

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

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

REPLY COMMENTS OF FREE PRESS

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INTRODUCTION

The docket clearly shows that the Commission must not relax or eliminate any of the remaining media ownership limits it considers in this Quadrennial Review proceeding. Without performing the analysis mandated by the Third Circuit, the Commission cannot reasonably assess the impact of any such modifications on either ownership or viewpoint diversity, much less assert that these rule changes would not harm diversity. And evidence in the docket strongly suggests that further deregulation would affirmatively reduce diversity in broadcasting.

No commenters present a rational justification for any expansion of the relevant market definitions to include non-broadcast media. Broadcast is uniquely free to viewers, locally-focused, widely trusted, and disproportionately relied upon by low-income communities and people of color. Consequently, no cable, satellite or digital streaming service can be counted as a genuine substitute or adequate competition – especially in light of the fact that even “free” online video streaming and social media sites require people to be online in the first place, something that not everyone can afford. Pro-consolidation filers uniformly parrot the disingenuous talking points of the National Association of Broadcasters (“NAB”), which relies on misleading assertions and hypocrisy to falsely equate the existence of these social media platforms with effective competitive pressure for broadcasters.

Either explicit or covert relaxation of the Commission’s rules is likely to cause irreparable harm to Free Press members and the public generally, stripping local communities of the competition, localism, and diversity they depend on for critical news and information.

I. THE COMMISSION MUST NOT RELAX ITS RULES WITHOUT COURT-MANDATED DIVERSITY ANALYSIS.

Other commenters recognize that the Commission must perform the analysis mandated by the Third Circuit prior to modifying or eliminating any remaining media ownership rules.

A. The Commission Cannot Reasonably Assess Diversity Implications of Relaxation Without Further Study.

In order to evaluate the need for its media ownership rules, the Commission must assess the impact that any proposed changes would have on competition, localism, and diversity in local broadcasting. The Third Circuit has repeatedly ruled that the Commission has failed to perform or collect sufficient analysis to gauge how further deregulatory action would impact race and gender ownership diversity. As the Leadership Conference on Civil and Human Rights (“Leadership Conference”) explains, “the FCC’s statutory obligation, existing judicial remands, and its own interpretation of the public interest standard” all require that the Commission consider race and gender ownership diversity before modifying any of its rules.¹ The Commission cannot in good faith argue that it has adequately assessed the impact of the proposed relaxation of these rules with regards to diversity, and consequently it “does not have a sufficient legal foundation to modify or repeal any Media Ownership Rules as proposed.”²

Pro-consolidation NAB attempts to airbrush this plain legal duty by wrongly equating the Commission’s failure to complete the necessary diversity studies with a (supposed) failure of such studies to demonstrate a link between consolidation and reduced diversity.³ Since the

¹ See Comments of The Leadership Conference on Civil and Human Rights, MB Docket No. 18-349, at 1 (filed Apr. 29, 2019) (“Leadership Conference Comments”).

² *Id.* at 4.

³ See Comments of the National Association of Broadcasters, MB Docket No. 18-349 & No. 17-289, at 67 (filed Apr. 29, 2019) (“Given that the Commission has been unable to design a reliable study to analyze the link between ownership and viewpoint diversity – let alone identify evidence actually establishing such a link – then the FCC

Commission has failed to produce any sufficient analysis at all, including any analysis showing that relaxation of its ownership rules will harm diversity, NAB reasons that no such harms can exist. NAB willfully mistakes the Commission's gross inaction for an affirmative showing that deregulation does not reduce diversity. But Commission analysis has shown nothing of the kind, because the Commission has yet to perform the required analysis.

B. Evidence Suggests Any Relaxation of the Rules Will Harm Diversity.

The Commission is simply unable on this record to conclude that any proposed rule relaxation would promote broadcast diversity or at least do no harm to it. In fact, ample evidence in the docket suggests that greater ownership concentration would affirmatively reduce both viewpoint and ownership diversity. The National Association of Black-Owned Broadcasters ("NABOB") explains quite clearly that "[i]ncreased consolidation of ownership in the broadcast industry reduces opportunities for minorities to enter the business or to grow."⁴ Allowing more consolidated ownership will lead to the biggest broadcasters getting even bigger, buying up smaller stations and eliminating opportunities for African-American entrants to purchase broadcast stations.

Increased concentration for ownership of radio stations would be particularly troubling, as they tend to be more affordable for new entrants.⁵ NABOB also details the history of declining

cannot justify retention of the local TV or other ownership rules on the basis they affirmatively promote viewpoint diversity in the marketplace.") ("NAB Comments"). At best, NAB's faulty reasoning here is another example of the "one-way ratchet" thinking that the Third Circuit rejected in its very first *Prometheus* decision. Under the quadrennial review statute, deregulation is NAB's default, but it's not the Congress's default. In other words, the Commission's failure to conduct studies demonstrating a link between ownership diversity and viewpoint diversity does not automatically mean that the Commission must eliminate its ownership rules, as NAB pretends. It means, as the Third Circuit has made clear, that the Commission has no justification to modify its rules in either direction.

⁴ See Comments of the National Association of Black-Owned Broadcasters, Inc., MB Docket No. 18-349, at 1 (filed Apr. 29, 2019) ("NABOB Comments").

⁵ *Id.* at 1-2.

station ownership by African-Americans since 1995, attributing this decline in part to previous relaxation of ownership rules.⁶

The MusicFirst Coalition and Future of Music Coalition (“Future of Music”) joint comment devotes significant time to reviewing a series of studies showing massive and worsening underrepresentation of women artists on broadcast radio playlists, raising concerns about viewpoint diversity.⁷ Deepening this analysis, Future of Music then presents original research demonstrating a correlation between increased broadcast consolidation and shrinking diversity of radio music playlists – in particular, a decline in the representation of female country artists on country stations.⁸ This analysis reinforces concerns raised by Free Press throughout several iterations of Quadrennial Review proceedings,⁹ and evinces a serious need for further study to assess the diversity implications of broadcast consolidation.

Notably, NAB does not argue that allowing increased common ownership will improve either ownership or viewpoint diversity. Instead, it argues for abdication of this prong of the public interest standard entirely, suggesting that ownership diversity is irrelevant and that the existence of nearly limitless content on the internet negates the need for broadcast viewpoint diversity.¹⁰ NAB’s callous suggestion that the broadcast industry outsource diversity to the online world selectively ignores the critical and unique role that broadcast plays in our media

⁶ See NABOB Comments at 2-4.

⁷ See Joint Comment of MusicFirst Coalition and Future of Music Coalition, MB Docket No. 18-349, at 25-36 (filed Apr. 29, 2019) (“Future of Music Comments”).

⁸ See *id.* at 39 (“Given that female artists have been increasingly excluded from AM/FM country airwaves at the same time that consolidation of radio station ownership has taken place nationwide, and that at least in some instances, such exclusion of women from the airwaves appears to have become worse after certain consolidation events, it is imperative that the Commission not further deregulate radio station ownership during this Quadrennial Review.”).

⁹ See *generally* Comments of Free Press, MB Docket No. 18-349 (filed Apr. 29, 2019).

¹⁰ See NAB Comments at 66.

ecosystem, and demonstrates a disturbing lack of concern for the public interest commitments all broadcasters are obligated to meet.

II. THE COMMISSION HAS NO RATIONAL JUSTIFICATION FOR EXPANDING MARKET DEFINITIONS.

Despite the best efforts of industry goliaths, the docket contains no coherent rationale for the Commission's bizarre proposal to broaden the broadcast market definitions to include non-broadcast media.

A. Digital Media Are Not A True Substitute for Broadcast.

While the digital age has seen a burgeoning of online video and audio content, broadcast continues to play a unique and critical role in the media ecosystem that cannot be adequately substituted by supposed internet "competitors." Commenters note that broadcast is uniquely free over-the-air, making it far more accessible than even "free" online outlets for low-income communities and people of color who lag behind in terms of broadband adoption as a result of high broadband prices.¹¹ Even if they did produce original local news – a dubious proposition – these online social media sites are only "free" once you've paid to get on the internet in the first place. Yet as the Leadership Conference rightly notes, broadcast also plays a unique role in the news market, offering more local news coverage than digital outlets that primarily operate on a national scale.¹² Broadcast also continues to be the most watched and most trusted source of news.¹³ For viewers, digital video and audio offerings are complements to broadcast, not substitutes. Often, the two are inseparable – according to the Leadership Conference, "much of

¹¹ See Leadership Conference Comments at 7-8.

¹² *Id.* at 6. ("Broadcast licensees, unlike streaming services, must 'serve the needs and interest of the communities to which they are licensed.' Because Pandora, SiriusXM, and Podcasts are not responsive to localities' particularized needs, deregulating local radio ownership will eliminate all diversity and all local news and programming.").

¹³ *Id.* at 5-6.

what most Americans are consuming online consists of uploaded video of television broadcast news. The increase in online consumption of traditional media extends the reach of traditional media and heightens the importance of competition, localism, viewpoint diversity, and ownership diversity in broadcasting.”¹⁴ Consequently, many of the viewers that NAB wrongly claims digital media are siphoning away from broadcast outlets are in fact using digital tools to consume that same traditional broadcast programming.

Many broadcasters openly acknowledge this, and argue against further relaxation of ownership rules. Future of Music cites Ron Stone, CEO of the Adams Radio Group, saying “Google’s revenue is \$110 billion, Apple’s revenue is \$220 billion, and Facebook’s revenue is \$40 billion annually. Radio’s combined \$16 billion revenue is not their target. We are using them as an excuse for our bad decisions and poor operations.”¹⁵ Radio broadcasters Ronald Gordon and Ed Cherry write “[h]orizontal deregulation just shuffles the deck in favor of the big guys; it does nothing to improve radio’s ability to compete with big tech.”¹⁶ Several broadcasters filed comments to oppose any loosening of the Commission’s ownership rules, expressing serious concern over the anti-competitive harms of allowing big broadcasters to grow bigger, but no fears at all over the supposed existential competitive threat of digital outlets.¹⁷ Steven L. White, Director of Triangle Access Broadcasting, specifically counsels against equating broadcast with satellite and internet outlets, while trumpeting the benefits that digital technologies have brought to traditional broadcasters.¹⁸

¹⁴ See Leadership Conference Comments at 6.

¹⁵ See Future of Music Comments at 10.

¹⁶ *Id.* at 11.

¹⁷ See generally Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, Ltd., MB Docket No. 18-349 (filed Apr. 29, 2019); Comments of the Crawford Broadcasting Company, MB Docket No. 18-349 (filed Apr. 26, 2019); Comments of King City Communications Corporation, MB Docket No. 18-349 (filed Apr. 29, 2019).

¹⁸ See generally Comments of Steven L. White, MB Docket No. 18-349 (filed Apr. 29, 2019).

B. Industry Relies On Misleading Statistics and Hypocrisy.

NAB attempts to counter this clear and intuitive separation of broadcast markets and non-broadcast markets with sheer bluster. It opens its comments by complaining that digital outlets have taken a bite out of broadcast viewership, arguing that “[e]ven though 92 percent of U.S. adults still listen to broadcast radio in an average week . . . [a]n estimated 169 million persons ages 12 and older listen at least weekly to online audio.”¹⁹ NAB avoids using equivalent units in this comparison, perhaps to mask the fact that 169 million equates to only just over 50 percent of the U.S. population. Not only is online audio a long ways away from overtaking local radio’s popularity, these numbers directly contradict NAB’s claims that audience attention is an increasingly “scarce resource.”²⁰ Instead, data shows that people have responded to the explosion of digital media outlets by rapidly increasing their time spent consuming media – not by jettisoning broadcast in favor of shiny new unregulated toys.²¹

NAB, and all the pro-consolidation commenters that echo its disingenuous claims, evince a glaring hypocrisy. They argue that broadcast is endangered and so easily replaceable that without further deregulation, it will be overrun by new media and technologies – while simultaneously insisting that broadcast is unique and special enough to be deserving of policy intervention to preserve it. NAB cannot have it both ways. If broadcast is truly existentially threatened by “competition” from online outlets because they provide exactly the same type of content, why should the Commission resist its creative destruction and act to preserve it? The

¹⁹ See NAB Comments at 2.

²⁰ See *id.* at 4.

²¹ Ashley Rodriguez, “Americans are now spending 11 hours each day consuming media,” *Quartz*, July 31, 2018, <https://qz.com/1344501/americans-now-spend-11-hours-with-media-in-an-average-day-study/>; Rani Molla, “Americans are spending more time on media thanks to multitasking,” *Vox*, Oct. 9, 2017, <https://www.vox.com/2017/10/9/16447820/americans-time-spent-media-multitasking-emarketer>.

reality, as NAB only selectively admits, is that broadcast is not interchangeable with other audio and video content – and people’s consumption habits, along with broadcasters’ true financial fortunes, prove this out. As the only free, local, and widely trusted news source in essentially every local market, broadcast is special, and cannot be adequately replaced by nationally-focused digital media that require expensive internet subscriptions for audiences to access. But if broadcast is special enough to save, why should the Commission expand its market definitions to falsely equate broadcast with media content that fails to offer truly competitive substitutions for its unique offerings? The answer is simple: It shouldn’t.

CONCLUSION

Without completing the race and gender diversity analysis mandated by the Third Circuit, the Commission has neither sufficient empirical evidence nor legal authority to relax its ownership rules. Additionally, the unique nature of broadcasting does not permit any covert relaxation via unjustifiable broadening of the Commission’s market definitions to include non-broadcast outlets. Any modification or elimination of the remaining ownership rules would harm Free Press members by reducing broadcast competition, localism and diversity, depriving their local communities of the information and journalism they need. The Commission must return to the drawing board.

Respectfully Submitted,

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