC
124	Monterey-Salinas, CA	ABC	ABC
125	Bakersfield, CA	FOX	FOX
128	Wilmington, NC	CBS	CBS
133	Columbus-Tupelo-West Point, MS	ABC	ABC
135	Columbia-Jefferson City, MO	FOX	FOX
136	Wausau-Rhinelander, WI	FOX	FOX
137	Salisbury, MD	FOX, NBC	FOX
139	Rockford, IL	CBS	
140	Duluth, MN-Superior, WI	CBS	CBS
141	Minot-Bismarck-Dickinson, ND	FOX	FOX
142	Topeka, KS	FOX	FOX
143	Monroe, LA-El Dorado, AR	ABC	ABC
144	Beaumont-Port Arthur, TX	NBC	NBC
146	Palm Springs, CA	CBS, FOX	CBS, FOX

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
153	Panama City, FL	CBS	CBS
154	Albany, GA	ABC	ABC
155	Bangor, ME	FOX	FOX
156	Terre Haute, IN	FOX	FOX
157	Biloxi-Gulfport, MS	CBS, NBC	CBS, NBC
158	Idaho Falls-Pocatello, ID	FOX	FOX
159	Sherman, TX - Ada, OK	ABC, FOX	ABC, FOX
161	Missoula, MT	FOX	FOX
162	Binghamton, NY	NBC	NBC
163	Wheeling, WV- Steubenville, OH	ABC, FOX	ABC, FOX
164	Bluefield-Beckley-Oak Hill, WV	FOX	FOX
166	Yuma, AZ-El Centro, CA	ABC, NBC	ABC, NBC
168	Hattiesburg-Laurel, MS	ABC, FOX	ABC
169	Rapid City, SD	FOX	FOX
170	Clarksburg-Weston, WV	ABC	ABC
171	Utica, NY	CBS	CBS
172	Dothan, AL	NBC	NBC
173	Lake Charles, LA	ABC, CBS	ABC, CBS
174	Quincy, IL-Hannibal, MO-Keokuk, IA	ABC, FOX	ABC, FOX
175	Jackson, TN	CBS, NBC	CBS
176	Harrisonburg, VA	CBS, FOX, NBC	CBS, NBC
177	Charlottesville, VA	ABC, FOX	FOX
178	Elmira, NY	CBS	CBS
179	Bowling Green, KY	CBS, FOX	CBS, FOX
180	Watertown, NY	FOX, NBC	FOX
181	Alexandria, LA	CBS	CBS
182	Jonesboro, AR	CBS, FOX, NBC	CBS, NBC
183	Marquette, MI	FOX	FOX
184	Bend, OR	CBS, FOX	FOX
185	Butte-Bozeman, MT	FOX	FOX
186	Laredo, TX	ABC, CBS, FOX	ABC
187	Grand Junction-Montrose, CO	ABC	
188	Lafayette, IN	ABC, FOX, NBC	ABC, NBC
189	Twin Falls, ID	ABC, FOX, NBC	FOX
190	Lima, OH	ABC, CBS, FOX	CBS, FOX
191	Meridian, MS	NBC	NBC
192	Great Falls, MT	FOX, NBC	FOX

Rank	Market	Missing Affiliates (without Including Multicast Affiliates)	Multicast Affiliates
193	Eureka, CA	CBS	
194	Parkersburg, WV	ABC, CBS, FOX	CBS, FOX
195	Cheyenne, WY-Scottsbluff, NE	ABC	ABC
196	Greenwood-Greenville, MS	CBS, FOX, NBC	FOX, NBC
197	San Angelo, TX	ABC	
199	Mankato, MN	ABC, FOX, NBC	FOX
200	Ottumwa, IA-Kirksville, MO	CBS, NBC	CBS, NBC
201	St. Joseph, MO	CBS, FOX, NBC	CBS
202	Fairbanks, AK	CBS, FOX	CBS, FOX
203	Zanesville, OH	ABC, CBS, FOX	
204	Victoria, TX	CBS, NBC	CBS, NBC
205	Helena, MT	ABC, CBS, FOX	FOX
206	Presque Isle, ME	ABC, FOX, NBC	FOX
207	Juneau, AK	CBS, FOX	FOX
208	Alpena, MI	ABC, FOX, NBC	ABC, FOX
209	North Platte, NE	ABC, CBS, FOX	FOX
210	Glendive, MT	ABC, FOX, NBC	NBC

Source: BIA Media Access Pro data as of March 4, 2021. Analysis takes into consideration the following service types: full power, satellites, and multicast. (i.e., those markets that do not receive the full complement of ABC, CBS, FOX, NBC affiliates via one of those service types is considered a short market.)