

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

In the Matter of	)	
	)	
Office of Economics and Analytics	)	GN Docket No. 20-60
Seeks Comment on the State of	)	
Competition in the Communications	)	
Marketplace	)	
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**COMMENTS OF MUSICFIRST COALITION AND  
FUTURE OF MUSIC COALITION**

*via electronic filing*

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## EXECUTIVE SUMMARY

The musicFIRST Coalition and the Future of Music Coalition take this opportunity to analyze and report on competitive relationships between and among audio delivery platforms and the public interest in having access to recorded music via diverse, competitive and local audio delivery mechanisms. We urge the Commission to consider music creators when analyzing competition *between* audio platforms, and importantly, *within* each type of audio delivery platform.

The Commission has requested comments from interested parties on “intramodal competition,” *i.e.*, “competition among providers of the **same** type, such as terrestrial radio broadcast stations,” and also “intermodal competition,” in other words, “competition among providers of **different** types, such as terrestrial radio broadcast stations and satellite radio providers.”<sup>1</sup>

While some broadcasting companies that want to expand the Commission’s Local Radio Station Ownership limits have previously described the relevant competitive marketplace in terms recognizing only intermodal competition between platforms,<sup>2</sup> the Commission is right to have also specifically requested comment on intramodal competition, including competition between AM/FM radio station owners in individual geographic markets in the U.S. For this

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<sup>1</sup> See *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, Public Notice, GN Docket No. 20-60, DA 20-199, at 2 (rel. Feb. 27, 2020) (Public Notice) (Emphasis added).

<sup>2</sup> See, e.g., Reply Comments of Future of Music Coalition, Media Bureau Seeks Comment on The Status of Competition in the Marketplace for Delivery of Audio Programming, MB Docket No. 18-227, at 8-9 (Oct. 9, 2018), <https://ecfsapi.fcc.gov/file/1013011075818/19010201-12.pdf> [<https://bit.ly/2S9HfMI>] (In the Commission’s 2018 MB Docket 18-227, “Media Bureau Seeks Comment on The Status of Competition in the Marketplace for Delivery of Audio Programming,” musicFIRST and FMC pointed out that Initial Comments by the National Association of Broadcasters and Sun Broadcasting omitted “any discussion of intramodal competition. Their comments include neither evidence nor argument about competition between AM/FM radio station owners, either on a national basis or as between AM/FM radio station clusters in individual local markets.”).

reason, we take the opportunity to comment on intramodal and intermodal competition specifically affecting AM/FM radio stations in the U.S. -- and also affecting music creators in the U.S.

With respect to intramodal competition as applied to commercial terrestrial radio, independent AM/FM radio stations often struggle when competing with larger clusters of commonly-owned terrestrial radio stations in the same market. Larger local clusters wield outsized market power compared to the few commercial independent radio stations left that traditionally allocate a substantial portion of their attention and resources to providing diversity and localism in their communities. We urge the Commission to recognize that owners of large AM/FM radio clusters within individual markets in the U.S., due to their comparatively outsized market shares, already have substantial competitive advantages over owners of smaller clusters and individual independent commercial stations within those markets.

With respect to intermodal competition between audio delivery platforms, increasing numbers of listeners are consuming music through streaming platforms, satellite radio, and online platforms like YouTube. However, 92% of U.S. adults still tune into AM/FM radio still each week.<sup>3</sup>

In the United States, AM/FM radio stations already enjoy a significant and unfair competitive advantage over every other audio delivery service because AM/FM radio is currently exempt from the requirement under federal copyright law that audio delivery services pay royalties to music creators for the use of sound recordings. Thus, national and regional

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<sup>3</sup> See *Year-End Music Report: U.S. 2019*, NIELSEN MUSIC (2019), [https://static.billboard.com/files/pdfs/NIELSEN\\_2019\\_YEARENDreportUS.pdf](https://static.billboard.com/files/pdfs/NIELSEN_2019_YEARENDreportUS.pdf) [<https://bit.ly/3cBgnxA>]; see also *The Nielsen Total Audience Report Q3 2018*, NIELSEN MUSIC 14 (2018), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/04/q3-2018-total-audience-report.pdf> [<https://bit.ly/357xvHZ>].

AM/FM radio corporations that already enjoy a competitive advantage over smaller local counterparts by virtue of market share, simultaneously also hold an advantage over competing audio delivery services who all pay for licenses to use sound recordings. We are united in our belief that AM/FM radio stations should compensate music creators for the use of their work, just like *all* other audio delivery services do. AM/FM radio's failure to do so places outsized economic strain on the music creation community, particularly in the midst of the COVID-19 global pandemic because artists are now unable to tour and otherwise engage in paid live performances.

## INTRODUCTION

The musicFIRST Coalition and the Future of Music Coalition respectfully submit these comments in the above referenced proceedings with respect to the state of competition in the marketplace for the delivery of audio programming as it relates to the Federal Communication Commission’s goal of providing the required *Communications Marketplace Report to Congress* in accordance with Section 13 of the Communications Act of 1934 as recently amended, found at 47 U.S.C. § 163(d)(3). We take the opportunity afforded us by this comment period to focus on several questions about audio presented in the *Public Notice* published in the Federal Register February 27, 2020.<sup>4</sup> Many of the comments herein are also relevant to the Commission’s current Quadrennial Review of Media Ownership Rules, since competition among and within audio delivery platforms, and any review by the commission of its Local Radio Station Ownership Caps under Section 202(h) of the Telecommunications Act of 1996,<sup>5</sup> are interrelated.

The musicFIRST Coalition is a national coalition of musicians, recording artists, managers, music businesses, producers, engineers, and performance rights stakeholders that works to ensure that music creators receive fair compensation for their work on all media platforms. The founding members include American Association of Independent Music (also known as “A2IM”), American Federation of Musicians, Recording Academy, Record Industry Association of America, Screen Actors Guild-American Federation of Television and Radio Artists (“SAG-AFTRA”), Sound Exchange, The Latin Recording Academy, the Society of Singers, Inc., the Christian Music Trade Association, the Music Managers Forum, Rhythm and

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<sup>4</sup> *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, Public Notice, GN Docket No. 20-60, DA 20-199, at 2 (rel. Feb. 27, 2020) (Public Notice).

<sup>5</sup> *See* Telecommunications Act of 1996, § 202(h), 110 Stat. at 111-12.

Blues Foundation, and The Vocal Group.<sup>6</sup>

Future of Music Coalition (“FMC”) is a 501(c)(3) nonprofit organization supporting a musical ecosystem where artists flourish and are compensated fairly and transparently for their work. FMC has long been an advocate for the physical and mental health of music creators, many of whom are self-employed and underinsured. FMC promotes strategies, policies, technologies and educational initiatives that put artists first while recognizing the role music fans play in shaping the future. FMC works to ensure that diversity, equality and creativity drive artist engagement with the global music community, and that these values are reflected in laws, licenses, and policies that govern any industry that uses music as raw material for its business.<sup>7</sup>

The *Public Notice* seeks comment on the “criteria and metrics that could be used to evaluate the state of competition in the audio programming marketplace, as well as comment and information on industry data, competitive dynamics, and trending factors.”<sup>8</sup> This comment seeks to inform the Commission’s *Communications Marketplace Report to Congress* regarding inter-platform competition between audio delivery platforms that deliver recorded music to listeners whose interest the FCC serves, as well as intra-platform competition in AM/FM radio, insofar as such radio stations play recorded music in order to draw their audiences. Due to consolidation of AM/FM radio station ownership following the Telecommunications Act of 1996, intra-platform competition within the AM/FM spectrum is limited, with a relatively small number of entities owning the majority of AM/FM radio stations in most individual markets. For this reason, our comments first analyze competition within the AM/FM radio platform and subsequently analyze

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<sup>6</sup> *The Coalition*, MUSICFIRST COALITION, <http://musicfirstcoalition.org/the-coalition/> [http://bit.ly/2poosym].

<sup>7</sup> *Mission*, FUTURE OF MUSIC COALITION, <https://futureofmusic.org/mission> [http://bit.ly/2xuDFkM].

<sup>8</sup> *Office of Economics and Analytics Seeks Comment on the State of Competition in the Communications Marketplace*, Public Notice, GN Docket No. 20-60, DA 20-199, at 2 (rel. Feb. 27, 2020) (Public Notice).

inter-platform competition among and between all types of audio providers.

Another reason we address intra-platform competition within AM/FM radio in these comments is that we recognize that the FCC may rely on some comments in this docket about competition in audio delivery during its current Quadrennial Review of the Commission's Broadcast Ownership Rules.<sup>9</sup> Certain AM/FM radio stakeholders have been lobbying for years in favor of the Commission loosening the Local Radio Station Ownership Caps in its current Quadrennial Review.<sup>10</sup> In our view, such deregulatory action would be disastrous for both the public interest and the recorded music industry. There still is a scarcity of frequencies that can be granted to those who want to own and operate a terrestrial radio station. Significant barriers to entry still exist to individuals and smaller broadcast groups, particularly women, people of Hispanic/Latino descent, and racial minorities.<sup>11</sup> Furthermore, the aforementioned consolidation

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<sup>9</sup> See *Radio Implications As FCC Takes Stock of Audio Competition*, INSIDERADIO (Dec. 10, 2018), [http://www.insideradio.com/free/radio-implications-as-fcc-takes-stock-of-audio-competition/article\\_cecf346a-fc4a-11e8-ba00-cfc517e4648d.html](http://www.insideradio.com/free/radio-implications-as-fcc-takes-stock-of-audio-competition/article_cecf346a-fc4a-11e8-ba00-cfc517e4648d.html) [<https://bit.ly/3anbeqB>].

<sup>10</sup> See Randy J. Stine, *NAB Pushes FCC to Revamp Ownership Rules: Critics Fear "Breathtaking" Deregulatory Move, The Possible "Death of AM"*, RADIO WORLD (Aug. 1, 2018), <https://www.radioworld.com/news-and-business/nab-pushes-fcc-to-revamp-ownership-rules> [<http://bit.ly/2QEBkfY>]; see also Marissa Moss, *One More Scoop Of Vanilla: A New Proposal Looks To Loosen Radio Ownership Rules*, NPR MUSIC (June 7, 2019), <https://www.npr.org/2019/06/07/730323196/one-more-scoop-of-vanilla-a-new-proposal-looks-to-loosen-radio-ownership-rules> [<https://n.pr/2RTLmMt>].

<sup>11</sup> See generally FCC Fourth Report on Ownership of Broadcast Stations, Form 323 & Form 323-E Ownership Data as of October 1, 2017, DA 20-161, Industry Analysis Division Media Bureau, at 1, 2 (Feb. 2020), <https://docs.fcc.gov/public/attachments/DA-20-161A1.pdf> [<https://bit.ly/2S9UEEk>] (hereinafter "The 2017 Ownership Report") (Methodology: "This report presents data on ownership interests in commercial and noncommercial broadcast stations as of October 1, 2017. The report contains: (1) an overview of the tabulations of the 2017 commercial and noncommercial broadcast ownership data presented by gender, ethnicity, and race; (2) a comparison of certain 2017 and 2015 data for commercial broadcast stations" including AM radio, and FM radio." "The data contained in these reports are "snapshots" of the status of minority and female ownership in the broadcast industry taken every two years."); see also 2002 Biennial Regulatory Review- Review of the Commission's Broadcasting Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, 18 FCC Rcd. 13620 at 13730-31, para. 288 (finding that in radio markets, "barriers to entry are high because virtually all available radio spectrum has been licensed" and that the "closed entry nature of radio suggests that the extent of capacity that is available for new entry plays a significant role in determining whether market power can develop in radio broadcasting"); see also Memorandum from Chairman Frank Pallone, Jr. of the Comm. on Energy & Commerce to the Subcomm. on Communications & Tech. Members & Staff, at 4 (Jan. 9, 2020), [https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/2020.01.15\\_Briefing%20Memo%20CAT%20Leg%20Hearing%20-%20Diversity%20in%20Media%20Ownership\\_update.pdf](https://energycommerce.house.gov/sites/democrats.energycommerce.house.gov/files/documents/2020.01.15_Briefing%20Memo%20CAT%20Leg%20Hearing%20-%20Diversity%20in%20Media%20Ownership_update.pdf) [<https://bit.ly/2VJUZYr>] (quoting "Women and people of color also face hurdles when it comes to financing, and research



in the AM/FM marketplace triggered large scale layoffs of the local on-air and programming workforce that is crucial for satisfying the localism challenge. With fewer AM/FM airplay decisions being made in the local communities that stations serve, smaller regional artists and music communities are especially hurt.

## DISCUSSION

### I. THE COMMISSION MUST ANALYZE COMMENTS THROUGH THE LENS OF ITS PUBLIC INTEREST OBLIGATIONS AND LONG-RECOGNIZED COMMITMENT TO PROMOTING DIVERSITY, COMPETITION AND LOCALISM AMONG MEDIA PLATFORMS.

The FCC's present task, under the amended Communications Act of 1934,<sup>12</sup> requires that the *Communications Marketplace Report* assess whether laws, regulations, regulatory practices or demonstrated marketplace practices pose a barrier to competitive entry into the communications marketplace or to the competitive expansion of existing providers of communications services.<sup>13</sup> Specifically, under 47 U.S.C. § 163(d)(3) "Special Requirements," the statute mandates the Commission not only to assess competition, but also to consider small businesses: "[i]n assessing the state of competition under subsection (b)(1) and regulatory barriers under subsection (b)(3), the Commission shall consider market entry barriers for entrepreneurs and other small businesses in the communications marketplace in accordance with the national policy under section 257(b) of this title."<sup>14</sup> Moreover, section §257 (a) of the Communications Act of 1934 requires that the Commission review ownership of telecommunications services and information services, with the

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by the FCC and National Telecommunications and Information Administration has shown that are limited broadcast properties available for purchase.").

<sup>12</sup> See *Media Bureau Seeks Comment on the Status of Competition In The Marketplace For Delivery Of Audio Programming*, Public Notice, MB Docket No. 18-227, DA 18-761, at 1 (rel. July 23, 2018) (Public Notice).

<sup>13</sup> 47 U.S.C. § 163(d)(3).

<sup>14</sup> *Id.*

goal of “identifying and eliminating, by regulations pursuant to its authority under this chapter (other than this section), market entry barriers for *entrepreneurs and other small businesses* in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services.”<sup>15</sup> 47 U.S.C. § 257(b), to which 47 U.S.C. § 163(d)(3) specifically refers, states: “In carrying out subsection (a), the Commission shall seek to promote the policies and purposes of this chapter favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience, and necessity.”<sup>16</sup>

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 consistent with acting in the public interest.<sup>17</sup> The Commission has an obligation to promote localism among those audio delivery platforms that have the means to communicate and program to their audiences in a localized manner. While many interested parties in the audio delivery business are large companies, the Commission’s *Communication Marketplace Report to Congress* must be drafted with special regard for audio listeners and small businesses. Among those small businesses are music-driven independent radio stations that have been harmed --or may be harmed in the future-- by the consolidation of radio station ownership.<sup>18</sup>

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<sup>15</sup> 47 U.S.C. § 257(a) (2018) (emphasis added).

<sup>16</sup> *Id.* § 257(b).

<sup>17</sup> *See Nat’l Broad. Co. v. United States*, 319 U.S. 190, 194, 203, 219 (1943).

<sup>18</sup> *See, e.g.,* Alyssa Jeong Perry, *In an Era of Consolidation, the Future of Radio is Uncertain*, MONTEREY COUNTY WEEKLY (Sept. 1, 2016), [http://www.montereycountyweekly.com/news/cover/in-an-era-of-consolidation-the-future-of-radio-is/article\\_53b703c4-6fcb-11e6-8a8b-37abfd2a664d.html](http://www.montereycountyweekly.com/news/cover/in-an-era-of-consolidation-the-future-of-radio-is/article_53b703c4-6fcb-11e6-8a8b-37abfd2a664d.html) [<http://bit.ly/2MWpV8f>]; Debbie Weingarten, *America’s Rural Radio Stations are Vanishing – And Taking the Country’s Soul With Them*, GUARDIAN (June 6, 2019), <https://www.theguardian.com/tv-and-radio/2019/jun/06/radio-silence-how-the-disappearance-of-rural-stations-takes-americas-soul-with-them> [<https://bit.ly/2XOubzE>]; Sarah Favot, *KKGO Owner is Still Dialed in at 93*, LA BUS. J. (Feb. 21, 2020), <https://labusinessjournal.com/news/2020/feb/21/kkgo-owner-93-last-independent-station-la/> [<https://bit.ly/2VGcfQo>] (Quoting KKGO-FM Los Angeles owner Saul Levine, “One reason for Levine’s longevity in a

## II. WITH RESPECT TO INTRAMODAL COMPETITION, LARGER TERRESTRIAL CONGLOMERATES STILL HAVE SUBSTANTIAL COMPETITIVE ADVANTAGES OVER INDEPENDENT BROADCASTERS AND SMALLER CLUSTERS WITHIN INDIVIDUAL MARKETS.

It is well known that many entities that own commercial AM/FM radio stations have, since the enactment of the Telecommunications Act of 1996, exercised the competitive strategy of purchasing multiple radio stations within given markets.<sup>19</sup> As a result of such additional purchases, many entities that own AM/FM radio stations have strategically consolidated operations by slashing payroll and other operational costs, with the effect of having fewer owners of radio stations in the geographic markets in which such activity took place.<sup>20</sup>

An analysis of intramodal competition *between radio station clusters* within given geographic markets makes clear that smaller AM/FM clusters already find it difficult to sell advertising when competing against larger local clusters.<sup>21</sup> Current Local Radio Station Ownership Caps provide limits on the extent to which larger clusters can leverage their market share at the expense of smaller clusters.<sup>22</sup> Smaller clusters of radio stations compete against larger

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consolidating industry is that he has remained steadfast in refusing to sell, even as other stations were gobbled up by corporations. ‘There are times when it would have been easier to walk away,’ he said. ‘I wouldn’t do it.’”)

<sup>19</sup> See, e.g., Gene Ely, *Can Deregulation Fix What’s Broken About Radio? That’s The Hope*, FORBES (May 14, 2018, 10:05 AM), <https://www.forbes.com/sites/geneely/2018/05/14/can-deregulation-fix-whats-broken-about-radio-thats-the-hope/#2377d8dd7761> [<http://bit.ly/2I9x3xd>].

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., Weingarten, *supra* note 18 (Detailing how independent radio station KHIL in Wilcox, Arizona struggles to compete against larger clusters in its market due to outsized market share of such competing clusters; see also Mount Wilson FM Broadcasters, INC., Comment Reply on 2018 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted MB Docket No. 18-349 Pursuant to Section 202 of the Telecommunications Act of 1996 (2018), <https://ecfsapi.fcc.gov/file/10529647413248/Mount%20Wilson%20Reply%20Comments.pdf> [<https://bit.ly/3eJTadC>] (“[I]ndependent radio stations are already struggling to compete with the larger clusters, which means further deregulation could result in complete elimination of smaller and independent radio clusters.”).

<sup>22</sup> 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, Second Report and Order, FCC 16-107, ¶ 96 and note 256 (2016).

clusters locally (intramodal competition) and also must simultaneously compete against growing digital and satellite audio delivery platforms (intermodal competition). Decimating the Local Radio Station Ownership Caps in an attempt to prop up larger radio clusters with a byproduct of harming smaller radio station clusters would not meet the Commission's mandate to promote diversity, competition and localism within AM/FM radio.

As expressed in their Reply Comments in the Commission's MB Docket No. 18-349, Taxi Productions, Inc, owner of 102.3 FM KJLH ("Los Angeles No. 1 black owned and operated radio station with a musical tradition spanning over 30 years")<sup>23</sup> explained:

The challenges that African American broadcasters experience has been well documented in FCC proceedings and elsewhere. We fight for advertising dollars with both major market competitors within the market and, yes, with alternative audio delivery systems as well. We have consistently sought regulatory support for the survival and growth of African American media ownership.<sup>24</sup>

Taxi Productions, Inc.'s Reply Comments continued:

Ownership limits go at least part way to prevent large companies from having such an overwhelming market share that they can price some of their advertising products below cost, leaving smaller operators unable to compete and survive, and they can pressure advertisers to deal exclusively with only them. No one has shown that adding a few more stations to a conglomerate mix will make the difference between survival and going out of business for companies constrained by today's caps, but independent broadcasters like KJLH know that adding those stations could break the backs of small station owners.<sup>25</sup>

Urban One owns 54 music and talk AM/FM stations in 15 large and medium markets

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<sup>23</sup> KJLH Radio, <https://kjlhradio.com/the-station/> (last visited Apr. 22, 2020).

<sup>24</sup> KJLH Radio, Comment Reply on 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, at 1 (May 29, 2019), [https://ecfsapi.fcc.gov/file/10529039863337/Taxi%20Reply%20Comments%205-29-2019%20\(01318539xB3D1E\).pdf](https://ecfsapi.fcc.gov/file/10529039863337/Taxi%20Reply%20Comments%205-29-2019%20(01318539xB3D1E).pdf) [<https://bit.ly/3cEa7nR>].

<sup>25</sup> *Id.* at 2.

throughout the U.S.<sup>26</sup> Urban One’s primary goal as a broadcast entity has long been, and remains, to provide diverse programming to largely Black American and urban audiences.<sup>27</sup> Radio One, Urban One’s radio-only division, has strong reach among Black American and other minority audiences.<sup>28</sup>

In its Comments in the 2018 Quadrennial Review, Urban One argued 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.<sup>29</sup>

Urban One acknowledged that, in its experience, it expects 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.”<sup>30</sup> Urban One argued 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

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<sup>26</sup> See *Radio One*, URBAN ONE (last visited May 24, 2019), <https://urban1.com/radio-one/> [<https://bit.ly/2Vyygq7>]; 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, at 6 (Apr. 29, 2019).

<sup>27</sup> See *2018 Quadrennial Review*, *supra* note 26, at 2.

<sup>28</sup> See *id.*

<sup>29</sup> See *id.* at 2-3.

<sup>30</sup> See *id.* at 3.

broadcasters would most likely look to decrease overhead and increase revenue, particularly if their debt obligations have substantially increased.”<sup>31</sup>

Urban One argues that, in its substantial experience in intramodal competition among AM/FM radio stations in local markets, 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:<sup>32</sup> “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.”<sup>33</sup>

Diversity at AM/FM radio is already at abysmal levels, according to data included in the Commission’s *Fourth Report on Ownership of Broadcast Stations FCC Form 323 and Form 323-E Ownership Data as of October 1, 2017*, which not released by the Commission until February 14, 2020 (hereinafter “2017 Ownership Report”).<sup>34</sup> For example, according to the 2017 Ownership Report, as of October 1, 2017, in the United States, women collectively or individually held a majority of the voting interests in just 9.3% of commercial AM radio stations<sup>35</sup> and a mere 7.2% of commercial FM radio stations.<sup>36</sup> Hispanic/Latino persons collectively or

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<sup>31</sup> See *id.* at 3.

<sup>32</sup> See *id.* at 6.

<sup>33</sup> See *id.*

<sup>34</sup> See generally The 2017 Ownership Report, *supra* note 11.

<sup>35</sup> See *id.* at 16.

<sup>36</sup> See *id.* at 4-5.

individually held a majority of the voting interests in just 6.1% of commercial AM radio stations and a mere 4.1% of commercial FM radio stations.<sup>37</sup> Racial minorities (including Black/African Americans, American Indian/Alaska Natives, Asians, Native Hawaiian and Pacific Islanders, and persons of two or more races)<sup>38</sup> collectively or individually held a majority of the voting interests in just 5.9% of commercial AM radio stations and a mere 2.9% of commercial FM radio stations.<sup>39</sup>

With respect to commercial FM radio stations, females held a discernible majority voting interest in 7.2% of commercial FM radio stations in 2017, down from 8.1% of commercial FM radio stations in 2015.<sup>40</sup> Hispanic/Latino persons held a discernible majority voting interest in only 4.1% of commercial FM stations in 2017 and 4.2% of stations in 2015.<sup>41</sup>

According to the Commission's 2017 Ownership Report, racial minorities held a discernible majority voting interest in just 2.9% of commercial FM radio stations in 2017.<sup>42</sup> The number of whites that held a discernible majority voting interest in FM commercial radio stations in the U.S. increased substantially between 2015 and 2017: from 80.9% to 93.7%.<sup>43</sup> Among racial minorities, Black or African American persons held a discernible majority interest in just 2.1% of commercial FM radio stations in 2017, and just 1.3% of such stations in 2015.<sup>44</sup>

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<sup>37</sup> *See id.* at 5.

<sup>38</sup> *See id.*

<sup>39</sup> *See id.*

<sup>40</sup> *See id.* at 19.

<sup>41</sup> *See id.* at 5.

<sup>42</sup> *See id.* at 19.

<sup>43</sup> *See id.* at 20.

<sup>44</sup> *See id.*

The Commission's mission is to promote diversity, competition, and localism within AM/FM radio at the local per-market level.<sup>45</sup> The Commission has no duty to find ways to help the largest of local radio station clusters become larger so that they alone among local AM/FM broadcasters have leverage to compete with both local competitors and outside digital and satellite audio delivery platforms.

Where the AM/FM radio industry works to correct such problems through innovation, investment in local communities, and partnership with music creators, we believe they will succeed. We would like for AM/FM radio to have such compelling localized programming that listener engagement drives stations' profitability. Indeed, some of the most encouraging stories in radio today come from LPFM and other non-commercial stations that have doubled down on a commitment to localism.<sup>46</sup> But if the Commission decides to attempt to prop up big radio companies by allowing them to buy more radio stations than they already own within individual markets, in our experience, this will only harm the public interest, create barriers to smaller radio entities in those same markets, and cause harm to those radio stations in such markets who do not have the opportunity to take advantage of economies of scale the way the larger radio entities do.

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<sup>45</sup> 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, Second Report and Order, FCC 16-107, ¶ 245, (2016).

<sup>46</sup> See, e.g., Community Counts: An Initiative of the National Federal of Community Broadcasters, CCI (2019), <https://nfcbb.org/wp-content/uploads/2020/02/cci-report.pdf> [<https://bit.ly/2yRz0y0/>].



### III. WITH RESPECT TO INTERMODAL COMPETITION AMONG COMMERCIAL AUDIO DELIVERY PLATFORMS, LISTENERSHIP OF STREAMING CONTINUES TO RISE, SATELLITE RADIO CONTINUES TO GROW AND AM/FM RADIO STILL ENJOYS BROAD REACH TO LISTENERS

#### A. *Listenership of Combined Streaming Platforms is Increasing Steadily.*

According to a recent study by Edison Research (“Edison”) and Triton Digital (“Triton”) that surveyed U.S. listeners age 12+, listenership in the US of combined streaming audio platforms increased steadily between 2016 and 2019.<sup>47</sup> The percentage of respondents listening to online audio (both AM/FM radio stations’ own streaming counterparts, as well as other streaming platforms, combined), was 57% in 2016, 61% in 2017, 64% in 2018 and 67% in 2019.<sup>48</sup> Among listeners age 12-24, the percentage of those surveyed who tuned into online audio listening each month was 79% in 2016, 87% in 2017, 88% in 2018, and 91% in 2019.<sup>49</sup> Streaming platforms collectively helped the music industry experience growth in 2019 with U.S. audio and video on-demand streams surpassing 1 trillion for the first time on November 25, 2019, and ending 2019 at 1.15 trillion total streams.<sup>50</sup> According to Nielsen’s 2019 “Year End Music Report,” 2019 brought a 23.8% increase in on-demand audio song streams compared to 2018.<sup>51</sup>

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<sup>47</sup> See *The Infinite Dial 2019*, EDISON RESEARCH & TRITON DIGITAL 23 (2019), <https://www.edisonresearch.com/wp-content/uploads/2019/03/Infinite-Dial-2019-PDF-1.pdf> [<https://bit.ly/2KmedoE>] (In January/February 2019, Edison Research conducted a national telephone survey of 1500 people aged 12 and older, using random digit dialing techniques to both cell phones and landline.).

<sup>48</sup> See *id.*

<sup>49</sup> See *id.* at 24.

<sup>50</sup> *Year-End Music Report: U.S. 2019*, *supra* note 3, at 4.

<sup>51</sup> See *id.*

1. With Respect to On-Demand Streaming, Spotify Leads the Pack by a Substantial Margin with Respect to Listenership and Subscriptions, but Apple Music’s Subscription Service is Rising in Popularity.

The “Infinite Dial” survey reports by Edison for 2018 and 2019, respectively, indicated that U.S. listeners age 12+ who claimed to have listened to Spotify in the prior month were: 13% in 2016, 18% in 2017 and 20% in 2018, with a big jump to 24% in 2019.<sup>52</sup> In May 2018, Spotify announced that it had 75 million paying subscribers worldwide, a 45% increase over the past year.<sup>53</sup> In July 2019, Spotify announced that it had hit 108 million paid subscribers by the end of June 2019.<sup>54</sup>

By comparison, Apple Music, which has a subscription service only, and provides both on-demand streaming and curated non-interactive playlists, is the nearest rival to Spotify, in terms of numbers of users and is growing relatively quickly. As of April 2018, Apple Music “had over 40 million global subscribers, up from 30 million in September 2017.”<sup>55</sup> News reports indicate that Apple Music had 60 million paid subscribers as of June 2019.<sup>56</sup>

2. With Respect to Non-Interactive Streaming, Pandora Remains Dominant Although Overall Growth of Listenership Continues to Slow.

Edison’s “The Infinite Dial” survey reports over the last several years indicate that in

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<sup>52</sup> *The Infinite Dial 2019*, *supra* note 47, at 37.

<sup>53</sup> See Brad Adgate, *Media Disruption is Accelerating*, FORBES (May 7, 2018), <https://www.forbes.com/sites/bradadgate/2018/05/07/media-disruption-is-accelerating/#6ed130ce5110> [<http://bit.ly/2pkY4VU>].

<sup>54</sup> See Georg Szalai, *Spotify Ups Paid User Base to 108 Million, Narrows Losses in Second Quarter*, BILLBOARD (July 31, 2019), <https://www.billboard.com/articles/business/8525540/spotify-paid-users-q2-2019-earnings-label-licensing-deals> [<https://bit.ly/2VrRvIa>].

<sup>55</sup> Adgate, *supra* note 53.

<sup>56</sup> See Joan E. Solsman, *Spotify Keeps Big Lead Over Apple Music But Disappoints with 108M Subscribers*, CNET (July 31, 2019), <https://www.cnet.com/news/spotify-subscribers-earnings-hit-108-million-apple-music/> [<https://cnet.co/2wQK5yq>].

2017, 32% of listeners age 12+ had listened to Pandora in the month prior to the survey.<sup>57</sup> In 2018, 31% of listeners tuned into Pandora in the prior month.<sup>58</sup> 2019 brought a small decrease in listenership, with 30% of 12+ listeners having tuned into Pandora in the prior month.<sup>59</sup> In 2019, Pandora remained dominant among audio delivery platforms with respect to how aware survey respondents were about particular audio delivery brands, and also remained dominant as the single audio platform that most survey respondents listened to in the prior month.<sup>60</sup>

*B. Satellite Radio is Still Growing*

SiriusXM reported in February 2020 that in the fourth quarter of 2019, it enjoyed continued subscriber growth in its satellite radio business, but suffered a decline in Pandora subscribers.<sup>61</sup> SiriusXM completed its acquisition of Pandora for \$3.5 billion in the first quarter of 2019.<sup>62</sup> SiriusXM reported that it added a net of 355,000 satellite radio subscribers during that period, including 341,000 self-pay customers and 14,000 paid promotional subscriptions.<sup>63</sup> In the same period during the prior year, it had added 346,000. SiriusXM ended 2019 with more than 34.9 million subscribers, including nearly 30.0 million self-pay subscribers.<sup>64</sup> With the completed

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<sup>57</sup> See *The Infinite Dial 2019*, *supra* note 47, at 37.

<sup>58</sup> See *id.*

<sup>59</sup> See *id.*

<sup>60</sup> See *id.* at 35-36.

<sup>61</sup> See *SiriusXM Reports Fourth Quarter and Full-Year 2019 Results*, SIRIUSXM (Feb. 4, 2020), <http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2020/SiriusXM-Reports-Fourth-Quarter-and-Full-Year-2019-Results/default.aspx> [https://bit.ly/2VImb0C].

<sup>62</sup> See *SiriusXM Completes Acquisition of Pandora*, SIRIUSXM (Feb. 1, 2019), <http://investor.siriusxm.com/investor-overview/press-releases/press-release-details/2019/SiriusXM-Completes-Acquisition-of-Pandora/default.aspx> [https://bit.ly/2Kjm1aF].

<sup>63</sup> See SiriusXM, *supra* note 61.

<sup>64</sup> See Georg Szalai, *SiriusXM Ends 2019 with 34.9 Million Paid Subscribers*, BILLBOARD (Jan. 7, 2020), <https://www.billboard.com/articles/business/radio/8547483/siriusxm-2019-paid-subscribers-totals> [https://bit.ly/3aw9ScY].

acquisition of Pandora, SiriusXM now may have the ability to take advantage of its newly consolidated market power as the dominant service in two distribution categories, by potentially leveraging this monopsony position to pay music creators less. The rumored acquisition of iHeartMedia by the media conglomerate with a controlling interest in Pandora and SiriusXM may heighten this dynamic while raising a range of new concerns about potential anticompetitive behavior.<sup>65</sup>

C. *AM/FM Radio Still Reaches More Listeners Than Any Other Platform, and Retains a Large Share of in Car Listening.*

According to Nielsen's Audio Today 2019 report, AM/FM radio remains a medium with excellent "reach" of listeners.<sup>66</sup> According to the survey, 272 million Americans age 6+, tune in to AM/FM radio at some point every week; that equates to 92% of listeners each week.<sup>67</sup> Surveys indicate that for the time being at least, AM/FM radio is still by far the most listened to audio delivery platform in cars.<sup>68</sup> Time spent listening to AM/FM radio has been in decline over the last several years<sup>69</sup> but a recent survey by Nielsen indicates that 8 out of 10 listeners are spending as much or more time spent listening to AM/FM radio during the COVID-19 pandemic than they did

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<sup>65</sup> See, e.g., Adam Jacobson, *DOJ Asked To Stop Liberty Media's iHeart Overtures*, STREAMLINE RBR (Apr. 16, 2020), <https://www.rbr.com/doj-asked-to-stop-liberty-medias-iheart-overtures/> [<https://bit.ly/2VF4osh>].

<sup>66</sup> Brad Kelly, *Audio Today 2019: How America Listens*, NIELSEN 2 (June 2019), <https://www.nielsen.com/wp-content/uploads/sites/3/2019/06/audio-today-2019.pdf> [<https://bit.ly/34ReERb>].

<sup>67</sup> *Id.*

<sup>68</sup> See, e.g., *Facing Radio's Biggest Challenge*, TECHSURVEY 2020 JACOBS MEDIA, at 62 (2020), <https://www.allaccess.com/assets/docs/editorial/TS-2020-wwrs-webinar-prefinal.pdf> [<https://bit.ly/34RdHlX>] (To find more information on Methodology go to page 2 of <https://www.allaccess.com/assets/docs/editorial/TS-2020-wwrs-webinar-prefinal.pdf>); see also *Despite Rising Alternatives, AM/FM Remains King Of The Road*, INSIDERADIO (Mar. 20, 2020), [http://www.insideradio.com/free/despite-rising-alternatives-am-fm-remains-king-of-the-road/article\\_8c4ad454-6a81-11ea-acff-1f9f9c2a06a3.html](http://www.insideradio.com/free/despite-rising-alternatives-am-fm-remains-king-of-the-road/article_8c4ad454-6a81-11ea-acff-1f9f9c2a06a3.html) [<https://bit.ly/2KlGOu8>].

<sup>69</sup> See *The Secret to Longer TSL*, EDISON RESEARCH (Oct. 8, 2019), <https://www.edisonresearch.com/the-secret-to-longer-tsl/> [<https://bit.ly/2XOGM5U>].

prior to the pandemic.<sup>70</sup> On March 16, 2020, Nielsen also recently noted that “[t]he reach of radio for remote workers compared to non-remote associates is nearly identical—both at just over 95%.”<sup>71</sup> According to Nielsen’s March 2020 Portable People Meter Report, during the period between February 27, 2020 and March 25, 2020, AM/FM radio listening was much stronger than anyone expected: “AM/FM retained 96% reach and 90% of its average quarter hour audience” as compared to the prior 30-day period.<sup>72</sup> Furthermore, as more people in the U.S. began to stay at home consistently, *i.e.*, in the last week of March 2020, Nielsen found that time spent listening on AM/FM radio was on the rise; in the last week of March 2020, “Americans spent 58 minutes a day listening to [AM/FM] radio compared to 45 minutes a day in the first week of March, a 29%+ gain.”<sup>73</sup>

*D. AM/FM Radio Provides Substantially Less Promotional Value to Music Creators Than It Once Did, and Still Refuses to Establish a Sound Recording Performance Right.*

A number of national and regional media companies with AM/FM holdings, and several broadcasters’ associations,<sup>74</sup> have argued that the Commission’s Local Radio Station Ownership

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<sup>70</sup> See *Radio is ‘Comfort Food’ as Media Consumption Rises Amid Covid-19 Pandemic*, NIELSEN (Mar. 26, 2020), <https://www.nielsen.com/us/en/insights/article/2020/radio-is-comfort-food-as-media-consumption-rises-amid-covid-19-pandemic/> [<https://bit.ly/3arAxro>] (Online survey gauging “the impact that the novel coronavirus (COVID-19) outbreak is having on radio listening behavior in the U.S. The survey was administered online among a weighted sample of 1,000 adults 18+ in the U.S. between March 20-22, 2020.”).

<sup>71</sup> See *Staying Put: Consumers Forced Indoors During Crisis Spend More Time on Media*, NIELSEN (Mar. 16, 2020), <https://www.nielsen.com/us/en/insights/article/2020/staying-put-consumers-forced-indoors-during-crisis-spend-more-time-on-media/> [<https://bit.ly/2wSEK9R>].

<sup>72</sup> See Pierre Bouvard, *AM/FM Radio Exceeds Expectations: What You Need to Know About Nielsen’s March 2020 Portable People Meter Audience Data*, WESTWOOD ONE (Apr. 14, 2020), <https://www.westwoodone.com/2020/04/14/am-fm-radio-exceeds-expectations-what-you-need-to-know-about-nielsens-march-2020-portable-people-meter-audience-data/> [<https://bit.ly/3eyPX0x>].

<sup>73</sup> See *id.*

<sup>74</sup> See, e.g., Letter from Raúl M. Santiago Santos, President, Radio Difusores de Puerto Rico, to Michelle Carey, Chief, Media Bureau, FCC (Aug. 15, 2018), <https://ecfsapi.fcc.gov/file/10111084547550/FCC%20MB%20DOCKET%20NO.%2018-349.pdf> [<https://bit.ly/2KqP9wF>].

Caps need to be loosened, claiming such deregulatory actions would help “level the playing field” with digital competitors within the inter-platform competitive landscape, while many independent radio station owners who want to stay in business rather than sell their stations to larger entities are steadfast in wanting the Commission to refrain from loosening the current restrictions on the number of radio stations that one entity can own in a given market in the US.<sup>75</sup> In addition to the grant of free spectrum to transmit its signals, AM/FM radio already has an enormous and unique competitive advantage against their streaming and satellite counterparts in that AM/FM radio is not yet required by law to pay royalties for the use of sound recordings, while all other audio platforms in the U.S. are required to pay for the privilege of playing recorded music content.<sup>76</sup> As the United States Copyright Office explained after conducting an exhaustive study on this subject in 2015:<sup>77</sup>

In the case of terrestrial radio, federal law exempts what is currently a 17 billion dollar industry from paying those who contribute the sound recordings that are responsible for its success. Apart from being inequitable to rightsholders—including by curtailing the reciprocal flow of such royalties into the United States—the exemption of terrestrial radio from royalty obligations harms competing satellite and internet radio providers who must pay for the use of sound recordings. In a world that is more and more about performance and less about record sales, the inability to obtain a return from terrestrial radio increases the pressure on paying sources. The market distorting impact of the terrestrial radio exemption probably cannot be overstated.<sup>78</sup>

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<sup>75</sup> See, e.g., *Saul Says No to Raising Ownership Caps*, RADIO INK (Apr. 26, 2019), <https://radioink.com/2019/04/26/saul-says-no-to-raising-ownership-caps/> [<https://bit.ly/2zn8LzE>]; *2018 Radio Executive of the Year: David Field*, RADIO INK (Jan. 1, 2018), <https://radioink.com/2018/01/08/1-8-2018-2018-radio-executive-year-entercom-ceo-david-field/> [<https://bit.ly/2VrABDq>]; *Does Radio Need More Deregulation (Part 2)*, RADIO INK (May 17, 2018), <https://radioink.com/2018/05/17/does-radio-need-more-deregulation-part-2/> [<http://bit.ly/2QSmPoZ>].

<sup>76</sup> *Copyright and the Music Marketplace, A Report of the Register of Copyrights*, U.S. COPYRIGHT OFFICE, at Preface (Feb. 2015), <https://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf> [<https://bit.ly/3cFt2i4>] [hereinafter Register of Copyrights 2015 Report].

<sup>77</sup> See *id.*

<sup>78</sup> *Id.* at 138.

This inequity not only harms competitors to AM/FM radio; it deprives recording artists in the United States a share of this substantial revenue in the U.S. as well as royalties collected abroad for the use of their work.<sup>79</sup> The U.S. is one of very “few industrialized countries...that does not have a terrestrial broadcast performance right for sound recordings.”<sup>80</sup> At least 75 nations have a performance right, which means that “foreign broadcasters pay royalties to songwriters/composers and performers.”<sup>81</sup> But since there is no reciprocal right in the U.S. under certain applicable treaties, foreign performance rights societies are not required or simply can choose not to distribute these royalties to American recording artists and copyright owners of sound recordings.<sup>82</sup> Low estimates suggest that this forces American artists and record labels to leave 70 to 100 million dollars on the table overseas every year.<sup>83</sup>

We respectfully request that when the Commission makes its report to Congress, and also if it analyzes the Local Radio Station Ownership Caps in its current Quadrennial Review, that it recognize that AM/FM already has a substantial advantage over its competitors insofar as AM/FM radio does not yet have to pay to use sound recordings. While competitors to AM/FM radio in the U.S. have often argued that the playing field would somehow be leveled by reducing the amount of performance royalties that those platforms should have to pay, such actions are entirely divorced from market-based principles and dramatically undervalues the music that

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<sup>79</sup> *Id.*

<sup>80</sup> *See Public Performance Right for Sound Recordings: Fact Sheet*, FUTURE OF MUSIC COALITION (Mar. 5, 2018), <https://futureofmusic.org/article/fact-sheet/public-performance-right-sound-recordings> [<http://bit.ly/2OMblwy>].

<sup>81</sup> *See id.*

<sup>82</sup> *See id.*

<sup>83</sup> Randolph May & Seth Cooper, *Three Ways to Modernize Copyright Laws in the Digital Age*, TENNESSEAN (Apr. 15, 2020), <https://www.tennessean.com/story/opinion/2020/04/15/three-ways-modernize-copyright-laws-digital-age/5138121002/> [<https://bit.ly/3eFkBoT>].

provides the basis for their entire business model. During the COVID-19 pandemic, while royalty-free performance of sound recordings on AM/FM radio continue, the pain is exacerbated, even under the reasoning often espoused by broadcasters that place a value on promoting artists through radio play. With live performances completely ceased due to public health concerns,<sup>84</sup> radio airplay cannot claim to be promoting any product sale for artists and the harm to artists is especially obvious.<sup>85</sup> Professional musicians now do not have the ability to generate income from sales of tickets to live concerts.<sup>86</sup> Formerly touring artists are also now deprived of revenue historically generated by on-site sales of band merchandise<sup>87</sup> and, to the extent that such

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<sup>84</sup> See Ben Sisario, *Concerts Are on Hold. Workers Behind the Stars Are Hurting*, N.Y. TIMES (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/arts/music/concerts-cancelled-coronavirus.html> [<https://nyti.ms/2Y8SxnW>].

<sup>85</sup> See Torquil Campbell, *A Catastrophe for the Night Economy*, ATLANTIC (Mar. 16, 2020), <https://www.theatlantic.com/ideas/archive/2020/03/musicians-coronavirus-second-cataclysm/608074/> [<https://bit.ly/2yOKOB6>]; see also, e.g., Tony Dehner, *How To Support Iowa's Musicians During The Coronavirus Crisis*, IOWA PUBLIC RADIO (Mar. 27, 2020), <https://www.iowapublicradio.org/post/how-support-iowa-s-musicians-during-coronavirus-crisis#stream/0> [<https://bit.ly/2xRHJA8>] (Iowa-based professional musician explains that due to all live in person concert dates being cancelled in the wake of the COVID-19 pandemic, musicians struggle to try to find students willing to pay for private music instruction, “because or gigs are getting cancelled, and most of us get little or no revenue from royalties.”); see also Mark Segraves, *DC Musicians' Careers on Hold as Concerts, Tours Canceled, Postponed*, NBC WASHINGTON (Apr. 6, 2020), <https://www.nbcwashington.com/news/local/dc-musicians-careers-on-hold-as-concerts-tours-canceled-postponed/2266126/> [<https://bit.ly/2Y8VO61>] (noting that Washington DC-based “Frank Sirius’ career was in full swing as lead singer of the famed Chuck Brown Band. He lost all of his income overnight..”); Tyler Perez, *How To Support Independent Musicians Amid COVID-19*, TEMPLE NEWS (Apr. 7, 2020), <https://temple-news.com/how-to-support-independent-musicians-amid-covid-19/> [<https://bit.ly/2xa7KtS>] (*The Temple News* is the student publication of the Temple University) (“In a matter of weeks, COVID-19 has dramatically changed American society, and musicians like [Philadelphia-based musician Sam] Oxford are struggling to adapt. For many artists and bands, performing can be their primary source of income, and the current pandemic complicates that, putting many musicians in financial stress at the moment.”).

<sup>86</sup> See, e.g., Chase Biefeldt, *Full-Time Idaho Musicians Lose Source of Income as COVID-19 Crisis Cancels Shows*, KTVB (Apr. 1, 2020), <https://www.ktvb.com/article/news/health/coronavirus/idaho-musicians-left-with-no-income-due-to-covid-19-crisis/277-dac2a5ef-7b21-4227-9d06-d47146eb4499> [<https://bit.ly/3aM2RoR>] (Idaho-based recording artist Curtis Stigers’ upcoming shows were all cancelled such that Stigers surmised that he will “lose well over half [of my income], but I know there are other musicians in Boise having trouble as well.”); Emma Webster, *Bay Area Musicians Put Their Lives And Tours On Hold During The Coronavirus Pandemic*, 7x7 (Apr. 8, 2020), <https://www.7x7.com/bay-area-musicians-talk-about-covid-19-2645611152/mh-theverb> [<https://bit.ly/2KC0g66>] (“In the Bay Area and beyond, artists and musicians are seeing events cancelled through 2020, and their main sources of income gone completely. We spoke to a few local musicians whose lives and plans have been turned upside down by the pandemic.”).

<sup>87</sup> Samantha Hissong, Ethan Millman & Amy X. Wang, *The Week the Music Stopped*, ROLLING STONE (Apr. 15, 2020) <https://www.rollingstone.com/music/music-features/music-crisis-concerts-tours-980968/> [<https://bit.ly/3aFd1Ht>]; see generally August Brown, *Artists, Live Industry Brace For A Year Without Concerts: 'Is There A Better Place For Spreading Disease?'*, LA TIMES (Apr. 17, 2020), <https://www.latimes.com/entertainment-arts/music/story/2020-04-17/coronavirus-concerts-live-music-return-2021> [<https://lat.ms/2KEcSJT>].



performing artists are also songwriters, they are now missing out on opportunities to generate public performance royalties for the use of their musical compositions in live in-person settings.<sup>88</sup> While the music industry's revenues from recorded music from streaming platforms grew substantially in the last several years, AM/FM radio unfairly still gets to run their music-driven stations without having to pay a cent for the privilege of broadcasting the sound recordings that draw their audiences to them. Total U.S. revenues "from streaming music grew 19.9% to \$8.8 billion in 2019, accounting for 79.5% of all recorded music revenues."<sup>89</sup> The streaming category includes a variety of formats, "including premium subscription services, ad-supported on-demand services (such as YouTube, Vevo, and ad-supported Spotify), and streaming radio services (like Pandora, SiriusXM, and other Internet radio services)."<sup>90</sup> By comparison, the music industry has never collected any performance royalties whatsoever from AM/FM radio for the use of sound recordings.<sup>91</sup>

#### **IV. LOOSENING LOCAL RADIO OWNERSHIP LIMITS WOULD MAKE WORSE ALREADY HARMFUL IMPACTS OF CONSOLIDATION ON DIVERSITY AND LOCALISM.**

While much has been said in the media about an apparent demise of AM/FM radio in the face of increased competition among audio delivery platforms, the fact is that AM/FM radio still reaches a broad (although aging) audience. AM/FM radio's reach is still healthy notwithstanding

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<sup>88</sup> See John Harris, *Music Is A Balm Right Now. But There's Little Comfort For Musicians*, GUARDIAN (Apr. 19, 2020) <https://www.theguardian.com/commentisfree/2020/apr/19/live-music-silenced-performers-covid-19> [<https://bit.ly/2SbtDAs>] ("Royalties from music being played in pubs, clubs and shops are suddenly in jeopardy.").

<sup>89</sup> See Joshua P. Friedlander, *Year-End 2019 RIAA Music Revenues Report*, RIAA (2019), <https://www.riaa.com/wp-content/uploads/2020/02/RIAA-2019-Year-End-Music-Industry-Revenue-Report.pdf> [<https://bit.ly/2Y8W85p>].

<sup>90</sup> *Id.*

<sup>91</sup> See *Radio Royalties: A Look At the Battle on All Fronts*, INSIDERADIO (Feb. 27, 2017), [http://www.insideradio.com/radio-royalties-a-look-at-the-battle-on-all-fronts/article\\_09690b28-fcbb-11e6-b899-e3ba57988b1e.html](http://www.insideradio.com/radio-royalties-a-look-at-the-battle-on-all-fronts/article_09690b28-fcbb-11e6-b899-e3ba57988b1e.html) [<https://bit.ly/35eDDye>]; see also Register of Copyrights 2015 Report, *supra* note 76.

the fact that they have more competition from newer competing audio platforms, and thus far also notwithstanding the COVID-19 pandemic. Any demands to loosen the Local Radio Station Ownership Caps in order to improve AM/FM radio's competitive position in the music delivery marketplace based on the relative strength of its more innovative competitors is entirely misplaced. Future of Music and musicFIRST have long carefully monitored the effects of consolidation of AM/FM radio and have observed how consolidation of AM/FM at local market levels has consistently decreased diversity of programming and affected AM/FM broadcasters' capacity to innovate with respect to locally produced content. While each audio delivery platform, including but not limited to AM/FM radio, is experiencing fierce competition with other platforms that provide challenges to maximizing sales and market share, such competition is not a sufficient justification for the Commission to loosen the Local Radio Station Ownership Caps. Rather, the FCC should instead focus on its longstanding commitment and responsibility to the public interest in nurturing diversity, competition and localism within AM/FM radio, particularly with respect to breaking down barriers to entry for those who want to enter local marketplaces as independent AM/FM broadcasters. The mission of the FCC is not to prop up huge media companies at the expense of smaller broadcasters or music creators.

In January 2020, iHeart Radio laid off hundreds of local radio employees in mostly smaller and medium sized markets.<sup>92</sup> Some sources estimated that at least 1,000 employees were let go during the January culling although iHeart has not publicly confirmed the numbers of employees that were affected.<sup>93</sup> These layoffs occurred prior to the COVID-19 pandemic

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<sup>92</sup> See Elias Leight, *'The Culling Has Begun': Inside the iHeartMedia Layoffs*, ROLLING STONE (Jan. 15, 2020), <https://www.rollingstone.com/music/music-features/iheartmedia-mass-layoffs-937513/> [<https://bit.ly/3ao6oJx>]; see also Steve Knopper, *iHeartMedia Staff Hit With Layoffs Across the Country: 'It's Been a Bloodbath'*, BILLBOARD (Jan. 14, 2020), <https://www.billboard.com/articles/business/radio/8548038/iheartmedia-layoffs-across-country-restructuring> [<https://bit.ly/2VKwWj2>].

<sup>93</sup> See Paul McLane, *iHeart Defends Painful Change*, RADIO WORLD (Jan. 31, 2020), <https://www.radioworld.com/news->

spreading in the U.S. According to former iHeart Radio employees interviewed by *Rolling Stone*, “[a]ny smaller to medium market in the country lost, in all likelihood, most, if not all, of their on-air staff,” the former on-air personality says.<sup>94</sup> “As far as the music stations go, there’s not a single local talent [left]. I heard they’re gonna go with their national music logs across the board.’ ‘I think the majority of these stations will be centrally programmed,’ agrees the other former employee.”<sup>95</sup> Another former employee, Daryl Ledyard, worked for more than a decade at iHeart’s country radio station in Syracuse, New York, said that while the station “was Number One in the Syracuse, New York, area year after year for two decades, ‘[t]o take all the local DJs off the radio in the Number One station, that says a lot,’” Ledyard notes.<sup>96</sup> A *Billboard* article on the subject stated: “Another laid-off source has been hearing all day from colleagues and speculates that the job reductions are disproportionately hitting “mid-major markets,” like Pittsburgh or Richmond, Virginia, as opposed to more lucrative big cities, or smaller markets *where the company can more easily install syndicated programming from its central office.*”<sup>97</sup> *Billboard* quoted the same source, who stated: ““Definitely a move away from the live and local,’ says the source. ‘I just don’t think you can have a market of this size without any local talent -- if you want good quality radio, anyway.’”<sup>98</sup> An article at *Cleveland Plain Dealer* titled “Could iHeart Layoffs Be The Beginning of Local Radio’s Endgame?”<sup>99</sup> summarized concerns by former

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[and-business/business-and-law/iheart-defends-painful-change](https://www.cleveland.com/business-and-law/iheart-defends-painful-change) [<https://bit.ly/2Vsegph>].

<sup>94</sup> Leight, *supra* note 92.

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> Knopper, *supra* note 92 (Emphasis added).

<sup>98</sup> *Id.*

<sup>99</sup> Joey Morona, *Could iHeart Layoffs be the Beginning of Local Radio’s Endgame?*, CLEVELAND (Jan. 29, 2020), <https://www.cleveland.com/entertainment/2020/01/could-iheart-layoffs-be-the-beginning-of-local-radios-endgame.html> [<https://bit.ly/2zhQK8>].

iHeart employees and media analysts that iHeart is expected to eviscerate locally produced programming there.<sup>100</sup> This is a longtime worry of supporters of localism who saw elimination of the main studio rule as removing a regulatory bulwark, allowing operation by few or no people employed locally in the city served by the radio station.<sup>101</sup> Since the Commission eradicated the Main Studio Rule, “[l]ocal DJs have since been further replaced by prerecorded substitutes, sometimes from hundreds of miles away.”<sup>102</sup> Although iHeart has defended its actions in the press,<sup>103</sup> *The Washington Post* reported:

When iHeartMedia announced this month it would fire hundreds of workers across the country, the radio conglomerate said the restructuring was critical to take advantage of its “significant investments ... in technology and artificial intelligence.” In a company wide email, chief executive Bob Pittman said the “employee dislocation” was “the unfortunate price we pay to modernize the company.”<sup>104</sup>

Several other AM/FM radio companies have conducted extensive layoffs since January 2020 as well, creating a situation in which listeners struggle to obtain locally produced content relevant to their communities.<sup>105</sup>

We understand now more than ever as employees are being asked to shelter in place during a pandemic, that having the capacity to work remotely has its advantages, logistically and economically. But the 2017 evisceration of the Main Studio Rule was a blow to the principle of

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<sup>100</sup> *See id.*

<sup>101</sup> *See* McLane, *supra* note 93.

<sup>102</sup> Drew Harwell, *iHeartMedia Laid Off Hundreds of Radio DJs. Executives Blame AI. DJs Blame the Executives*, WASH. POST (Jan. 31, 2020), <https://www.washingtonpost.com/technology/2020/01/31/iheartmedia-radio-artificial-intelligence-djs/> [<https://wapo.st/2XTIYt3>].

<sup>103</sup> *See id.*

<sup>104</sup> *See id.*

<sup>105</sup> *See generally* Samantha Hissong, *In a Crisis, Radio Should Be Bigger Than Ever — So Why Isn't It?*, ROLLING STONE (Apr. 21, 2020), <https://www.rollingstone.com/pro/features/radio-coronavirus-crisis-985533/> [<https://bit.ly/357TIFR>].

localism that the Commission is required to protect and promote,<sup>106</sup> and if the Commission were to further loosen the Local Radio Station Ownership Caps, what little actual localism is left at independent and locally-programmed regional AM/FM radio stations would be further jeopardized as syndicated programming and voicetracking takes the place of long-standing local talent and genuine commitment to local concerns. While local programming control and talent is important to the public interest of listeners, it is also crucial to developing artists, who often begin careers with local or regional followings. The unchecked consolidation within the AM/FM radio industry has meant that a powerful few gatekeepers control what music gets played.

While we hope for a fulsome regulatory review by this and other agencies in due course, any assessment of the audio delivery marketplace would be incomplete without observing potential competitive harms that may result from Liberty Media, the company with a controlling interest in SiriusXM and Pandora purchasing, iHeartMedia. When coupled with Liberty Media's other investments, consummation of this rumored deal would grant domination of too many interrelated facets of the music ecosystem to one conglomerate.

## CONCLUSION

Although intermodal competition between audio delivery platforms has increased substantially in recent years, an anti-competitive market distortion remains with respect to compensating music creators fairly for the use of their work. Moreover, with respect to intramodal competition among AM/FM radio stations in the United States, corporations that own a larger number of AM/FM radio stations in certain geographic markets enjoy significant competitive advantages over their AM/FM competitors locally, by virtue of their market shares.

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<sup>106</sup> *Id.*; see also Dissenting Statement of Commissioner Jessica Rosenworcel, FCC 17-137, FCC (Oct 24, 2017), <https://www.fcc.gov/document/fcc-eliminates-main-studio-rule-0/rosenworcel-statement> [<https://bit.ly/2y3ESUF>].

They also hold competitive advantages over all other audio delivery platforms, as the only audio platform in the U.S. that does not compensate music creators for the use of sound recordings.

Respectfully Submitted,

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