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	)	

JOINT REPLY COMMENT OF MUSICFIRST COALITION AND FUTURE OF MUSIC COALITION

via electronic filing

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INTRODUCTION AND SUMMARY

As advocates for music creators and music fans, the musicFIRST Coalition and Future of Music Coalition ("FMC") submit these Reply Comments, respectfully requesting that the Commission retain the Local Radio Station Ownership Rule in its entirety. We are not alone. A broad cross-section of public interest groups and members of the National Association of Broadcasters ("NAB") members with diverse perspectives and music offerings have filed initial comments in this Quadrennial Review proceeding, specifically requesting that the Commission not expand the number of AM/FM radio stations that can be owned in local markets in the U.S., and also requesting that the Commission not eliminate or relax AM/FM subcaps within terrestrial radio clusters. If the Commission were to further deregulate AM/FM radio station ownership at local market levels during this Quadrennial Review, significant harms should be expected to befall a significant number of competing radio broadcasters as well as the listeners they serve. Current numerical limits on the number of AM/FM radio stations that one entity can own in a given market remain necessary to promote diversity, localism, and competition.

Within the Commission's Local Radio Station Ownership Rule, there are several different issues that the Commission asked commenters to address.

The current Local Radio Ownership Rule:

> "allows an entity to own: (1) Up to eight commercial radio stations in radio markets with at least 45 radio stations, no more than five of which may be in the same service (AM or FM); (2) up to seven commercial radio stations in radio markets with 30-44 radio stations, no more than four of which may be in the same service (AM or FM); (3) up to six commercial radio stations in radio markets with 15-29 radio stations, no more than four of which may be in the same service (AM or FM); and (4) up to five commercial radio stations in radio markets with 14 or fewer radio stations, no more than three of which may be in the same service (AM or FM), provided that the entity does not own more than 50 percent of the radio stations in the

market unless the combination comprises not more than one AM and one FM station."[1]

But the NAB's broad proposal would allow entities in the top 75 Nielsen Audio markets to own or control up to eight commercial FM stations and unlimited AM stations in any of those markets. The NAB also proposed that entities should be permitted to own up to two additional FM stations if they participated in the Commission's incubator program. Further, the NAB alarmingly proposed eliminating all limits on FM and AM ownership in markets ranked below #75.[2] In other words, the NAB has proposed to relax limitations on the number of terrestrial radio stations that one entity can own in many markets ranked 1-75, eliminating limitations on AM/FM ownership entirely in smaller markets (those ranked below #75) such that there would be no Commission regulations preventing monopolies in these markets, and eliminating AM/FM subcaps entirely.[3]

While the NAB and certain broadcasters who might financially benefit from implementing such a proposal have expressed enthusiasm for making all of the proposed changes described above,[4] musicFIRST and FMC, along with **all** of the public interest and civil rights groups who filed comments, and a number of NAB members,[5] have voiced

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[1] *See 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*, Notice of Proposed Rulemaking, FCC 18-179 (2018) at ¶ 3.

[2] *See id.* at ¶ 6.

[3] *See id.* at ¶¶ 6, 15; Letter from Rick Kaplan et al., Legal and Regulatory Affairs, NAB, to Michelle Carey, Chief, Media Bureau, FCC, at 1-4 (filed June 15, 2018).

[4] *See id.*

[5] *See generally, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Salem Media Group, MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the Crawford Broadcasting Company, MB Docket No. 18-349 (Apr. 26, 2019). *See also, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Urban One, Inc., MB Docket No. 18-349 (Apr. 29, 2019); Mount Wilson FM Broadcasters, Inc., *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments, MB Docket No. 18-349 (Apr. 25, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, LTD., MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial*

strong opposition to all such proposed changes.[6] Many commenters in this proceeding expressed broad distaste for further deregulation of AM/FM radio generally, but some articulated specific concerns about potential harms that they believe should be expected to occur as a result of elimination or relaxation of the FM subcaps. Other commenters were most concerned about that portion of the NAB's proposal that would result in the FCC having no restriction against monopolies in markets ranked below #75. Consequently, we take this opportunity to address each of these issues separately, noting and amplifying some arguments that we find particularly compelling.

Further, we agree with commenters including Free Press and Urban One, Inc., ("Urban One") that the relevant competitive product market for purposes of this proceeding remains AM/FM Radio. The Commission's definition of the relevant competitive product market should not be expanded to include global non-broadcast advertising platforms. We agree with Urban One that "The plaintive plea now heard at the

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Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, Comments of King City Communications Corporation, MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of iHeart Communications, Inc., MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of CRC Broadcasting Company, Inc., MB Docket No. 18-349 (Feb. 7, 2019).

[6] *See generally, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Association of Black Owned Broadcasters, Inc., MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Free Press, MB Docket No. 18-349 (Apr. 29, 2019); Leadership Conference on Civil and Human Rights letter to FCC Re: MB Docket No. 18-349, 2018 Quadrennial Regulatory Review, (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communications Inc., and Wasingtech, LLC., MB Docket No. 18-349 (Apr. 29, 2019); *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the Multicultural Media, Telecom and internet Council, MB Docket No. 18-349 (Apr. 28, 2019).

FCC for fewer radio ownership rules is the cry of large radio entities asking the government to assist in quashing the competition to aid them in expanding their clout."[7]

We stand by our Initial Comments arguing that the Commission must conduct studies analyzing whether past consolidation events have led to a reduction of viewpoints conveyed through song, particularly by women and people of color.

We thank the Commission for the opportunity to provide these Reply Comments with respect to its review of the Local Radio Station Ownership Rule.

DISCUSSION

I. CURRENT LOCAL RADIO STATION OWNERSHIP CAPS AND SUBCAPS REMAIN NECESSARY TO PROMOTE DIVERSITY, LOCALISM, AND COMPETITION.

In our Initial Comments, we expressed our strong opposition to further deregulation of AM/FM radio ownership in the U.S.[8] A sizable number of NAB members, public interest groups,[9] and 1400+ express commenters[10] have explicitly asked the Commission to refrain from making any deregulatory changes to the Local Radio Station Ownership Rule, reasoning that any such changes could reasonably be expected to harm

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[7] Comments of Urban One, Inc., *supra* note 5.

[8] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Joint Comments of musicFIRST Coalition and Future of Music Coalition, MB Docket No. 18-349 (Apr. 29, 2019), https://ecfsapi.fcc.gov/file/1042963768046/QR%20FINAL%20FCC%20MF%20FMC%20Initial%20Comments%20with%20Schedules.pdf

[9] *See generally,* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6, Comments of Free Press, *supra* note 6; Leadership Conference on Civil and Human Rights letter to FCC, *supra* note 6; *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communications Inc., and Wasingtech, LLC., MB Docket No. 18-349 (Apr. 29, 2019); Comments of the Multicultural Media, Telecom and internet Council, *supra* note 6.

[10] *2018 Quadrennial 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.

local competition among radio broadcasters, and harm AM/FM radio broadcasters' ability to promote diversity and localism to listeners. These commenters have stated on the record that they oppose both relaxing the number of AM/FM stations that can be owned (in any market size) and they also specifically oppose eliminating or relaxing the AM/FM subcaps. We agree with all such commenters for purposes of this proceeding, as described in this section.

Salem Media Group ("Salem"), a California-based company operating 115 AM/FM radio stations nationwide.[11] Salem's radio stations largely serve Christian and conservative radio audiences. Most of Salem's radio stations offer spoken word content,[12] although a substantial number of Salem's stations offer Contemporary Christian music or Urban Gospel music programming.[13] Salem CEO Edward Atsinger met on May 15, 2019 with Chairman Pai and Alex Sanjenis, Media Advisor to Chairman Pai, to discuss the Commission's current review of the Local Radio Station Ownership Rule.[14] According to Salem's *Ex Parte* Notice describing that meeting, Mr Atsinger "expressed Salem's opposition to any changes in the local radio ownership rules and underscored the industry division on the issue of broadcast deregulation, observing that Urban One, the National Association of Black Owned Broadcasters ("NABOB"), and the Multicultural Media, Telecom and Internet Council ("MMTC") oppose the proposal put forward in this proceeding by the National Association of Broadcasters ("NAB")."[15]

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[11] *See* Comments of Salem Media Group, *supra* note 5 at 1.

[12] *See id.* at 1, 8.

[13] *Radio Stations,* **Salem Media Group**, https://salemmedia.com/wp-content/uploads/downloads/2018/09/Station-Map_Sept2018.pdf.

[14] *See* Russel R. Hauth, *Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996) and MB Docket No. 13-249 (Revitalization of the AM Radio Service),* Notice of Ex Parte Communication in MB Docket No. 18-349 (2018 Quadrennial Regulatory Review, https://ecfsapi.fcc.gov/file/10516043172667/FCC%20-%20Salem%20iHM%20Ex%20Parte%20051619.pdf (filing of Salem Media Group).

[15] *See id.*

Similarly, Hugh Hewitt, Salem's top syndicated conservative radio host,[16] wrote to the Commission in July 2018, expressing concerns over the prospect of the Commission further deregulating local radio station ownership:

> "I am generally a proponent of the efficiency of markets and of deregulation but of course there are and always have been exceptions that provide for the regulation of a limited resource like the radio bands. When highly regulated markets enter into deregulatory phases, profound and unforeseen consequences occur if the transition is abrupt or unforeseen."[17]

Hewitt's letter described how restrictions on radio station ownership helped conservative talk radio thrive on the AM band, and how quick deregulation could be expected to harm those who now provide diverse radio content on the AM dial.[18] He continued, "[T]he radio 'mall' I and other talk show hosts moved into required competition to thrive. No one could corner the market because of the caps, and the subcaps kept any one market participant from controlling any particular market. Stations had to compete for audience based on the quality of our content. The programs that succeeded did so over years and years of effort and under the structure of subcaps preventing monopoly…. *The market and its participants, including me, at a minimum require a long runway to a deregulated world as the reliance damages from a sudden shift in the highly structured*

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[16] *See The Hugh Hewitt Show,* **Salem Radio Network**, http://www.srnonline.com/show/the-hugh-hewitt-show (last visited May 24, 2019).

[17] *See Ex Parte Filing of Salem Media Group*, June 29, 2018, https://ecfsapi.fcc.gov/file/1227062476449/18122104-1.pdf.

[18] *See id*; *see e.g.* Kristen McQueary, *Chicago radio stations, which feed us daily, should showcase Chicago talent, not an out of towner 'brand',* **Chicago Tribune** (May 24, 2019), https://www.chicagotribune.com/columns/kristen-mcqueary/ct-perspec-mcqueary-radio-bobby-bones-chicago-20190523-story.html (A Chicago-based listener of conservative talk radio and multiple formats of music-driven radio laments a decrease of localism on Chicago's FM station Big 95.5's decision to replace local air talent with a syndicated morning talk show based out of Nashville.).

market would be significant and very difficult to predict in the absence of detailed studies of the various markets in which there is cross-ownership of stations."[19] (Emphasis added).

NABOB submitted comments stating that "any change in the local radio ownership rule to allow increased consolidation will have a significant negative impact on African American and other minority [radio] station owners and entrepreneurs.[20] NABOB notes that African American AM/FM radio station ownership has declined steadily since 1995.[21] NABOB cited its own study showing that while there were 146 African American owned companies that owned AM/FM radio stations in 1995, by 2013 only 67 African American owned AM/FM radio stations in the U.S.[22] Moreover, while the Commission has long had an affirmative obligation to promote ownership diversity and viewpoint diversity in AM/FM radio, the number of African American owned AM/FM radio stations in the U.S. has dwindled from 250 in 1995[23] to 180 today.[24] NABOB also cited the Commission's own data showing that as of 2013, African Americans owned only 2.5% of AM stations and a mere 1.3% of FM stations in the U.S.[25] These numbers are dismal, considering that African Americans comprise 13.4% of the U.S. population.[26] As NABOB explains, "the Commission has only one direct tool available to help it slow the decline in African

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[19] Hugh Hewitt, *Letter to the Commission Re: Caps on FM Ownership and the Impact on AM Radio*, (July 2, 2018), https://ecfsapi.fcc.gov/file/10516043172667/Pai%20-%20FCC%20Ltr%20Hewitt%20-%20subcaps%20070318.pdf.

[20] *See* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6 at 2.

[21] *See id.*

[22] *See id.* at 3; *2014 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Association of Black Owned Broadcasters, Inc., MB Docket No. 14-50 (Aug. 6, 2014).

[23] *See id.*

[24] *See* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6 at 4.

[25] *See id.* at 3; Third Report on Ownership of Commercial Broadcast Stations, Industry Analysis Division, Media Bureau, May 2017.

[26] *See* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6 at 4; U.S. Census Bureau website: https://www.census.gov/quickfacts/fact/table/US/PST045218.

American broadcast ownership and give that ownership an opportunity to grow – it must maintain the rules that slow industry consolidation." Those rules include current numerical caps[27] and subcaps.[28]

Aurora Colorado-based Crawford Broadcasting Company operates 15 AM and 9 FM radio stations nationwide.[29] Crawford's stations are recognized as leaders in Christian music, Urban music, Gospel music, Christian talk and conservative talk.[30] Like Salem, Crawford has a substantial number of AM stations that house talk formats, but Crawford also hosts music programming on many of its FM stations.[31] Crawford argues in its Initial Comments that it opposes further deregulation of AM/FM ownership, and that the current limits on radio ownership still promote competition, much to the benefit of the listening public.[32] Crawford explains, "current ownership limits have resulted in an equilibrium of sorts in many markets, particularly large and medium markets, wherein individual and smaller group owners are not locked out of station ownership by large entities that would otherwise likely seek to eliminate competition by themselves owning most or all the radio stations in a local area. We believe it would continue to be in the public interest to maintain these limits."[33]

Urban One owns 54 music and talk AM/FM stations in 15 large and medium markets throughout the U.S.[34] Urban One's primary goal as a broadcast entity has long

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[27] *See* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6 at 6.

[28] *See id.* at 5.

[29] *See* Comments of the Crawford Broadcasting Company, *supra* note 5 at 1.

[30] *See By Region*, **Crawford Broadcasting Company,** https://crawfordbroadcasting.com/by-region/ (last visited May 24, 2019); *Stations,* **Crawford Broadcasting Company,** https://crawfordbroadcasting.com/stations/ (last visited May 24, 2019).

[31] *See id.*

[32] *See* Comments of the Crawford Broadcasting Company, *supra* note 5 at 1.

[33] *See id.* at 2.

[34] *See* Comments of Urban One, Inc., *supra* note 5 at 6.

been, and remains, to provide diverse programming to largely Black American and urban audiences.[35] Radio One, Urban One's radio-only division, has strong reach among Black American and other minority audiences; Radio One's "workforce and audience are the hallmarks of diversity and inclusion."[36] As Urban One articulated, further deregulation of AM/FM radio ownership at local market levels would be detrimental both to independent broadcasters struggling to compete with clusters with markedly increased market share, and also to listeners likely to lose access to varied viewpoints and localism.

Urban One argues convincingly that the current proposal by the NAB would, if enacted, be disastrous to the public interest in competition among radio broadcasters in local markets:

> "The plaintive plea now heard at the FCC for fewer radio ownership restrictions is the cry of large radio entities asking the government to assist in quashing the competition to aid them in expanding their clout. Indeed, were the Commission to eliminate the local ownership caps, a reduction in the number of competitors in Urban One markets would occur with one or two already large companies ultimately owning most of the other stations. The resulting behemoths would attract an even greater share of advertising dollars and be able to set advertising prices at levels designed to drive out competition."[37]

Urban One acknowledges that such reduction in competition among AM/FM broadcasters would "likely lead to poorer service to radio listeners, fewer viewpoints being presented, and less localism."[38] It argues that if local competitors were eliminated in the wake of further local deregulation, "broadcasters would have no incentive to invest their resources into great programming or localism. Rather, radio broadcasters would

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[35] *See id.* at 2.

[36] *See id.* at 6.

[37] *See id.* at 2-3.

[38] *See id.* at 3.

most likely look to decrease overhead and increase revenue, particularly if their debt obligations have substantially increased."[39] Urban One's prediction rings true: if the Commission further relaxes current restrictions on local AM/FM ownership, "increased consolidation will lead the very largest radio station group owners to do what they have already done under previous bouts of consolidation; rely heavily on existing staff to handle much of the responsibilities of the newly acquired stations without expanding staffs or in a meaningful way increasing programming diversity."[40]

Urban One argues that further deregulating radio station ownership at local market levels would harm ownership diversity and create barriers to entry for minority broadcasters seeking to enter the arena of radio broadcasting at local market levels:[41]"Radio ownership diversity is not fostered by FCC rules that favor anti-competitive blocks of station ownership that will dominate local markets - such local radio behemoths have the ability to take actions that make entering and staying in the business of operating competing stations financially imprudent and challenging."[42]

Urban One aptly points out new AM/FM radio broadcasters just getting started at lower power facilities have historically "served niche demographics through a strategically-located technical facility and specialized programming." For example, Urban One itself was able to enter such large markets as Atlanta and Philadelphia "only by taking advantage of exactly such opportunities."[43]

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[39] *See id*.

[40] *See id.* at 14.

[41] *See id.* at 6.

[42] *See id*.

[43] *See id.* at 7.

Urban One argues that further deregulation of radio station ownership at local market levels would put "current and future owners of such stations into an expand-or-be-swallowed position."[44] Urban One warns the Commission that elimination of the subcaps

> "would drive many fringe radio stations out of business, losing both the diversity of ownership now emblematic of such facilities as well as their service to diverse populations. Specifically, minority owners would likely be up against stronger competition and/or would be more likely to exit the business altogether as companies look for stations in a market with a static number of radio stations to purchase to get larger."[45]

Moreover, in an anti-competitive fashion, larger acquiring owners would be able to offer advertisers time on a duplicated-format station recently flipped to a niche format "as an extra for little or no additional price based on the advertiser purchasing time on all of the larger owner's stations, leaving smaller owners in the market in the untenable position of trying to sell something the other guy is offering for free."[46]

This scenario of smaller clusters trying to sell advertising that other local radio stations are offering for free (as value added to advertising purchases on other stations within a large cluster) is not merely hypothetical. It happens now, and can be expected to only get worse if the Commission were to loosen existing numerical caps or FM subcaps. Mt. Wilson Broadcasters, Inc. ("Mt. Wilson"), which owns commercial country music station KKGO-FM in Los Angeles and sister station KSUR in Beverly Hills, as well as two radio stations in Monterey, California,[47] concurs with Urban One that independent AM/FM radio owners have good reason to provide niche music programming: "Mount Wilson has survived by operating niche formats (Jazz, Classical, and yes, Country in L.A.) because [we recognized that] a need in the community for these formats exists despite limited

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[44] *See id.*

[45] *See id*.

[46] *See id* at 8.

[47] *See* Mount Wilson FM Broadcasters, Inc., *supra* note 5 at 1.

revenue opportunities which make such formats unattractive to large group operators. The radio broadcast industry would be well served by more owners with a passion for radio and public service, not by greater consolidation." Mt. Wilson then got more specific about how independent broadcasters have difficulty competing against predatory larger radio clusters in their communities. "A major problem with large co-owned clusters is that they use their dominance to sell to both local and national advertising accounts. Some stations are included as a bonus, and some have low-balled rates, all with the goal to obtain the entire advertising buy for the cluster. Such practices freeze Mount Wilson out of buys by low balling the entire eight stations to obtain 100% of the advertiser's order."[48]

Mt. Wilson argued that consolidation since the enactment of the Telecommunications Act of 1996 has harmed both localism and viewpoint diversity, and that further relaxation of the Local Radio Station Ownership Rule could be expected to create further harm to viewpoint diversity and localism at local market levels.[49] Mt. Wilson has served the Los Angeles community as a family-owned independent broadcaster providing quality music programming since 1959, and is uniquely positioned to understand the negative impact of further consolidation.

Bristol County Broadcasting, Inc./SNE Broadcasting, Ltd. (Collectively, "Bristol"), owns and operates two AM stations (with FM translators) in Fall River, Massachusetts.[50] One of those stations is a talk format with a decidedly local morning show called the "Bristol County Breakfast Club,"[51] while the other station is a Portuguese language

[48] *See id.* at 4.

[49] *See id*.

[50] *See* Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, LTD., *supra* note 5 at 1. Fall River is ranked #182 among radio markets. See *3182 New Bedford-Fall River: Fall 2018 Nielsen Audio Quarterly Report,* **Radio Online** (Updated: 01-25-19), https://ratings.radio-online.com/cgi-bin/rol.exe/arb365.

[51] *History*, **WSAR**, https://wsar.com/about-wsar/history (last visited May 25, 2019).

station.[52] Bristol argues that if the NAB proposal were adopted by the Commission such that the ownership caps were eliminated in markets 76 and below, small station owners like itself would be harmed by consolidating larger competitors.[53] "As a result, local communities would ultimately suffer the loss of community inspired broadcasts in exchange for syndicated content that is national rather than local-centric."[54]

As Bristol explains, if the Commission were to eliminate restrictions on ownership in markets ranked 76 and below, that independent radio owners like Bristol could be expected to struggle to compete with growing local clusters of stations wielding comparatively formidable market share, and that communities like Fall River may become starved for locally-produced content.[55] Having made a strong commitment to locally-produced content for listeners in Fall River while making its way as an independent broadcaster with a small cluster, Bristol is uniquely qualified to speak on this issue.

Similarly, King City Communications Corporation ("King City"), which has been a locally-owned broadcast radio station licensee serving King City, California for decades,[56] requested in comments that the Commission retain the current rule as is. King City argues that as larger radio conglomerates have gulped up independent station groups, servicing local communities "is no longer a priority" to entities acquiring stations from smaller radio owners.[57] "Eliminating the ownership cap will hasten the demise of the

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[52] *WHTB 1400 AM,* **Radio Voz Do Emigrante**, http://www.radiovozdoemigrante.com/ (last visited May 27, 2019).

[53] *See* Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, LTD., *supra* note 5 at 2.

[54] *See id*. *See e.g.* Kristen McQueary, *supra* note 18.

[55] *See* Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, LTD., *supra* note 5 at 2.

[56] *See* Comments of King City Communications Corporation, *supra* note 5 at 1.

[57] *See id*.

independent, family-owned broadcast radio station and destroy the localism that is at the center of such stations."[58]

Free Press is a nonprofit organization who fights for "positive social change, racial justice, and meaningful engagement in public life... equitable access to technology, diverse and independent ownership in media platforms, and journalism that holds leaders accountable and tells people what's actually happening in their communities."[59] In its Initial Comment, Free Press argues against loosening the Local Radio Station Ownership Rule at all,[60] and aptly wrote, "Particularly despicable is NAB's suggestion that the local ownership rule should be completely eliminated (rather than, potentially, subject to waiver in markets where diverse ownership is truly and demonstrably uneconomical) for all markets below the top 75 Nielsen Audio Metro markets. Smaller and rural markets are often the most in need of quality local coverage, as major broadcasters have increasingly consolidated operations and news production in cities far from the localities they serve."[61] We agree that the portion of NAB's proposal to eliminate all ownership restrictions in Nielsen markets 76 and below is particularly reprehensible, since the adoption of the proposal would mean that the Commission would have no restrictions whatsoever to prevent monopolies in these markets. The Commission is legally required to promote ownership diversity. Allowing monopolies is precisely the opposite of promoting ownership diversity. We request that the Commission quickly dismiss this section of the NAB's proposal.

The Leadership Conference on Civil and Human Rights stated in its Initial Comment, that the Commission has persistently failed to obtain reliable data on which

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[58] *See id*.

[59] *See About*, **Free Press**, https://www.freepress.net/about (last visited May 26, 2019).

[60] *See* Comments of Free Press, *supra* note 6 at 4.

[61] *See id.* at 4-5.

broadcast outlets are controlled by women and minorities. “The Commission cannot effectively promote racial and gender diversity without conducting comprehensive research on race and gender participation in the media industry. Because the FCC has not conducted sufficiently reliable studies, nor furnished well-developed data-backed analysis to reasonably support modification or repeal, the FCC does not have a sufficient legal foundation to modify or repeal any Media Ownership Rules as proposed.”[62]

In joint Initial Comments, the National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ Office of Communications, Inc. and Washingtech, LLC argued against the Commission weakening any media ownership rules whatsoever.[63] These joint commenters called upon the Commission to, before considering any further deregulatory actions, conduct further studies on potential impacts of further media deregulation on communities of color, where access to broadband is far more restricted than elsewhere and thus reliance upon broadcast media is higher than elsewhere.[64] We stand by our Initial Comments in opposition to the NAB's entire proposal described above, and bring to the Commission's attention similarly-minded Initial Comments by public interest groups and a notable array of NAB members.

A. FM subcaps should neither be eliminated nor relaxed in this Quadrennial Review.

In our Initial Comment, we argued that FM subcaps in particular should not be eliminated or relaxed.[65] A diverse group of AM/FM radio broadcasters, public interest

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[62] Leadership Conference on Civil and Human Rights letter to FCC Re: MB Docket No. 18-349, 2018 Quadrennial Regulatory Review, (Apr. 29, 2019) at 3-4.

[63] *See* Comments of National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communications Inc., and Wasingtech, LLC., *supra* note 6 at 18-19.

[64] *See id.* at 10-11.

[65] *See,* Joint Comments of musicFIRST Coalition and Future of Music Coalition, *supra* note 8 at 44-45.

groups and civil rights groups have also argued in this proceeding that the Commission should not eliminate or relax FM subcap ownership restrictions.[66] They argued that elimination of the FM subcap in particular should be expected to cause devaluation of AM radio station assets and thus risk the public interest currently served to listeners of AM radio stations.[67]

Salem is among those broadcast companies that argued this point most emphatically. Seventy percent of Salem's radio stations are on the AM band.[68] In a letter to Chairman Pai filed December 20, 2018, Salem CEO Edward Atsinger and President of Broadcast Media David P. Santrella wrote, "Chairman Pai, we are concerned about the likely effect that the removal of sub-caps will have on AM radio. With the prospect of FM Ownership caps moving to 8 in the top markets, and no caps in smaller markets, dominant radio groups will likely move much of their talk programming to the FM band. If this continues to happen the AM band will be left for very specialized formats."[69]

Of course, no form of deregulation could be more abrupt than the NAB's proposal to obliterate all restrictions on radio station ownership in markets ranked below #75.[70]

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[66] *See generally,* Comments of the National Association of Black Owned Broadcasters, Inc., *supra* note 6; Comments of Free Press, *supra* note 6; Leadership Conference on Civil and Human Rights letter to FCC, *supra* note 6; Comments of National Hispanic Media Coalition, Asian Americans Advancing Justice-AAJC, The Institute for Intellectual Property and Social Justice, Public Knowledge, United Church of Christ, Office of Communications Inc., and Wasingtech, LLC., *supra* note 6; Comments of the Multicultural Media, Telecom and internet Council, *supra* note 6; *see also,* Comments of Salem Media Group, *supra* note 5; Comments of the Crawford Broadcasting Company, *supra* note 5. *See also,* Comments of Urban One, Inc., *supra* note 5; Mount Wilson FM Broadcasters, Inc., *supra* note 5; Comments of Bristol County Broadcasting, Inc./SNE Broadcasting, LTD., *supra* note 5; Comments of King City Communications Corporation, *supra* note 5, Comments of iHeart Communications, Inc., *supra* note 5; Comments of CRC Broadcasting Company, Inc., *supra* note 5.

[67] *See generally, id.*

[68] Comments of Salem Media Group, *supra* note 5 at 1.

[69] *See Ex Parte Filing of Salem Media Group*, June 29, 2018, https://ecfsapi.fcc.gov/file/1227062476449/18122104-1.pdf.

[70] Letter from Rick Kaplan et al., *supra* note 3 at 1-4.

Similarly, raising the numerical caps across wide swaths of markets 1-75 and/or eliminating FM subcaps would also be abrupt.[71]

In its initial comment in this proceeding, Salem noted its 34 years of experience as a radio broadcaster in the U.S,[72] including having had a presence on the AM band in almost all large markets, and predicted that "relaxation of the subcaps will do little to counter the diffusion of radio's market position [with respect to competing advertising platforms] while doing much to undermine the Commission's progress toward AM Revitalization."[73] This point was further illustrated by Salem's syndicated host Hugh Hewitt, who wrote in a letter to Chairman Pai in July 2018: "[T]he removal of the FM subcaps would have a quite foreseeable effect of bleeding out the listeners to AM radio. This would raise barriers to entry for new shows, lessen the diversity of existing programming and generally darken the future of AM radio, perhaps in a relatively short period of years."[74]

Salem aptly argues that if subcap restrictions on FM ownership were to be relaxed, the Commission would thereby encourage station owners to move their investments from AM to FM, leaving many AM radio listeners disenfranchised, particularly in rural markets where listeners depend even more on AM radio than in larger urban centers.[75]

iHeart Communications, Inc. ("iHeart") is the licensee of 848 broadcast radio stations throughout the U.S.,[76] nearly 30 percent of which are on the AM band.[77] Citing

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[71] *Id*.

[72] Comments of Salem Media Group, *supra* note 5 at 1.

[73] *Id.* at 2.

[74] *Id.* at 7.

[75] *Id.* at 2.

[76] *See* Comments of iHeart Communications, Inc., *supra* note 5 at 2.

studies showing significant declines for AM stations in both audience and advertising revenue in recent years,[78] iHeart wrote in its Initial Comment, "iHeart urges the Commission to reject the NAB proposal with respect to FM ownership, which would exacerbate the competitive disparity between AM and FM stations. Doing so will avert the very real threat of a mass divestiture of AM stations in favor of FM station purchases and the consequent devaluation of AM assets and attendant listener flight from the AM band."[79]

AM radio has traditionally been relied upon by listeners in times of disaster (natural and otherwise), and still remains a primary source of information during such times of crisis.[80] Accordingly, if FM subcaps were to be removed by the Commission, subsequent migration of radio groups from AM to FM may leave former AM listeners, particularly those in rural areas most reliant on AM radio stations (which often cover larger geographic territories than FM stations), with no good choices on their AM dial for crucial news in times of local crisis.[81]

Crawford Broadcasting also expressed that it is against eliminating the FM subcap; "We have no doubt that if the subcaps are removed, existing independently-owned FM stations will in short order be sold to larger groups that will move lucrative talk formats from existing AM outlets to those FM stations. This, we believe, will serve to undo much of the good that has been achieved to date by AM Revitalization." Crawford argues that if the Commission eliminates the FM subcap, the value of AM stations can be expected to drop, "in many cases to less than the value of the land on which their

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[77] *See id*.

[78] *See id.* at 4, 14.

[79] *See id.* at 5.

[80] Comments of iHeart Communications, Inc., *supra* note 5. *See also*, Russell R. Hauth, *supra* note 14.

[81] *See* Comments of Salem Media Group, *supra* note 5 at 4. Comments of iHeart Communications, Inc., *supra* note 5.

antennae sites are built. That will in turn lead to stations going dark."[82] It is important to the public interest to maintain a vibrant AM radio, and that keeping the FM subcaps is crucial in this regard.

CRC Broadcasting Corp. ("CRC"), which operates a handful of talk-based stations in Arizona,[83] similarly expressed concern about the prospect of the Commission allowing more than five FM stations in any market under any scenario.[84] CRC recently conveyed in an ex parte notice that in a meeting with Mr. Alex Sanjenis, Media Advisor to Chairman Pai on May 13, 2019, CRC's position that allowing more than five FMS in any markets would likely cause harm to remaining AM stations in such markets, and "in particular, adverse changes in diversity of ownership and viewpoint, and in diminishment of AM station valuations."[85]

NABOB, in turn, argued that elimination or relaxation of FM subcaps would disproportionately affect minority and female radio broadcast owners, many of whose radio assets are on the AM band.[86]

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[82] *See* Comments of the Crawford Broadcasting Company, *supra* note 5 at 2.

[83] *Radio Stations Licensed to CRC BROADCASTING COMPANY, INC.*, **Streaming Radio Guide**, https://streamingradioguide.com/licensee-list.php?showall=on&licensee=CRC+BROADCASTING+COMPANY%2C+INC. (last visited Apr. 25, 2019).

[84] *See* Comments of CRC Broadcasting Company, Inc., *supra* note 5 at 1.

[85] *See id*.

[86] *See* Comments of iHeart Communications, Inc., *supra* note 5 at 25; *see e.g.,* iHeartMedia Inc. & Jessica Marventano, Letter to FCC Re: Quadrennial Review of Local Broadcast Radio Ownership Rules, MB Docket No. 18-349, (Oct. 9, 2018); *see also,* National Association of Black Owned Broadcasters Letter to Hon. Ajit Pai, *Re: 2014 Quadrennial Regulatory Review,* MB Docket 14-50 et. al. (April 7, 2017), https://ecfsapi.fcc.gov/file/10407839121781/NABOB%20Letter%20to%20Chairman%20Pai%20Opposing%20Repeal%20of%20the%20Subcaps%20Rule.pdf. NABOB supports this assertion by quoting a letter from iHeart's Senior Vice President, Government Affairs, Jessica Marventano, dated October 8, 2018, to Michelle Carey, Chief of the Commission's Media Bureau, expressing that part of iHeart's reasoning in opposing efforts to relaxing the FM subcaps: "By contrast, relaxing (much less eliminating) current limits on FM ownership would risk significant harm to the industry, particularly to AM radio, as it would trigger potential mass divestiture of AM stations in favor of FM station purchases. Such divestiture would result in a dramatic *devaluation* of and capital flight from AM radio stations, further undermining AM radio's economic challenges and potentially stranding millions of Americans who depend on AM radio for their local news, information, sports and weather. For those current owners of AM radio stations, including women and minority owners, it could destroy the financial underpinnings of their asset." *See* Comments of Urban One, Inc., *supra* note 5 at

B. The Commission should conduct studies analyzing whether past consolidation events have led to a reduction of viewpoints conveyed through song, particularly by women and people of color.

Urban One argues compellingly that allowing for greater consolidated ownership in local markets would lessen the radio broadcasting competition within those markets.[87] Urban One explains that such reduced local competition would in turn likely lead to fewer viewpoints being presented, and less localism."[88] Urban One described having invested in creating an old-school hip hop format for some of its stations, which ultimately did not succeed financially, but was designed specifically to try to "give listeners options outside of mass-appeal programming." Urban One then went on to say: "The FCC should not, through imprudent changes to its ownership regulations, make it even more difficult for radio broadcasters to launch new, potentially competitive or experimental programming that provide radio audiences real choices."[89] Urban One made this statement in the context of arguing that the FCC should "promote program diversity as a complementary goal" to promoting ownership diversity.[90] Urban One argues that reducing competition between AM/FM radio broadcasters in local markets has the potential to discourage stakeholders from investing in developing innovative and more eclectic music formats. Urban One is correct that the Commission should do far more than it has done in recent years to promote (and better define) its notion of program diversity. We enthusiastically root for broadcasting companies that invest in innovative music formats and we wholeheartedly advocate for program diversity on AM/FM radio. But music isn't *about*

9; *see also,* iHeartMedia Inc. & Jessica Marventano, Letter to FCC Re: Quadrennial Review of Local Broadcast Radio Ownership Rules, MB Docket No. 18-349, (Oct. 9, 2018) at 3.

[87] *See* Comments of Urban One, Inc., *supra* note 5 at 3.

[88] *See id.* at 3.

[89] *See id.* at 9.

[90] *See id*.

formats. Rather, music is *about* whatever songwriters and performing musicians are trying to convey to their audiences. Musical content must have a place in any and all discussions by the Commission about how *viewpoint diversity* may be affected by further deregulation of radio station ownership at local market levels. The communication of viewpoints on AM/FM radio is not reserved to just spoken word in news or discussion. Most AM/FM radio stations in the U.S. are music-driven rather than talk or sports. The vast majority of content that drives music stations contains recorded lyrics that are sung or rapped. Music creators and listeners have long complained about AM/FM radio regularly shrinking playlists in the wake of consolidation.[91]

Notably, at least 550 express comments have been filed specifically endorsing our Initial Comment in this proceeding. Our Initial Comment argued that any analysis of viewpoint diversity within the music radio realm must include a discussion of music lyrics as viewpoints, and that any reduction in the number of songs and artists in the wake of ownership consolidation must be viewed as harm to viewpoint diversity, and not just to program diversity. We asked the Commission to conduct studies on correlations between past consolidation of AM/FM ownership and subsequent contractions of affected stations' playlists. We specifically repeat that request now. The Commission has the resources to request and obtain such data on a broad scale, analyze it, and make it public.

Thomas C. Smith, a 50 year broadcasting veteran from Sun Prairie, Wisconsin filed ten pages of thoughtful comments in this proceeding lamenting the effects of prior

[91] *See, e.g.*, **Dealbook**, *Some Musicians Sing the Blues Over Radio Consolidation,* **NY Times** (Dec. 12 2006), https://dealbook.nytimes.com/2006/12/12/some-musicians-sing-the-blues-over-radio-consolidation; Scott McCaughey, *Localism and diversity should be FCC's priority,* **The Seattle Times** (Nov. 8, 2007), http://old.seattletimes.com/html/opinion/2004000448_music08.html; John Reinan, *Terrestrial radio is losing listeners– and the industry war*, **MinnPost** (Feb. 4, 2013), https://www.minnpost.com/business/2013/02/terrestrial-radio-losing-listeners-and-industry-war/; "In a world of shrinking playlists, corporate control, and a stagnated format… take heart. Epic has the answer!" (trade advertisement promoting Epic recording artists Brad Martin, Tammy Cochran and Ty Herndon) **Country Airplay Monitor** (Mar. 1, 2002), https://www.americanradiohistory.com/Archive-Billboard/Billboard-Country-Airplay/BBCA-2002-03-01.pdf at 5.

broadcast consolidation on the public interest.[92] He wrote, "The current rules on radio ownership were created in [the Telecommunications] Act of 1996 and lead to the creation of a few very large radio broadcast groups. By placing the only limits on the number of station[s] one could own in each market and with no national limits other than the local market limits, it lead[s] to a number of issues that has damaged radio. The first is the creation of basically cookie cutter radio where the music playlists were the same from market to market…. I have seen many comments already posted from members of the music industry objecting to further consolidation. They have legitimate complaints."[93]

In this Reply Comment, we take the opportunity to expand our prior analysis of playlists of a group of country radio stations that were sold from Citadel to Cumulus in 2011, and which 1) remained in the country format rather than flipping to a different format after having been acquired, and 2) had playlists that were monitored by Mediabase.[94] In our Initial Comments we analyzed playlists at this group of 22 stations on year end Mediabase airplay charts in the year 2010 (before the sale to Cumulus) and in 2014 (3 years post-sale). We found that the total number of songs played on these stations decreased by 32.2% between 2010 and 2014. We also found that the number of songs by female artists was reduced by 40.9% between those years, while the number of songs played by male artists was reduced by 30.7% and the number of songs played by mixed-gender ensembles was reduced by 19.7%.[95]

Since filing our Initial Comments, we were able to expand our study of that group of stations' combined year-end playlists for each year between 2008 and 2018. We stand

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[92] *See generally, 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of Thomas C. Smith, MB Docket No. 18-349 (Apr. 29, 2019).

[93] *See id.* at 4.

[94] *See* Joint Comments of musicFIRST Coalition and Future of Music Coalition, *supra* note 8 at 36-39.

[95] *See id.* at 38-39.

by our analysis in our Initial Comments, and here we want to make data for more years available for that same group of stations so that the Commission can get a feel for how playlists at those stations evolved for a longer period of time before and after the sale from Citadel to Cumulus. After analyzing year-end Mediabase data for these stations from 2008 to 2018, we discovered that the combined total number of songs played on those stations was consistently in the range between 3,206 and 3,283 songs per year between 2008 and 2011. Then, after the sale in 2011, in all of the years between 2012 and 2018, the total combined number of songs played on those stations was reduced to between 2,227 and 2,701 per year. That's a clear (and thus far permanent) reduction of songs played on these stations immediately following the sale of this group of stations to Cumulus. The combined number of songs played on average per year was reduced by 24.6% during the span between 2011-2018 (as compared to between 2008-2010). Each of the songs played on the radio represents a message, and as playlists got reduced in the wake of ownership consolidation, the number of voices, literally and figuratively, was significantly reduced.

Importantly, during this same period, the number of songs performed by women on these stations was reduced from an average of 656 between 2008-2010 down to an average of 428 between the years 2011-2018 (after the sale). That was a reduction of 34.7%. Meanwhile, combined total songs performed by male artists between 2008 and 2010 were on average 2,465 per year, and then decreased to an average of 1,892 per year after the sale between 2012 and 2018. That was a reduction of 23.2%. Total combined songs performed by mixed ensembles between 2008 and 2010 totaled on average 134, and didn't change substantially after the sale. There were an average of 135 songs played by mixed ensembles per year between 2011-2018. The number of songs performed by mixed ensembles increased very slightly, by 0.7%.

The takeaways from this analysis are that at this group of country stations sold from Citadel to Cumulus in 2011:

- Playlists were slashed after the sale such that the average combined total number of distinct songs per year played on these stations was reduced by 24.6%.
- Total combined distinct songs performed by female artists on these stations were reduced by a whopping 34.7% after the sale; female artists (and therefore female perspectives) on these stations were already underrepresented before the sale, and have been even further underrepresented since the sale.
- Total combined distinct songs by male artists were reduced by 23.2% after the sale.

II. WE DISAGREE WITH THE NAB THAT INCREASING COMPETITION FROM NON-BROADCAST ADVERTISING PLATFORMS PROVIDES SUFFICIENT REASON FOR THE COMMISSION TO EXPAND OR ELIMINATE LIMITS OF FM OWNERSHIP

The NAB's Initial Comments in this proceeding are, much like the NAB's prior Comments and Reply Comments, almost entirely about how much competition AM/FM now has for audience and advertising dollars from non-broadcast advertising-based content providers.[96] Now, however, the NAB misleadingly asserts in its Initial Comments in this proceeding: "The local radio ownership rule is "competition based," and the FCC has not relied on its diversity or localism goals as the basis for retaining the [Local Radio

[96] *See generally*, *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Association of Broadcasters, MB Docket No. 18-349 (Apr. 29, 2019); *In the Matter of Status of Competition in the Marketplace for Delivery of Audio Programming*, Comments of the National Association of Broadcasters, MB Docket No. 18-227 (Sept. 24, 2018).

Station Ownership Rule] unchanged in its various periodic reviews.[97] The NAB here implies that the Commission's 2016 Order creates a new standard of review that would allow the Commission to base its rulemaking decisions entirely on competitive analysis in favor of the NAB's position, without regard to the extent to which diversity and localism are helped or harmed. Nothing could be further from the truth.

In support of its assertion about the applicable standard of review, the NAB cites the Commission's 2014 Quadrennial Regulatory Review, Second Report and Order, 31 FCC Rcd 9864, 9899 (2016) (2016 Order). The Commission's 2016 Order never said or implied that inter-modal competition *between AM/FM radio and other non-broadcast advertising platforms* was determinative when deciding whether to retain or change any portions of the Local Radio Station Ownership Rule. In order to understand the Commission's standard of review applied in the 2016 Order, one must read a series of paragraphs together. Doing so makes exceedingly clear that the Commission retained all aspects of the Local Radio Station Ownership Rule *specifically in order to protect competition between AM/FM radio stations at local market levels*, and since doing so was determined by the Commission to be entirely consistent with promoting viewpoint diversity, ownership diversity, and localism.

The entire point of the Commission's analysis of the Local Radio Station Ownership Rule in its 2016 Order was that retaining the Local Radio Ownership Rule in its entirety would not only be necessary to protect *intra-modal competition* (***i.e.*, competition among AM/FM radio stations within individual local markets, particularly those smaller AM/FM clusters who would struggle to compete against clusters that were allowed to grow their local markets share to even greater**

[97] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Association of Broadcasters, *supra* note 96 at 29.

levels),[98] but the Commission also emphasized that retaining the Local Radio Station Ownership Rule would promote viewpoint diversity, ownership diversity, and localism, consistent with the Commission's public interest obligations. The Commission stated in its 2016 Order:

> Based on the record in the 2010 and 2014 Quadrennial Review proceedings, we find that the current Local Radio Ownership Rule remains necessary in the public interest and should be retained without modification. We find that the rule remains necessary to promote competition and that the radio ownership limits promote viewpoint diversity "by ensuring a sufficient number of independent radio voices and by preserving a market structure that facilitates and encourages new entry into the local media market." Similarly, we find that a competitive local radio market helps to promote localism, as a competitive marketplace tends to lead to the selection of programming that is responsive to the needs and interests of the local community. Also, we find that the Local Radio Ownership Rule is consistent with our goal of promoting minority and female ownership of broadcast television stations. We find that these benefits outweigh any burdens that may result from retaining the rule without modification. In addition, as discussed in greater detail below, we adopt certain clarifications and other actions proposed in the FNPRM that are designed to fulfill the intent of the revisions to the Local Radio Ownership Rule adopted in the 2002 Biennial Review Order.[99]

The NAB implies on page 29 of its Initial Comments that an analysis of expanded inter-modal competition (among various types of advertising-based platforms not limited to AM/FM radio) should provide the Commission justification to repeal or relax the Local

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[98] *See 2014 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, 2010 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*, Second Report and Order, 31 FCC Rcd 9864, at ¶ 94 (Aug. 25, 2016). "Ultimately, we find that the record demonstrates that alternative sources of audio programming are not currently meaningful substitutes for broadcast radio stations in local markets; therefore, we decline to depart from our tentative conclusion to exclude non-broadcast sources of audio programming from the relevant market for the purposes of the Local Radio Ownership Rule.254 ***We find that the Local Radio Ownership Rule should continue to focus on promoting competition among broadcast radio stations in local radio listening markets.***"

[99] Second Report and Order, *supra* note 198 at ¶ 82 (Aug. 25, 2016).

Radio Station Ownership Rule, *even if doing so would be inconsistent with promoting diversity and localism*.[100] Such an assertion is patently false. Instead, the Commission in its 2016 Order concluded that retaining the Local Radio Station Ownership Rule should be retained because doing so would promote competition among AM/FM radio stations *sharing a local market*, consistent with the Commission's policy goals of promoting diversity and localism. Here's the paragraph the NAB took out of context:

> Under Section 202(h), we consider whether the Local Radio Ownership Rule continues to be "necessary in the public interest as a result of competition." In determining whether the rule meets that standard, we consider whether the rule serves the public interest. For the reasons discussed below, we conclude that the current rule, without modification, meets that standard. While we believe that the competition-based Local Radio Ownership Rule is consistent with our other policy goals and may promote such goals in various ways, we do not rely on these other goals as the basis for retaining the rule. Consistent with Commission precedent, upheld by the court in Prometheus II, we find that the Local Radio Ownership Rule continues to be necessary to protect competition, which provides a sufficient ground on which to retain the rule.[101]

In the immediately following paragraph, the Commission went on to provide further context:

> We tentatively concluded in the FNPRM that the relevant product market for review of the Local Radio Ownership Rule is the radio listening market and that it is not appropriate to include non-broadcast audio sources in that market. Public interest commenters generally support the Commission's proposal to retain the rule along with the current relevant market definition.[102]

Finally, the Commission concluded:

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[100] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the National Association of Broadcasters, *supra* note 96 at 29: "The local radio ownership rule is "competition-based," and the FCC has not relied on it's diversity or localism goals as the basis for retaining the rule unchanged in its various periodic reviews."

[101] *See* Second Report and Order, *supra* note 98 at ¶ 87 (Aug. 25, 2016).

[102] *See id.* at ¶ 88.

> **We affirm our tentative conclusion that the current rule remains consistent with the Commission's goal to promote minority and female ownership of broadcast radio stations. While we retain the existing Local Radio Ownership Rule for the specific reasons stated above, we find that retaining the existing rule nevertheless promotes opportunities for diverse ownership in local radio ownership. This competition-based rule indirectly advances our diversity goal by helping to ensure the presence of independently owned broadcast radio stations in the local market, thereby increasing the likelihood of a variety of viewpoints and preserving ownership opportunities for new entrants.** We have also retained the AM/FM subcaps, in part, to help promote new entry—as noted, the AM band in particular has historically provided lower-cost ownership opportunities for new entrants.[103]

The Commission thus concluded that for purposes of determining whether to retain or relax a rule designed to protect AM/FM broadcasters from unfair local competition, that retention of the rule on the basis of the Commission's competitive analysis was sufficient, given that the same rule also helped promote diversity and localism.

Moreover, the Communications Act requires the FCC "to make the broadcast spectrum available to all people 'without discrimination on the basis of race.'"[104] "Federal law imposes on the Commission an obligation to promote ownership by minorities and women…. As such, we have described promoting minority and female ownership as an "important aspect of the overall media ownership regulatory framework."[105] The Commission is legally required to promote diversity. Since the 1940's, the United States Supreme Court has made clear that the FCC has a legislative mandate to protect the public interest, and that goals promoting diversity, competition, and localism are

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[103] *See id.* at ¶¶ 87, 125.

[104] *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 420-21, fn. 58 (3d Cir. 2004) (*Prometheus I)* (citing 47 **U.S.C**. § 151).

[105] *See Prometheus Radio Project v. FCC*, 824 F.3d 33, 48 (2016) (*Prometheus III*); see also 47 **U.S.C.** §§257; 309(j)(4)(D); 309(j)(3)(B).

consistent with acting in the public interest.[106] Contrary to the NAB's misleading description of the applicable standard of analysis, the Commission may not conduct a review of the Local Radio Station Ownership Rule solely on the basis of an analysis of inter-modal global competition among advertising-based content providers without regard to promoting diversity and localism in local broadcasting.

We have already argued in three recent substantive filings that the AM/FM radio industry's competition with non-broadcast advertising platforms is not itself a sufficient condition to warrant reducing competition among AM/FM broadcasters in local markets. We filed Initial Comments[107] and Reply Comments[108] in the Commission's 2018 proceeding "In the Matter of Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming," arguing that further consolidation at AM/FM radio in local markets would hurt the ability of smaller AM/FM radio clusters and independent AM/FM stations to compete with larger AM/FM clusters in shared markets.[109] Our Initial Comments in this Quadrennial Review provided further evidence in this regard.[110] In all of these filings, we noted that the NAB (and similarly-minded broadcasters) whose concerns appear limited almost exclusively to inter-modal

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[106] *See Nat'l Broad. Co. v. United States*, 319 U.S. 190, 194, 203, 219 (1943).

[107] *See Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Comments of musicFirst Coalition and Future of Music Coalition, (Sept. 24, 2018), https://ecfsapi.fcc.gov/file/10925263011177/MUSISCFIRST%20FMC%20FCC%20COMMENT%20FINAL.pdf at 22-26.

[108] *See Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Joint Reply of musicFirst Coalition and Future of Music Coalition, (Oct. 9, 2018) https://ecfsapi.fcc.gov/file/1010152413876/MF%20FMC%20Reply%20comments%20final%2010_9_2018.pdf at 6-17.

[109] *See Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Comments of musicFirst Coalition and Future of Music Coalition, *supra* note 114 at 22-26; *Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming*, Joint Reply of musicFirst Coalition and Future of Music Coalition, *supra* note 115 at 6-17.

[110] *See generally*, *2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Joint Comments of musicFIRST Coalition and Future of Music Coalition, MB Docket No. 18-349 (Apr. 29, 2019), https://ecfsapi.fcc.gov/file/1042963768046/QR%20FINAL%20FCC%20MF%20FMC%20Initial%20Comments%20with%20Schedules.pdf.

competition between global advertising platforms not only ignore the plight of those smaller clusters of AM/FM radio that want a fighting chance at competing with larger AM/FM clusters for local advertising dollars, but also largely ignore the fact that the Commission's public interest obligations require the agency and broadcasting entities alike to promote diversity and localism, both of which have been substantially harmed in the wake of past radio consolidation events. With respect to our prior Comments and Reply Comments from Docket 18-227, as well as our Initial Comments in this proceeding, we incorporate those filings here by reference.

Multicultural Media, Telecom and Internet Council ("MMTC") refuted the NAB's assertion that inter-platform competition necessitates further deregulation. MMTC noted that lifting local radio ownership caps and subcaps would benefit only a tiny handful of already-large radio clusters which had already been able to acquire enough stations to bump up against the local ownership cap or FM subcap.[111] MMTC's analysis of the largest markets showed there are only 19 station groups currently bumping up against the five-station subcap, two groups bumping up against the five station AM subcap, and two groups bumping up against the eight station cap.[112] MMTC aptly pointed out that "[a] benefit for these few companies would come entirely at the expense of others who entered the industry late or have yet to enter– including nearly all of the nation's minority, women and aspiring broadcasters."[113] Finally, MMTC agreed with certain broadcasters and with *Radio Ink* Chairman Eric Rhoads, "that the successful answer to the competitive

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[111] *See 2018 Quadrennial Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Comments of the Multicultural Media, Telecom and Internet Council, MB Docket No. 18-349 (Apr. 28, 2019) at 5.

[112] *See* Comments of the Multicultural Media, Telecom and Internet Council, *supra* note 111 at 5-6; see, e.g., Ernesto Aguilar, Community Broadcaster, Diversity Later, Radio World, June 22, 2018), available at https://www.radioworld.com/columns-and-views/community-broadcaster- diversity-later (last visited May 26, 2019).

[113] Comments of the Multicultural Media, Telecom and Internet Council, *supra* note 111 at 6.

challenge presented by online media must be found in innovation and local service - not in more consolidation."[114]

III. CONCLUSION

We respectfully request that the Commission retain the Local Radio Ownership Rule in its entirety. Current maximums on the number of AM/FM radio stations that one entity can own in a single market, as well as the FM subcap, remain necessary in order to promote competition, diversity, and localism at AM/FM radio *in local communities*. Public interest groups and broadcast companies of all sizes have agreed on these points in initial comments already filed in this proceeding. The Commission should not expand its current definition of the relevant product market beyond broadcast radio stations for purposes of analyzing the Local Radio Station Ownership Rule. Expanding this definition as a means to justify an increase in the numerical limits on local radio station ownership would unduly harm smaller radio station clusters that already struggle to compete with larger radio station clusters that wield inordinate local market share, and would result in harm to diversity and localism in local radio broadcasting. The Commission therefore should consider the extent to which the number of artists and songs (particularly by people of color and women) on AM/FM radio playlists have been reduced in the wake of prior radio consolidation events, since such reductions result in fewer viewpoints being represented on AM/FM radio. We thus request that the Commission conduct studies that show the impact of prior local radio consolidation events on viewpoint diversity through song, particularly with respect to representation by women and people of color.

[114] *See id.* at 7; *see 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*, Notice of Proposed Rulemaking, FCC 18-179 at 10 ¶19 (2018).

We thank the Commission for this opportunity to comment in these important proceedings.

Respectfully Submitted,

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SCHEDULE A

Citadel-Cumulus Country Stations - Number of Songs by Gender and by Year

The chart below shows the total number of unique songs in each year played across 22 country-format Citadel stations that became part of Cumulus in the 2011 merger. The playlist data comes from Mediabase.

Number of Songs

Gender Code	2008	2009	2010	2011 (YEAR OF TRANSACTION)	2012	2013	2014	2015	2016	2017	2018
Male	2,412	2,496	2,487	2,407	2,071	1,709	1,723	1,857	1,942	1,964	1,981
Female	672	652	643	629	483	407	380	449	434	421	424
Mixed Ensemble	119	130	152	169	145	121	122	129	129	139	157
Exclude	3	3	1	3	2	2	2	2	1	1	-
Total	**3,206**	**3,281**	**3,283**	**3,208**	**2,701**	**2,239**	**2,227**	**2,437**	**2,506**	**2,525**	**2,562**

Pre-2011 Average	Post-2011 Average	% Change
2,465	1,892	-23.2%
656	428	-34.7%
134	135	0.7%
2	1	-38.8%
3,257	2,457	-24.6%

Share of Number of Songs

Gender Code	2008	2009	2010	2011 (YEAR OF TRANSACTION)	2012	2013	2014	2015	2016	2017	2018
Male	75.2%	76.1%	75.8%	75.0%	76.7%	76.3%	77.4%	76.2%	77.5%	77.8%	77.3%
Female	21.0%	19.9%	19.6%	19.6%	17.9%	18.2%	17.1%	18.4%	17.3%	16.7%	16.5%
Mixed Ensemble	3.7%	4.0%	4.6%	5.3%	5.4%	5.4%	5.5%	5.3%	5.1%	5.5%	6.1%
Exclude	0.1%	0.1%	0.0%	0.1%	0.1%	0.1%	0.1%	0.1%	0.0%	0.0%	0.0%

Pre-2011 Average	Post-2011 Average	% Change
75.7%	77.0%	1.8%
20.1%	17.4%	-13.4%
4.1%	5.5%	33.5%
0.1%	0.1%	-18.8%

Takeaways:

-The total number of songs played fell -24.6%, from an average of 3,257 per year in 2008-2010 to an average of 2,457 per year in 2012-2018. Songs by female artists fell more steeply than songs by male artists. The number of songs by female artists dropped -34.7%, while male artists' songs dropped -23.2%, and mixed ensembles' songs were up 0.7%. As a share of total songs, songs by female artists fell from 20.1% to 17.4%, but songs by male artists increased in share from 75.7% in 2008-2010 to 77.0% in 2012-2018.

Stations Included	
KATC-FM	KXKC-FM
KATM-FM	WCTO-FM
KBUL-FM	WFBE-FM
KHKI-FM	WGKX-FM
KIIM-FM	WIOV-FM
KIZN-FM	WIVK-FM
KJJY-FM	WIWF-FM
KQFC-FM	WKDF-FM
KRST-FM	WKHX-FM
KSCS-FM	WSJR-FM
KUBL-FM	WTNR-FM

Methodology

The BIA database of US radio stations provides detailed format, ownership, and station sale information. Using this database, we searched for the AM/FM country stations owned by Citadel that were part of the Cumulus merger in 2011, and that did not change to a different format over the years. That list was cross-referenced against the list of stations monitored by Mediabase, a company that provides complete counts of all spins on over 1,500 radio stations, by song title and by artist. 22 of the Citadel/Cumulus country stations were tracked by Mediabase for the entire time period that we wanted to study, so these were the stations that we analyzed. (see below for station list)

We pulled complete year-end playlists from Mediabase for all 22 stations in every year from 2008 to 2018. The playlists include artist name and song title information. The list of artist names was then gender coded by Dr. Jada Watson. Each artist was listed as female, male, or mixed ensemble (a group or duo consisting of both genders)[1]. Using this information, we summarized the number of songs that fit into each gender category in each year, and each gender category's share of total songs for each year. In addition to the annual summaries, we also provided summaries of the average annual songs within 2 time periods: pre-2011 (2008 to 2010) and post-2011 (2012-2018), since 2011 was the year of the transaction[2].

Stations Included	
KATC-FM	KXKC-FM
KATM-FM	WCTO-FM
KBUL-FM	WFBE-FM
KHKI-FM	WGKX-FM
KIIM-FM	WIOV-FM
KIZN-FM	WIVK-FM
KJJY-FM	WIWF-FM
KQFC-FM	WKDF-FM
KRST-FM	WKHX-FM
KSCS-FM	WSJR-FM
KUBL-FM	WTNR-FM

[1] A small number of artists were excluded from the 3 classifications, usually because the artist was listed as "various."

[2] 2011 was excluded from the averages because it was the year of the transaction.