Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming	))))))))))))))))))	MB Docket No. 18-227 DA Docket No. 18-761

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 focus on competitive relationships between audio delivery platforms and the public interest in having access to recorded music via diverse, competitive and local audio delivery mechanisms.

While we urge the Commission to consider music creators when analyzing competition between audio platforms, we also urge the Commission to recognize that owners of large AM/FM radio clusters within individual markets in the U.S. already have substantial competitive advantages over owners of smaller clusters and individual independent stations within those markets. In particular, if the Commission were to loosen the Local Radio Station Ownership Caps in its upcoming Quadrennial Review, history has made clear that such action would substantially reduce competition among AM/FM radio stations and profoundly harm the public interest in allowing radio entities with smaller market shares to effectively compete with their larger counterparts. For this reason musicFIRST and Future of Music Coalition are keenly interested in ensuring that ownership of AM/FM radio is not further deregulated in the U.S.

In the wake of the passage of the Telecommunications Act of 1996, larger media companies bought local stations in order to consolidate them into large local clusters to take advantage of economies of scale. As a result, far fewer independent radio owners now operate stations in those markets, and the public interest in diversity, competition and localism of music on the airwaves suffer. Such consolidation also causes homogenization of AM/FM music playlists such that listeners of commercial AM/FM music-driven stations now hear a substantially less diverse swath of artists and recordings than before consolidation.

Increasing numbers of listeners are consuming music through streaming platforms, satellite radio, other online platforms like YouTube. However, AM/FM radio still has a substantial percentage of the number of listeners who tune into audio delivery platforms, particularly in cars.

In the U.S., AM/FM radio stations already enjoy a significant competitive advantage over every other audio delivery platform because AM/FM radio is currently exempt from the requirement that audio delivery platforms pay royalties to music creators for the use of sound recordings. Large AM/FM radio corporations already enjoy an unfair competitive advantage over smaller counterparts by virtue of market share, while also holding an advantage over competing audio delivery platforms who pay for the privilege of using 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 platforms do.

Considering the fact that AM/FM radio has not lost a substantial number of listeners, the competitive advantages that owners of large numbers of radio stations enjoy, and the public interest in protecting smaller broadcasters from reduced competition, we strongly urge the Commission to refrain from loosening the Local Radio Station Ownership Caps in its upcoming Quadrennial Review.

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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).[1] We take the opportunity afforded us by this comment period to focus on the questions presented in the *Public Notice* that was published in the Federal Register August 23, 2018,[2] and also submit comments that may be related to the Commission's upcoming Quadrennial Review of Media Ownership Rules since the matters of competition among and within audio delivery platforms, and the upcoming review of the Commission's Local Radio Station Ownership Caps under Section 202(h) of the Telecommunications Act of 1996[3] are potentially interrelated.

The musicFIRST Coalition is a nonprofit organization comprised of a national coalition of musicians, recording artists, managers, music businesses, and performance rights stakeholders that works to ensure that music creators receive fair compensation for their work on all media platforms. The founding members

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1 47 **U.S.C.** § 163(d)(3) (2018).

2 *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).

3 *See* Telecommunications Act of 1996, § 202(h), 110 Stat. at 111-12.

include the Recording Academy, The Latin Recording Academy, American Association of Independent Music (also known as "A2IM"), the American Federation of Musicians, Sound Exchange, the Record Industry Association of America, the Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-AFTRA"), the Society of Singers, Inc., the Christian Music Trade Association, the Music Managers Forum, Rhythm and Blues Foundation, and The Vocal Group.[4]

Future of Music Coalition ("FMC") is a nonprofit organization supporting a musical ecosystem where artists flourish and are compensated fairly and transparently for their work. We promote 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.[5]

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."[6] This comment seeks to inform the Commission's

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[4] **musicFIRST Coal.**, *The Coalition,* http://musicfirstcoalition.org/the-coalition/ [http://bit.ly/2poosym].
[5] **Future of Music Coal.**, *Mission,* https://futureofmusic.org/mission [http://bit.ly/2xuDFkM].
[6] *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).

Communications Marketplace Report to Congress regarding inter-platform competition between the multiple audio delivery platforms who deliver recorded music to members of the public in 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 its audiences. Inter-platform competition among audio delivery platforms is robust, with a plethora of audio streaming options, YouTube, satellite radio, and AM/FM radio. Consumers now have plenty of choices for where to access music. However, 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 majorities of AM/FM radio stations in individual markets. For this reason, our comments first analyze competition within the AM/FM radio platform before we analyze inter-platform competition among and between all types of audio delivery platforms.

Another reason why we addressed intra-platform competition in these comments is that we recognize that the FCC may rely on some comments in this docket about competition in audio delivery when it commences its upcoming Quadrennial Review of the Commission's Broadcast Ownership Rules.[7] Since certain AM/FM radio stakeholders have been lobbying diligently for months in favor of the Commission loosening the Local Radio Station Ownership Caps in its

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[7] See David Oxenford, *Comments Due September 24 on Audio Competition Report — Setting the Stage for Radio Ownership Reform?,* **Broadcast Law Blog** (Aug. 23, 2018), https://www.broadcastlawblog.com/2018/08/articles/comments-due-september-24-on-audio-competition-report-setting-the-stage-for-radio-ownership-reform/ [http://bit.ly/2pk8MMp].

upcoming Quadrennial Review,[8] and since in our view, such deregulatory action would be disastrous for both the public interest and the recorded music industry, musicFIRST and its member organizations, as well as the Future of Music Coalition felt that it was timely to enter these comments now. An analysis of competition in the AM/FM radio market is squarely within the purview of the FCC's current request for comments in preparation for its required *Communications Marketplace Report to Congress*, and also directly relevant to the FCC's upcoming Quadrennial Review.

While there is admittedly no longer a scarcity of types of audio delivery platforms from which consumers can access recorded music, within the AM/FM radio spectrum, 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.[9]

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[8] **Radio & Television Business Report,** *NAB On Board For Radio Ownership Rule 'Modernization',* (June 15, 2018), https://www.rbr.com/nab-on-board-for-radio-ownership-rule-modernization/ [http://bit.ly/2NXh0bb]; *see also,* 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].

[9] 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").

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 recently amended Communications Act of 1934,[10] 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.[11] 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:[12] "In 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."[13] Moreover, section §257 (a) of the Communications Act of 1934 requires that the Commission review ownership of telecommunications services and information services, with the goal of "identifying and eliminating,

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[10] *See, Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming,* 83 Fed. Reg. 164, 42649 (Aug. 23, 2018).
[11] 47 **U.S.C.** § 163(d)(3) (2018).
[12] *Id.*
[13] *Id.*

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."[14] 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."

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.[15] 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. So while many interested parties in the audio delivery business are large companies, the Commission's *Communication Marketplace Report to Congress* must be drafted through the lens of what is best for audio listeners and small businesses. Among those small businesses are

[14] 47 **U.S.C.** § 257(a) (2018) (emphasis added).
[15] *See Nat'l Broad. Co. v. United States*, 319 U.S. 190, 194, 203, 219 (1943).

music-driven independent radio stations that have been harmed --or may be harmed in the future-- by consolidation of radio station ownership.[16]

II. LARGE TERRESTRIAL CONGLOMERATES ALREADY HAVE SUBSTANTIAL COMPETITIVE ADVANTAGES OVER INDEPENDENT BROADCASTERS AND SMALLER CLUSTERS WITHIN GIVEN MARKETS.

The Commission's request for comments in the Federal Register invited analysis and commentary on, among other topics, "[i]dentification and ownership of key Audio Marketplace Participants as well as the business models and competitive strategies they use."[17] 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.[18] 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

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[16] *See,* Gary Trust, *Independent Radio Stations: Getting By With A Little Help From Their Friends,* **Billboard** (Mar. 5 2013), https://www.billboard.com/articles/columns/chart-beat/1550593/independent-radio-stations-getting-by-with-a-little-help-from [http://bit.ly/2PZAauf]. *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://bit.ly/2MWpV8f].

[17] *Media Bureau Seeks Comment on the Status of Competition in the Marketplace for Delivery of Audio Programming,* 83 Fed. Reg. 164, 42649 (Aug. 23, 2018).

[18] *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/#123b11a57761 [http://bit.ly/2I9x3xd].

costs, with the effect of having fewer owners of radio stations in the geographic markets in which such activity took place.[19]

It has also long been known that under the current radio cluster model popular in most radio markets in the U.S., the goal of radio station owners is to operate at an economy of scale that excludes others and reduces competition.[20] For example, with respect to a two-station FM cluster in New York owned by Emmis Communications, radio trade publication *InsideRadio* wrote earlier this year that while Emmis' 2015 purchase of two urban FM stations, WBLS and WLIB[21] enhanced its ability 'to adapt to competitive environment shifts in that market,'[22] Emmis nonetheless conceded that some of its competitors with larger clusters in that market were able to "leverage their market share to extract a greater percentage of available advertising revenue through packaging a variety of advertising inventory at discounted unit rates."[23] Emmis' New York cluster is relatively small compared to the clusters of radio stations that some other broadcast companies own in the market.[24] CEO Jeff Smulyan rhetorically stated about its market share in New York City: "Would I rather have eight stations in a

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19 *Id.*

20 *Id.* (reporting that many in radio want "want the rules changed to reduce competition. So instead of five competitors in a market, there might be just three or two, maybe even just one."). *See also,* Sarah Elizabeth Leeper, Note, *The Game of Radiopoly: An Antitrust Perspective of Consolidation in the Radio Industry*, 52 **Maurer Sch. of L.: Ind. U. Fed. Comm. L. J.**, 473, 493 (2000). *See also,* Andrea Adelson, *THE MEDIA BUSINESS; Radio Station Consolidation Threatens Small Operators*, **N.Y. Times** (Apr. 19, 1993),

21 In addition to FM stations WBLS and WLIB, Emmis also owns New York City AM gospel station WLIB which Emmis is currently working on selling. *See,* **Inside Radio**, *St. Louis Sale Makes Emmis More Reliant on New York Cluster,* (Feb. 28, 2018), http://www.insideradio.com/free/st-louis-sale-makes-emmis-more-reliant-on-new-york/article_18caa4aa-1c54-11e8-89fb-4312d33104be.html [http://bit.ly/2O2MRaE].

22 *See,* **Inside Radio**, *supra* note 27.

23 *See, id.*

24 *See, id.*

market than one? Sure. But I think I'd rather have one really strong station than eight bad ones…. From our standpoint, we feel comfortable.'" However, if a competitor were to increase the number of radio stations it owned in New York City to eight or more, the market share Emmis' competitors use "to extract a greater percentage of available advertising revenue" would further erode Emmis' ability to compete.

The radio community itself is not united that further deregulation of radio station ownership would be good for the radio industry.[25] The National Association of Black Owned Broadcasters and the Multicultural Media, Telecom and Internet Council are opposed to further deregulation of radio ownership.[26] Results of a 2018 reader survey by radio trade publication *Radio Ink* showed that an astounding 80% of respondents said they were opposed to deregulation.[27] Several substantial owners of radio stations, including iHeart Media are not in favor of sweeping deregulatory moves.[28] However, iHeart Media has said that it would "potentially be the biggest buyer of additional stations" should the FCC adopt the NAB proposal."[29] If the Commission were to further loosen the Local Radio Station Ownership Caps in its upcoming Quadrennial Review, the intra-

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[25] *See,* **Radio Ink**, *Why iHeartMedia Opposes More Deregulation,* (June 26, 2018), https://radioink.com/2018/06/26/why-iheartmedia-opposes-more-deregulation/ [http://bit.ly/2xHn6lX]; *see also,* **Inside Radio,** *supra* note 26.

[26] *See, id.*

[27] *See*, **Inside Radio,** *supra* note 26.

[28] *See*, *id.*

[29] *See, id.*

platform competitive struggles of smaller clusters like the one owned by Emmis in New York City would only get worse.

A. Prior Radio Consolidation Into Clusters of Co-owned Stations Within Given Markets Has Caused Homogenization of Radio Programming and Harmed the Diversity of Music Programming, to the Detriment of the Public Interest, Including the Recorded Music Industry.

The change from a marketplace characterized by diversity in ownership into a marketplace characterized by concentration of ownership, concentration of listenership and concentration of revenue has resulted in clear changes to the character of commercial radio programming, restricting musicians' and songwriters' opportunities for airplay.[30] Cost-cutting measures by corporate owners have in many cases led to local staff reduction, resulting in fewer programming decisions being made by those in the community in which the local station is located.[31] Programmers and on-air-talent may not even live in the community served by a particular station, giving them no organic means of participation in a local music community.[32]

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[30] *See,* **Future of Music Coal.**, *Radio Station Ownership Consolidation Shown to harm Musicians and the Public, Says FMC Study,* (Dec. 13, 2006), https://www.futureofmusic.org/press/press-releases/radio-station-ownership-consolidation-shown-harm-musicians-and-public-says-fmc-[http://bit.ly/2IbRrOw]; *see also,* **Frontline**, *Interview: Jeff Leeds,* (Feb. 11, 2004), https://www.pbs.org/wgbh/pages/frontline/shows/music/interviews/leeds.html [https://to.pbs.org/2I9aIQn]. *See generally,* Gregory M. Prindle, Note, *No Competition: How Radio Consolidation Has Diminished Diversity and Sacrificed Localism,* 14 **Fordham Intell. Prop., Media, and Ent. L. J.** 279 (2003).

[31] *See,* Rachel M. Stilwell, *Which Public - Whose Interest - How the FCC's Deregulation of Radio Station Ownership Has Harmed the Public Interest, and How We Can Escape from the Swamp,* 26 **Loy. of Los Angeles Ent. L. Rev.** 369, 410-413 (2006).

[32] *See, id.* at 430-434.

In 2002 and 2006, Future of Music Coalition conducted research on how the effects of these changes impacted the music community, summarizing its findings thusly:

> "[...]oligopolies controlled almost every market. By 2002, virtually every *geographic market* was dominated by four firms controlling 70% of market share or greater. In addition, nearly every *music format* was controlled by an oligopoly. In 28 of the 30 major music formats nationwide, four companies or fewer controlled more than 50% of listeners. As a result, an increasingly small number of companies determined what music was played on specific formats. In addition, radio station group owners introduced cost-cutting measures that reduced local staff and centralized programming decisions at the regional, or cluster, level. With individual station autonomy drastically limited and broad trend toward shorter playlists, musicians had far fewer opportunities to receive airplay."[33]

FMC further found in 2006 that just 15 commercial formats made up 76% of commercial programming and that radio station group owners who exceeded or exactly met the local ownership cap tended to program heavily in just eight formats. Analysis of playlists revealed considerable homogeneity. Programming formats with different names often had similar playlists.[34]

As musicians faced restricted opportunity for commercial airplay as local markets trended toward oligopolies, listeners reported a decline in local musical character. As one survey of listeners found: Among all survey participants who

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[33] Kristin Thomson, *Same Old Song: An Analysis of Radio Playlists in a Post-FCC Consent Decree World,* **Future of Music Coal.** (Apr. 2009), http://www.futureofmusic.org/sites/default/files/FMCplaylisttrackingstudy.pdf [http://bit.ly/2NDmGbe].

[34] *See,* Peter DiCola, *False Premises, False Promises: A Quantitative History of Ownership Consolidation in the Radio Industry,* **Future of Music Coal.** (Dec. 2006), https://futureofmusic.org/sites/default/files/FMCradiostudy06.pdf [http://bit.ly/2O6HHKy].

responded regarding their opinions about the amount of music created by local artists and bands aired on local radio stations, 64.3% reported perceptions of "Very Little"; 19.7% reported opinions of "Some"; 13.8% reported perceptions of "None"; 2.1% reported opinions of "A Lot."[35]

Critics of deregulation of radio station ownership have long argued that "excessive concentrations of capital in media businesses are crushing diversity and suppressing expression nationally."[36] Many veteran radio programmers,[37] music industry executives[38] and listeners[39] of music-driven radio acknowledge that as

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[35] Michael J. Saffran, *Effects of Local-Market Radio Ownership Concentration on Radio Localism, the Public Interest, and Listener Opinions and Use of Local Radio,* 18 **J. of Radio & Audio Media** 281-294 (2011), http://www.rit.edu/news/pdfs//msaffran_rit.pdf [http://bit.ly/2OMHLfw].

[36] Sarah Elizabeth Leeper, *supra* note 21 at 493.

[37] *See* Andy Gensler, *L.A.'s Triple A Station KCSN Massively Expands Reach, Partnering With KSBR: Exclusive,* **Billboard** (Sept. 6, 2017), https://www.billboard.com/articles/business/7957096/las-triple-a-station-kcsn-massively-expands-reach-partnering-with-ksbr [http://bit.ly/2zpI9M4] (quoting Los Angeles based public radio AAA music station KCSN's GM and Program Director Sky Daniels: "as radio has undergone consolidation and playlists have become homogenized, many music fans have become alienated or simply stopped listening."). See also, Steve Knopper, *Is Terrestrial Radio Facing Its Judgment Day With Fierce Digital Competition?*, **Billboard** (May 5, 2016), https://www.billboard.com/articles/business/7378152/terrestrial-radio-digital-competition-iheartradio-cumulus [http://bit.ly/2Nz5Eeh] ("During a panel discussion at the Worldwide Radio Summit in Los Angeles on April 15, the moderator asked veteran programmer Jim McGuinn, formerly of modern-rock station WPLY (Y100) Philadelphia, why FM was no longer relevant to listeners in their 20s. "I blame commercial radio for f---ing it up," said McGuinn, who today programs a Minneapolis public station.")("'Deregulation could've worked had we included one rule, and that was resist some of the greed,' says John Gorman, former PD for Cleveland rock station WMMS, who left the business to form online station oWOW. 'Now you have a budget you've had to slash and you're running a national playlist instead of local programming. You're not the same platform that you once were.'").

[38] *See,* Steve Knopper, *supra* note 38 (*Billboard* interviewed veteran record company senior executive James Caparro, who stated, "[B]ig radio companies have become too bland and homogenized to thrive in an era when listeners can tailor playlists to their tastes and personalities.").

[39] *See, e.g.,* Steve Johnson, *The Problem with Chicago Radio: The Songs Remain the Same*, **Chicago Tribune** (June 12, 2015, 12:29PM), http://www.chicagotribune.com/entertainment/music/ct-the-problem-with-chicago-radio-20150611-column.html[https://trib.in/2NyqZEw]; **Savingcountrymusic.com**, *Clear Channel, CMT Deal Means More Homogenization*, (Oct. 4, 2013), https://www.savingcountrymusic.com/clear-channel-cmt-deal-means-more-homogenization/ [http://bit.ly/2NAVWrK].

consolidation has taken place in music-driven radio stations nationwide, playlists at commercial AM/FM radio have become more homogenized.[40]

III. WITH RESPECT TO COMPETITION AMONG COMMERCIAL AUDIO DELIVERY PLATFORMS, LISTENERSHIP OF STREAMING CONTINUES TO RISE.

A. Listenership of Combined Streaming Platforms is Increasing Steadily.

According to a recent study by Edison Research and Triton Digital that surveyed U.S. listeners age 12+, 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 and 64% in 2018.[41] Among listeners age 12-24, the percentage of those surveyed who tuned into online audio listening each month was 79% in 2016, with a big jump to 87% in 2017, and 88% in 2018.[42]

In 2017 there were 35.3 million Americans paying for a streaming audio subscription such as Spotify, Apple Music or Pandora.[43] That is an increase of 55.5% from the previous year.[44] Revenue derived by streaming audio services in

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40 *See,* Andy Gensler, *supra* note 38. *See also,* Steve Johnson, *supra* note 40. *See also*, **Frontline**, *supra* note 31. *See generally*, Gregory M. Prindle, *supra* note 31.

41 *See,* **Edison Research**, **Triton Digital**, *The Infinite Dial 2018,* 23, (2018)(The Infinite Dial study uses a random probability telephone sample of 2000 Americans ages 12 and older, comprising both mobile phones and landlines).

42 *See, id.* at 24.

43 *See,* Brad Adgate, *Media Disruption is Accelerating,* **Forbes** (May 7, 2018, 10:15AM), https://www.forbes.com/sites/bradadgate/2018/05/07/media-disruption-is-accelerating/#6ed130ce5110 [http://bit.ly/2pkY4VU].

44 *See, id.*

2017 was $3.5 billion, an increase of 56% from 2016.[45] In 2017, revenue from streaming music providers has surpassed digital downloads and physical sales for the first time.[46]

B. One of the Strongest Trends in Music Driven Audio Delivery is the Quick Ascent of Smart Speaker Usage.

Another strong trend in music driven audio delivery is the significant increase in popularity of smart speakers. National Public Radio and Edison Research together released a "Smart Audio Report" in July of 2018 that indicated that about 43 million people in the U.S. aged 18 and older now own a smart speaker.[47] Another survey by Jacobs Media estimated that around 21% of its 2018 survey respondents owned a smart speaker while only 11% of those surveyed owned a smart speaker in 2017.[48] Remarkably, the percentage of those surveyed who owned smart speakers nearly doubled from 2017 to 2018.[49] Several studies indicate that around 90% of first adopters have asked their smart speakers to play music.[50] Since smart speakers are able to play audio music from more than one

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45 *Id.*

46 *Id. See also,* Cyclical Consumer Goods, *Music Streaming Overtakes Physical Sales for the First Time - industry body,* **Reuters** (Apr. 24, 2018), https://www.reuters.com/article/music-sales/music-streaming-overtakes-physical-sales-for-the-first-time-industry-body-idUSL8N1S143H [https://reut.rs/2xxx8qj].

47 Emily M. Reigart, *Smart Speaker Owners Listen to More Audio (But Not Necessarily Radio)*, **Radio World** (July 20, 2018), https://www.radioworld.com/news-and-business/smart-speaker-owners-listen-to-more-audio-but-not-necessarily-radio [http://bit.ly/2xB74tL](This report is based on a survey of 909 smart speaker owners aged 18 years and older.).

48 **Jacobs Media**, *Techsurvey 2018 Jacobs Media: Radio Navigates the Digital Revolution*, 25, (2018)(This survey involved 567 radio stations in the U.S. and Canada and generated more than 64,000 respondents, mostly members of station databases.)

49 *See, id.*

50 *See,* Emily M. Reigart, *supra* note 48.

audio delivery platform, it remains to be seen what effect smart speakers will have on the various types of competing platforms.[51]

C. YouTube Consumption of On-Demand Music is Vast, But the Value Gap of What Music Creators Receive in Compensation For Such Use is a Huge Public Policy Challenge.

As described in the International Federation of the Phonographic Industry's ("IFPI") *Global Music Report 2018: Annual State of the Industry,* 26, (2018), [52] globally, 85% of YouTube users went there for music in just the past month (from when the information was compiled).[53] That adds up to about 1.3 billion people—several times larger than the total number of listeners who have signed up for a streaming platform like Spotify or Apple Music, which provide several times the level of compensation for creators.[54]

Within the music industry, stakeholders including the Future of Music Coalition and the members of musicFIRST have long recognized that there is a severe "value gap" to the music industry with regard to YouTube's delivery of music to consumers. According to the IFPI 2018 Report, "The value gap describes the growing mismatch between the value that some digital platforms, in particular online user upload services, such as YouTube, extract from music and the revenue returned to the music community – those who are creating and investing in

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51 *See, id.*
52 **International Federation of the Phonographic Industry**, About, http://www.ifpi.org/about.php [http://bit.ly/2PSnMwa].
53See **International Federation of the Phonographic Industry**, *Global Music Report 2018: Annual State of the Industry,* 27, (2018).
54 *See, id.*

music."[55] The report continues, "The sustainable and balanced growth of the digital content market continues to be undermined by a fundamental flaw in legislation underpinning the market," reflecting a mismatch between the value that YouTube extracts from music and the revenue returned to the music community.[56]

D. 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 Quickly in Popularity.

The "Infinite Dial 2018" survey report by Edison Research indicated that U.S. listeners age 12+ who had claimed to have listened to Spotify in the last month were: 13% in 2016, 18% in 2017 and 20% in 2018.[57] In May 2018, Spotify announced that it had 75 million paying subscribers worldwide, a 45% increase over the past year.[58] Spotify also announced it had a total of 170 million active monthly users globally, including the free ad-supported service.[59]

The report indicated that U.S. listeners age 12+ who had claimed to have listened to Soundcloud in the last month were: 11% in 2017 and 9% in 2018.[60] U.S. listeners age 12+ who had claimed to have listened to Google Play All Access in the last month were: 5% in 2016, 6% in 2017 and 6% in 2018.[61]

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55 *See, id.* at 26.
56 *See, id.* at 27.
57 **Edison Research**, **Triton Digital**, *supra* note 41, at 31.
58 *See*, Brad Adgate, *supra* note 44.
59 *See, id.*
60 **Edison Research**, **Triton Digital**, *supra* note 41, at 31.
61 *See, id.*

Meanwhile, 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 growing relatively quickly. As of April 2018, they had over 40 million global subscribers, up from 30 million in September 2017. According to *Forbes*, Apple Music is expected to surpass Spotify with paid subscribers in the U.S. by the summer of 2018.[62]

E. With Respect to Non-Interactive Streaming, Pandora Remains Dominant Although Overall Growth of Listenership has Slowed.

Edison Research's "The Infinite Dial" survey reports over the last several years indicate that in both 2016 and 2017, 32% of listeners age 12+ had listened to Pandora in the month prior to the survey. In 2018, 31% of 12+ listeners had tuned into Pandora in the last month, while 20% had listened to iHeart Radio online.[63] Listenership for iHeart Radio online was up in 2018; 18% of the same age bracket had listened to the platform in the prior month in 2017. Only 13% of that same age bracket had listened in 2016.[64]

With respect to how much AM/FM content other than iHeart Radio that is listened to online rather than over the air, while we don't have access to data from the past few years, the 2018 "Share of Ear" survey report by Edison Research

[62] *See*, Brad Adgate, *supra* note 44.
[63] *See,* **Edison Research**, **Triton Digital**, *supra* note 41 at 31.
[64] *See, id.*

indicates that for music driven AM/FM content, only 6% is listened to via streaming while 94% is listened to over the air via AM/FM signal.[65]

IV. SATELLITE RADIO IS ENJOYING SLOW GROWTH, AND AM/FM RADIO RETAINS STRONG REACH TO LISTENERS NATIONWIDE.

A. SiriusXM is Enjoying Slow Growth, Off a Large Installed Base.

According to Jacobs Media 2017 Techsurvey, Satellite Radio is slowly growing in popularity, driven mostly by men and older listeners.[66] In a 2017 blog by radio consultant Fred Jacobs, describing SiriusXM as a competitor to AM/FM radio: "And then there's satellite radio. As time goes by, it's becoming more apparent the threat from SiriusXM is a clearer and more present danger to broadcast radio. Considering the #1 location for AM/FM radio consumption is the car, then satellite radio provides the greatest challenge. And as we learned in this year's Techsurvey, that's especially the case for people who own a 'connected car'"[67] Explaining some of the results of Jacobs Media's 2017 survey, radio consultant Fred Jacobs wrote in his company blog, "Among all respondents, broadcast radio has a solid 64 share in the car. But among owners of 'connected cars,' AM/FM's piece of the pie drops to 55%, while satellite soars to 21%.

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65 *See,* **Inside Radio,** *Edison: 92% of AM/FM Listening Occurs Over The Air,* (May 18, 2018), http://www.insideradio.com/free/edison-of-am-fm-listening-occurs-over-the-air/article_122d85c6-5a62-11e8-a83b-0bf3bd0b9da5.html [http://bit.ly/2NvYszs].

66 **Jacobs Media**, *Techsurvey 13 Jacobs Media Executive Summary: Navigating the New Media Landscape*, 20, (2017)(This survey involved 321 radio stations in the U.S. and Canada and generated 51,760 respondents, mostly members of station databases).

67 Fred Jacobs, *Radio Can't Just Check Off the Boxes,* **Jacobs Media Strategies Blog** (Oct. 27, 2017), https://jacobsmedia.com/radio-cant-just-check-off-boxes/ [http://bit.ly/2xsHqrV].

Interestingly, other streaming alternatives along with podcasts barely budge."[68] Jacobs continues, "When radio sees a formidable and direct competitor like SiriusXM, not to mention the bevy of streaming music services, brilliant podcasts, and compelling mobile apps, the need for digital strategy, commitment, and investment has never been greater."

According to Jacobs Media's 2018 Techsurvey, 83% of SiriusXM subscribers listen to the service in a vehicle on an average workday. One third of SiriusXM subscribers listened at home. 92% of SiriusXM subscribers listened to music on the service.[69]

Notably, SiriusXM announced on September 24, 2018 that it will acquire Pandora for $3.5 billion. SiriusXM had previously purchased 19% of Pandora for $480 million in 2017. The long-term impact of the combined SiriusXM and Pandora is yet to be seen.[70]

B. 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 2018 report, AM/FM radio remains a medium with good "reach" of listeners. According to the survey, 271 million Americans, tune in to AM/FM radio at some point every week[71] Surveys indicate

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[68] *Id.*

[69] **Jacobs Media**, *Techsurvey 2018 Jacobs Media: Radio Navigates the Digital Revolution*, 34-35, (2018).

[70] Peter Kafka, *Pandora needs help, and Sirius XM needs the internet, so they are (finally) hooking up,* **Recode** (June 9, 2017, 11:13 AM), https://www.recode.net/2017/6/9/15768446/pandora-sirius-streaming-music-strategy-deal [http://bit.ly/2xnwNGC].

[71] Judann Pollack, *Radio's Health Is Better Than You Think, But What's The Long-Term Prognosis?*, **AdAge** (Apr. 17, 2018), https://adage.com/article/media/mixed-signals-radio-s-health/313110/ [http://bit.ly/2xCmDRS].

that for the time being at least, AM/FM radio is still the most listened to audio delivery platform in cars.[72] Nevertheless, "growth in the number of [AM/FM] radio listeners was flat at about 1% a year from 2016 to 2017, according to eMarketer, while time spent with radio is in a slow-drip decline of 0.5 to 1% a year."[73] Time spent listening at AM/FM radio is in a slow decline: "A closer look at that last stat, however, shows that while consumers do indeed spend 86 minutes a day with radio, that's declining. The figure was 86.5 minutes in 2016, eMarketer says, which projects it will fall to 84.96 minutes in 2019."[74]

C. AM/FM Radio's Role in Music Discovery is Declining, Particularly Among Listeners Age 16-24, and Radio's Promotional Value to Music Creators Has Been Decimated in Recent Years.

According to a 2017 study by INTEGR8 Research, the percentages of music discovery per audio delivery platform varied greatly by age demographic.[75] Among listeners age 30-39, around 65% discovered new music via AM/FM radio, with 12%-14% of those people discovering new music through on-demand audio services and 7%-9% discovering new music through YouTube.[76] However, among survey respondents age 24 or under, those numbers changed dramatically. Of survey respondents age 20-24, 42% reported that they heard new music first on AM/FM radio (with 29% discovering music on on-demand audio services and

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72 See, *e.g.*, *id. See also,* **Jacobs Media**, *supra* note 70, at 31.
73 Judann Pollack, *supra* note 72.
74 *Id.*
75 *See,* Anna Washenko, *Survey: Radio leads music discovery, but on-demand is closing the gap in select groups,* **RAIN News** (Oct. 18, 2017), https://rainnews.com/survey-radio-leads-music-discovery-but-on-demand-is-closing-the-gap-in-select-groups/ [http://bit.ly/2PSnMwa].
76 *See, id.*

18% on YouTube) and among survey respondents age 15-19, only 34% went to AM/FM radio to discover new music while 29% went to on-demand audio services and 25% went to YouTube for music discovery.[77]

According to media research company Nielsen's "360 Report Highlights 2017," the top source for music discovery among audio delivery platforms remains AM/FM radio; 49% of listeners say this is where they turn for new music, with 40% of respondents discovering music through friends/relatives and 27% discovering music through "Online Music Services." This study did not break down demographics by age.[78]

A 2017 survey by Audience Net asked respondents what their "go to" source was for listening to a recording that they had previously discovered and liked.[79] 51% of respondents age 16-24 said that they went to YouTube to hear the track a second time, while 28% of respondents in that age bracket went to an on-demand streaming platform to listen to the track after they first discovered it. Only four percent of the same age bracket just waited for the song to come back

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77 **Nielsen Music,** *U.S. Music 360 2017 Report Highlights,* https://www.nielsen.com/content/dam/corporate/us/en/reports-downloads/2017-reports/us-music-360-highlights.pdf [http://bit.ly/2I6zoci] (Data for this study was collected in August 2017 among over 3,000 Gen Pop consumers ages 13+. Surveys were conducted online and data has been weighted to be reflective of the U.S. census population based on age, gender, region, education and household size); *see also,* Anna Washenko, *supra* note 76.

78 **Inside Radio**, *Nielsen Report: Radio Tops All Comers for Music Discovery,* (Oct. 4, 2017), http://www.insideradio.com/nielsen-report-radio-tops-all-comers-for-music-discovery/article_f20adc4c-a8d9-11e7-92d2-0b0c20dabc00.html [http://bit.ly/2poStxY].

79 *See,* **Audience Net**, *2017 Music Consumption_ The Overall Landscape*, 16, (2017), https://musicbiz.org/wp-content/uploads/2017/09/MusicConsumptionTheOverallLandscape_AudienceNet.pdf [http://bit.ly/2I6LBO9] (This study displays the responses of 3006 men and women across the U.S. aged 16+).

on the radio again.[80] With respect to YouTube listening, in order for a recorded track to generate a single dollar for music creators it requires an astonishing 58 hours of listening.[81] As a result of this value gap with respect to YouTube, and the fact that remuneration to music creators is far less for plays on on-demand streaming than was generated in prior years through sales of digital downloads and physical goods, the promotional value that the AM/FM radio industry provides sound recordings has been decimated. Revenues generated by the use of sound recordings on streaming platforms have been increasing in recent years, but those figures are way down from what they were before YouTube and on-demand streaming became substitutions for record sales.[82]

D. There are Several Reasons Not to Loosen the Local Radio Station Ownership Caps. These Include Radio's Continued Reach, the Clearly Damaging Impacts of Consolidation on Diversity and Localism, its Nearly Non-Existent Promotional Value to Music Creators and Refusal to Establish a Sound Recording Performance Right.

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)

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80 *See, id.*

81 *See*, Anne Steele, *Music Industry Recovery Continues, Powered by a Surge in Subscriptions*, **Wall Street Journal** (Sept. 20, 2017), https://www.wsj.com/articles/music-industry-recovery-continues-powered-by-a-surge-in-subscriptions-1505927551 [https://on.wsj.com/2I9A54I].

82 *See* Dan Rys, *The Future of Downloads, Accelerating Growth & Vinyl Vinyl Vinyl: 5 Takeaways From the RIAA Year-End Report,* **Billboard** (Mar. 22, 2018), https://www.billboard.com/articles/business/8257618/riaa-2017-year-end-report-five-takeaways-downloads-growth-vinyl [http://bit.ly/2QRNiTJ]. *See also,* Bill Rosenblatt, *Music Industry Breaks Out of $7 Billion Rut As Streaming Takes Over, Yet YouTube Concerns Remain,* **Forbes** (Apr. 1, 2017), https://www.forbes.com/sites/billrosenblatt/2017/04/01/music-industry-breaks-out-of-7-billion-rut-as-streaming-takes-over-yet-youtube-concerns-remain/#383d077726fa [http://bit.ly/2Drdxhc].

audience[83] AM/FM radio is still healthy notwithstanding the fact that they have more competition from newer competing audio platforms. 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. AM/FM's ability to compete in the audio marketplace is not dependent on further concentration, which would only decrease diversity of programming and capacity to innovate on a local level. To the extent that AM/FM radio entities currently have problems with finances, in some cases those problems are self-inflicted.[84] To the extent that larger radio broadcast entities complain about their profit levels, it is important for the FCC to recognize that several of these large companies with significant AM/FM holdings are spending much of their available cash servicing debt that they incurred by borrowing funds to purchase large numbers of radio stations in the wake of the last time the Local Radio Station Ownership caps were loosened.[85] 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 in its upcoming Quadrennial Review. Rather, the FCC should

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83 *See,* Judann Pollack, *supra* note 72.

84 *See,* Judann Pollack, *supra* note 72.

85 Dacarba LLC, *Terrestrial Broadcast Radio Industry Continues to Show Signs of Distress*, **JD SUPRA** (June 4, 2018), https://www.jdsupra.com/legalnews/terrestrial-broadcast-radio-industry-51863/ [http://bit.ly/2xtaQpU]. S*ee also,* Parker Hall, *Is Tech Finally Killing Radio? Don't let iHeart's Bleeding Fool You,* **Digital Trends** (Mar. 23, 2018),

instead focus on its longstanding commitment and responsibility to the public interest in nurturing diversity, competition and localism within AM/FM radio. The mission of the FCC is not to prop up huge media companies at the expense of smaller broadcasters or music creators. Many of these larger media companies voluntarily took on high levels of debt to finance their growth.[86] Now, instead of using free cash flow to grow from making opportunistic strategic investments in the quality of their local radio stations, many of these companies "are now forced to contribute all available free cash flow to satisfy their debt obligations. For some large national and regional terrestrial radio broadcast companies who used debt to fuel growth, the level of debt carried on their balance sheets is unsustainable."[87] As written earlier this year in *AdAge* magazine: "When two of the top three radio broadcasters drowned themselves in debt, some experts say, it left them too strapped to innovate, invest in new technologies or build sophisticated tracking tools and data sets for advertisers. In fact, in three separate interviews, people used the word 'self-inflicted' to describe [AM/FM] radio's wounds."[88]

Respected radio consultant Fred Jacobs spoke frankly in a 2015 blog about AM/FM facing developing competitive challenges: "Radio has its issues – clutter, a lack of personalization, homogenization, incessant budget cutting, and stations

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86 *See,* Dacarba LLC, *supra* note 85.
87 *See, id.* S*ee also,* Parker Hall, *supra* note 85.
88 Judann Pollack, *supra* note 72.

that sold their local flavor out to voice tracking."[89] But he rightly pointed out that 90% of the population listens to radio, a usage level that is "leaps and bounds ahead of every other audio platform and brand." He also points out that AM/FM radio is working hard at -- and enjoying some success at -- increasing stations' engagement with listeners through those stations' own streaming platforms, podcasts, mobile apps, social media relationships with fans.[90] But to the extent that AM/FM is working to catch up to some of its digital competitors with regard to such engagement, they are behind in doing so in part because their emphasis for many years has been on cutting costs through consolidation and economies of scale, rather than investment in the local radio stations that listeners feel are a part of their communities.[91] AM/FM radio still enjoys the opportunity to be "local" in their individual markets (an advantage not enjoyed by their competitors).

Where the AM/FM radio industry is working on correcting such problems through innovation, investment and partnership with music creators, we believe they will succeed. We too would like for AM/FM radio to be so compelling and engaged with their listeners that they once again drive significant generation of revenue for music creators and increase their own profits substantially. 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, this

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89 Fred Jacobs, *Uncool*, **Jacobs Media Strategies Blog** (May 11, 2015), https://jacobsmedia.com/uncool/ [http://bit.ly/2QN2yRF].
90 *Id.*
91 *See,* Biswas, Steele, *Radio Giant iHeart Faces Costly Reckoning on Debt 10 Years After Buyout*, **Wall Street Journal** (Feb. 2 2018), https://www.wsj.com/articles/radio-giant-iheart-faces-costly-reckoning-on-debt-10-years-after-buyout-1517567406 [https://on.wsj.com/2O2Xtq0].

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.

Large AM/FM entities have long argued that the Local Radio Station Ownership Caps need to be loosened, claiming such deregulatory actions would help "level the playing field" with digital competitors within the inter-platform competitive landscape.[92] In fact, AM/FM radio already has a huge 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.

"Copyright and the Music Marketplace, a Report of the Register of Copyrights," a report issued by the United States Copyright Office in 2015 that detailed "an exhaustive analysis of industry practices and considerable dialogue with music creators and the businesses that represent and invest in their interests, as well as the music services and distributors and other interested parties," (hereinafter "Register of Copyrights Report 2015")[93] stated:

> "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

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[92] *See, e.g.*, **Radio Ink,** *Does Radio Need More Deregulation (Part 2),* (May 17, 2018), https://radioink.com/2018/05/17/does-radio-need-more-deregulation-part-2/ [http://bit.ly/2QSmPoZ].

[93] **U.S. Copyright Office,** *Copyright and the Music Marketplace, A Report of the Register of Copyrights* (February 2015), https://copyright.gov/docs/musiclicensingstudy/copyright-and-the-music-marketplace.pdf [http://bit.ly/2QN9Iph] at Preface, (hereinafter "Register of Copyrights 2015 Report").

> 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."[94]

This inequity not only harms competitors to AM/FM radio; it deprives recording artists and copyright owners of sound recordings in the United States of their 50% of this pool of substantial revenue that it would otherwise collect, and it also deprives labels (big and small) of the other 50% of this revenue. The U.S. is one of very few industrialized countries that does not have a terrestrial broadcast performance right for sound recordings.[95] At least 75 nations do have a performance right, which means that foreign broadcasters pay royalties to songwriters/composers and performers.[96] But since there is no reciprocal right in the U.S. under certain applicable treaties, foreign performance rights societies cannot distribute these royalties to American recording artists and copyright owners of sound recordings. This leaves tens of millions of dollars of royalties on the table annually rather than in the pockets of American artists and record labels.[97]

We respectfully request that when the Commission makes its report to Congress, and also when it analyzes the Local Radio Station Ownership Caps in

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[94] *Id.*

[95] *See,* **Future of Music Coal.**, *Public Performance Right for Sound Recordings: Fact Sheet* (Mar. 5, 2018), https://futureofmusic.org/article/fact-sheet/public-performance-right-sound-recordings [http://bit.ly/2OMbIwy].

[96] *See, id.*

[97] *See, id.*

its upcoming Quadrennial Review, that it understand that AM/FM already has a substantial advantage over its competitors insofar as it 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 should be leveled by reducing the amount of performance royalties that those platforms should have to pay, such actions are completely divorced from market-based principles and would dramatically undervalue the music which provides the basis for their entire business model. The recent experience of the widespread support for the Music Modernization Act[98] (including from the National Association of Broadcasters)[99] and its unanimous passage by Congress demonstrates that stakeholders and policymakers realize that current laws have systemically undervalued music. The Music Modernization Act will increase the value of music across the board, and we believe that AM/FM radio will inevitably compensate recording artists and owners of copyrights in sound recordings similarly to all other music platforms.

CONCLUSION

Although competition among audio delivery platforms has increased in recent years, a value gap remains with respect to compensating music creators fairly for the use of their work. Moreover, among audio platforms available to listeners in the United States, corporations that own a larger number of radio

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98 S. 2823, 115th Cong. (2017-2018).

99 *See,* Ed Christman, *National Association of Broadcasters Signs On to Support Music Modernization Act,* **Billboard** (Jan. 1, 2018), https://www.billboard.com/articles/business/8096572/national-association-broadcasters-music-modernization-act [http://bit.ly/2zq781F].

stations in certain geographic markets enjoy competitive advantages over their AM/FM competitors locally, by virtue of their market shares. They also hold competitive advantages over all other audio delivery platforms, since they are the only audio platform in the U.S. that does not compensate music creators for the use of sound recordings. Consequently, the Commission should bring to the attention of Congress in its required *Communications Marketplace Report* that AM/FM Radio should be required to pay music creators for the use of sound recordings, and the Commission itself must refrain from loosening the Local Radio Station Ownership Caps in its upcoming Quadrennial Review.

Respectfully Submitted,

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