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

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

To The Commission

REPLY COMMENTS OF THE MULTICULTURAL MEDIA, TELECOM AND INTERNET COUNCIL

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Summary

The Multicultural Media, Telecom and Internet Council ("MMTC") respectfully submits these Reply Comments in response to certain of the commenters who responded to the Commission's Notice of Proposed Rulemaking[1] ("2018 Quad NPRM").

In the first section we discuss what would happen if the Commission were to lift the radio ownership cap and subcaps. Given the already vulnerable position of small broadcasters, especially in AM radio, we recognize that this move would run counter to diversity and competition while frustrating the Commission's AM revitalization initiatives. The NAB's proposal would have an especially negative effect on the public in markets ranked 75+ by Nielsen – 26 of which are located in state capitals. We know that the effect this policy would have on smaller, diverse broadcasters would ultimately place them at risk of being pushed out.

We next examine the flawed, unfortunate, and unprecedented reasoning of the NAB to the extension of the Cable Procurement Rule. The proposed extension of the Rule into broadcasting has not been barred by Congress, nor would the proposed Rule "pressure" broadcasters to behave in a manner that is not race-neutral.

MMTC offered economic formulas that could allow the FCC to make less arbitrary decisions. While the FCC has been using antiquated and arbitrary coefficients in its proposed and enacted rules, we offer that when more precise tools might be available, they should be considered. For example, we offered what we believe are more precise tools; these were not acknowledged for 15 years, ultimately hindering the Commission's goal of diversity.

[1] *See 2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996,* Notice of Proposed Rulemaking, MB Docket No. 18-349, FCC 18-279 (Dec. 13, 2018) ("2018 Quad NPRM").

I. Lifting The Radio Ownership Caps Or Subcaps Would Severely Undermine Innovative New Entrants, Small, Religious, And Minority Broadcasters.

The National Association of Broadcasters (NAB) has put forth a truly extreme proposal whose adoption would virtually destroy broadcast ownership diversity. Indeed, the Commission should take note that many of the NAB's own leading members have forcefully opposed it.[2]

Here is the proposal:

> If the FCC ultimately retains broadcast–only ownership caps, it should allow radio broadcasters to achieve greater economies of scale by: (1) eliminating caps on AM ownership in all markets; (2) permitting a single entity to own up to eight commercial FM stations in Nielsen Audio markets 1-75 (with the opportunity to own up to 10 FM's by successfully participating in the FCC's incubator program); and (3) imposing no restrictions on FM ownership in Nielsen markets 76 and lower and in unrated areas.[3]

A. The NAB's proposal would entirely abandon diversity in medium and small markets, including 26 state capitals.

Urban One sums up what the NAB's proposal would do:

> Allowing for greater consolidated ownership would lessen the radio broadcasting competition that the resulting fewer owners would face. This reduced radio broadcasting competition would likely lead to poorer service to radio listeners, fewer viewpoints being presented, and less localism.[4]

Let us first consider the NAB's proposal to abandon all radio ownership restrictions for markets below 75. As Urban One points out,

> Markets below 75 might end up with one owner owning majority of stations assuming that the Department of Justice does not step in on antitrust issues. Urban One fails to see how one owner owning a majority of stations in market 75+ advances any of the FCC's competition or diversity goals. Such deregulation

[2] The largest radio broadcaster, iHeartMedia; the largest religious broadcaster, Salem Media; and the largest minority broadcaster, Urban One, take the opposite view and align with MMTC, NABOB, and Music First.

[3] NAB Comments at 5.

[4] Urban One Comments at 3.

> has the potential to squeeze out existing owners and give the largest owner the ability to set market advertising rates.[5]

If the NAB proposal were granted, we could have only a single owner in each of the 26 *state capitals* that are located in markets 75+.[6] In many instances this would mean no more competitive (if any) commercial radio news coverage of entire state governments.

The NAB's primary justification for its proposal is that it wants the government to help broadcasters fight advertising competition from Google and Facebook. But as NABOB points out,

> Advertisers now allocate separate budgets for digital and broadcast, because they recognize that these media reach consumers in very different ways and neither can reach consumers in the manner of the other. Whether all the stations in the market are owned by 10 owners or one owner the broadcast budget will be the same. Therefore the need to compete against Facebook, Google and other Internet companies is no justification for elimination or relaxation of the Subcaps rule.[7]

iHeartMedia explains how the NAB proposal, with respect to FM ownership, essentially throws AM radio under the bus because it would:

> exacerbate the disparity between AM and FM stations. Doing so will avert the very real threat of a massive divestiture of AM stations in favor of FM station

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[5] *Id.* at 10.

[6] Twenty-two state capitals are located in Nielsen rated markets 75+: Dover, DE, Harrisburg, PA, Columbia, SC, Little Rock, AR, Boise, ID, Carson City, NV, Madison, WI, Jackson, MS, Lansing, MI, Trenton, NJ, Montgomery, AL, Tallahassee, FL, Lincoln, NE, Frankfort, KY, Concord, NH, Charleston, WV, Topeka, KS, Columbia, MO, Bismarck, ND, Montpelier, VT, Augusta, ME, and Cheyenne, WY. Four additional state capitals are unrated by Nielsen: Juneau, AK, Pierre, SD, Springfield, IL, and Santa Fe, NM.

[7] *See* NABOB Comments at 12; *see also* iHeartMedia Comments at 12 ("advertisers do not view these platforms (broadcast radio and Internet-based platforms) as interchangeable, but rather as separate and distinct means of delivering customers. Thus they are not substitutable from an advertising perspective.") One indication of how unimportant it is to Google or Facebook that radio stations in a market are owned by one or dozens of owners can be found in the companies' conspicuous election not to submit comments in this proceeding.

> purchases in the consequent devaluation of AM assets and attendant listener flight from the AM band.[8]

iHeartMedia explains in some detail how AM would meet its near-death:

> One potential scenario under that local market reconfiguration would be a series of stations swaps, resulting in group owners adding higher ranked stations in key strategic markets, as well as increasing the number of stations within the group. As noted above, although there are myriad factors to go into advertising purchasing decisions in a particular market, two of the principal elements are station rank and pricing, and the higher ranked stations within a market tend to draw more advertising placement interest. Moreover, having a larger number of stations within a group may afford a group owner more flexibility to create attractive pricing packages. Thus, if ongoing market trends influenced an owner's approach toward such station swaps, thereby dictating the prioritization of additional FM station acquisitions over that of lower-ranked AM stations, the foreseeable impact would be to further increase the revenue disparity between AM and FM stations in the market. Based upon an analysis of market forces already at work, a parallel, if not more dramatic, impact would be manifested in audience listening to AM and FM stations in the market. In essence, the proposal put forth by NAB carries a real risk of turbocharging current marketplace forces that place AM stations at a competitive disadvantage relative to their FM counterparts.[9]

Salem reminds us of the progress the Commission has been making on strengthening the AM band, pointing out that "relaxation of the sub caps will do little to counter the diffusion of radio's market position while doing much to undermine the Commission's progress toward AM revitalization."[10] Salem explains that deregulation of subcaps could lead to a devaluation of the AM band "because the possible resulting migration leading radio brands to the FM band could accelerate a departure of the AM audience."[11] Salem cites a recent Nielsen study, "Percentage of

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[8] *See* iHeartMedia Comments at 5; *see also* NABOB Comments at 13 ("[a]llowing companies to own eight or 10 FM stations in the market would lead to major consolidation of FM station ownership and would severely undermine the value of AM stations. Existing AM station owners would have the value of their existing assets severely reduced. This would undermine everything the Commission has been attempting to do to revitalize AM radio.")

[9] *Id.* at 30.

[10] *See* Salem Comments at 2.

[11] *See id.* at 4.

Listeners that Don't Tune to AM Band" which found that for P25-54, non-listenership to AM went from 64.7% to 81.9% of this demographic in just the 11 years from 2008 to 2019.[12] As AM is shrinking – and will shrink farther and faster if proposals like the NAB's displace AM revitalization as policy priorities–we will see the communities most dependent on AM bearing the loss. In a recent Politico article about the importance of AM radio, reporter Zach Stanton found that:

> In 2019, thousands of AM stations remain on the air, many of them thriving – in part because they serve unique sets of people whose voices aren't always heard loudly. For generations, it was considerably cheaper to buy or start an AM station than any other form of mass media, making ownership more accessible to people of color, immigrants, non–English speakers in those with political views outside the mainstream.[13]

B. With a raised cap or subcaps, stations owned by or offered to minority and other disadvantaged or specialized broadcasters would seldom be financially viable.

The NAB has failed to explain why the entirely predictable outcomes of more consolidation – shutting out innovative new entrants, religious, and minority broadcasters; cutting staffs; making small company ownership untenable, and decimating AM stations – would help the industry or the listening public. The NAB's proposal would shift money from small radio operators to big ones, while doing nothing to shift money from the internet companies to the struggling radio operators that are most in need of additional revenue. At the same time, the NAB's proposal would weaken the very cutting-edge attributes of radio that empower the industry to compete effectively with the large internet companies.

Elimination of the ownership cap and subcaps would hit minority-owned and other disadvantaged radio companies the hardest. Urban One lays out why:

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[12] *See id.* at 6.

[13] Zach Stanton, The Lo-Fi Voices that Speak for America, Politico, April 27, 2019.

> 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…. to the extent smaller and niche broadcasters do not sell out, a lack of radio ownership restrictions will allow large radio groups to take considerably more revenue from smaller and less well–funded local radio broadcasters….Woe be it to the single station owner or small broadcaster all of the market's most powerful facilities are owned and operated by the same entity. The message to all others is to get out, stay in at your own peril, or do not even think about getting in![14]

Small and minority broadcasters would be forced out because their investors would never be able to reap competitive returns, and would instead be susceptible to purchase offers from larger competitors. As Urban One explains:

> Removing all or most radio ownership limitations would drive smaller broadcasters, many of whom are minority–owned, out of the radio broadcasting business. To the extent that such broadcasters have powerful and/or heritage stations, they will be enticed to sell. To the extent that their stations are not as viable, they will be ignored, the stations will not be purchased in such owners will have no chance of getting bigger; they already would have if they could….[15]

Pointing to the sharp decline in African American radio ownership from 1995 to 2017, NABOB concludes:

> Any relaxation of the Commission's ownership rules will further the ongoing precipitous decline in minority broadcast ownership. African Americans still own a small number of successful radio stations and allowing further consolidation in that industry could substantially undermine currently successful radio stations.[16]

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[14] *See* Urban One Comments at 3, 4, 6.

[15] *Id.* at 8.

[16] *See* NABOB Comments at 5. Religious broadcasters will be hit hard as well. *See* Salem Comments at 9 (stating that "the weakening of the AM band will likely hurt other religious broadcasters along with minority broadcasters and independent small-market broadcasters who provide meaningful, diverse programming options to their communities.")

This decline in minority ownership has been fueled by the collapse of small and mid-size broadcast deal funding. A recent summary by Hoffman Schutz Media Capital explains the current state of small and middle market lending to broadcasters:

> The 10+ year freeze in small and middle market lending to broadcasters continues. Smaller local banks continue to refinance existing loans, and to consider modest acquisitions for existing customers.
>
> Institutional private equity, and venture capital are virtually nonexistent.
>
> We are conducting appraisals for a few banks and finance companies that are originating new loans to broadcasters. All of these loans have had the following characteristics:
>
> - The stations are currently operating on a profitable basis. Often the stations are located in the same city as the bank providing the senior debt.
> - The bank already knows the buyer of the local broadcast stations
> - Senior loans are in the range of $2 Million to $10 Million
> - SBA Guaranteed senior loans may be available up to $1.4 Million
> - Total debt generally is no greater than three times (3X) trailing cash flow
>
> Traditional financing does not appear to be available in the following situations:
>
> - Stations that are operating at a loss, or operating with minimal profitability
> - New ("start-up" or "stick") stations
> - AM-only radio stations (except a few Asian and religious stations in the very largest markets)
> - Low-Power TV stations that lack long-term cable carriage contracts, or major network affiliations
> - New radio, TV, or cable programming services, unless the borrower has business start-up experience, and there is a substantial equity partner.[17]

This accurate summary of the current broadcast financing environment confirms that virtually no bank financing is available for AM station transactions, for small and medium market deals, or for stations operating at a loss or with minimal profitability. Thus it is puzzling why some parties believe that consolidation would somehow magically play into the hands of

[17] Hoffman Schutz Media Capital, Radio & TV Station Financing – Observations, Spring 2019 (fn. omitted; emphasis in original).

minority broadcasters, gracing them with access to capital.[18] No traditional lender will finance minorities' and other small broadcasters' acquisitions of consolidators' throwaway stations. Even now, most of the stations being offered to minorities are the stations few broadcasters want today and no one will want tomorrow – the weak or inferior signals doomed to fail. Even the temporary support of an incubating benefactor won't save these second-class facilities in the long run, even assuming against evidence that the incubator program would survive the NAB's proposal at all.[19]

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[18] *See, e.g.,* Alpha Media Comments at 2 (stating that "lifting the sub caps will create new opportunities for divested stations, including minorities, women, and small businesses, because broadcasters will buy and sell certain in market stations to strengthen existing station clusters"); *cf.* NAB Comments at 39 (suggesting that its proposed tweaks to the incubator program will address "access to capital.")

[19] *Seee* iHeartMedia Comments at 34-35, which sets out in stark but accurate detail why the NAB's proposal would kill off the incubator program before it starts:

> Adoption of the FM component of the NAB proposal would undermine the economic foundation of the Incubator program before it ever has a chance to succeed. In formulating the Incubator program, the Commission unequivocally and repeatedly recognized the centrality of a sufficient financial incentive for the incubating entity to invest the time and resources to incubate a new entrant…. The Commission elucidated its rationale for adopting a waiver of the local radio ownership rules as the best financial incentive for incumbent broadcasters to incubate a small business or new entrant…. The Incubator program and the existing local radio ownership rules are intertwined and interdependent…. Adoption of the FM component of the NAB proposal would destroy that indispensable financial incentive. By increasing the number of FM stations that could be owned in the top 75 markets from five to eight and removing entirely the ownership limits on FM stations in all remaining markets, the NAB proposal makes the financial incentive for incubating a new entrant or existing small broadcaster far less meaningful. In markets below the top 75 markets it eliminates the financial incentive altogether because no waiver will be needed as there will no longer be local ownership limits in those markets in the top 75 markets as practical matter. The acquisition cost of three additional FM stations will be sufficiently substantial and the time resources and effort to absorb those stations will be sufficiently great that the inclination of incumbent radio broadcasters to incubate new entrants or small businesses will likely to be tiny to nil.

II. The Cable Procurement Rule Should Be Extended To Broadcasting.

A. Congress did not preclude the Commission from extending the Cable Procurement Rule to broadcasting.

The NAB maintains that because Congress adopted cable procurement requirements without also adopting a broadcast procurement requirement, Congress must have intended to prevent a future Commission from using other sources of legislative authority to adopt a broadcast procurement requirement.[20] This argument is neither valid nor based on the facts.

In 1992, Congress prevented the FCC from repealing its TV and Cable EEO rules while remaining silent on whether it could repeal the Radio EEO Rule.[21] However, as the FCC carefully reaffirmed in 2002, Congress' silence on whether the FCC could repeal its radio EEO rules was not a direction to the FCC to abandon radio EEO regulation.[22]

The NAB also argues that because, in 1992, Congress expressly prevented the Commission from changing its broadcast *EEO* rules, the Commission is now statutorily barred from adopting a broadcast *procurement* rule.[23] This is illogical. In 1992 Congress also failed to extend, to broadcasting, thousands of other regulations that are not EEO regulations. While EEO and procurement enforcement happen to be managed by the same staff at the FCC, they are different rules.[24]

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[20] *See* NAB Comments at 85-86.

[21] *See* 47 U.S.C. §334.

[22] *See Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies,* Second R&O and Third NPRM, 17 FCC Rcd 24018, 24035 ¶44 (2002).

[23] *See* NAB Comments at 87 (citing 47 U.S.C. §334(a)-(c)).

[24] The Broadcast EEO Rule is 47 C.F.R. §73.2080 *et seq.* The Cable EEO Rule is 47 C.F.R. §76.71 *et seq.*, and the Cable Procurement Rule is 47 CFR §76.75(e). Suffice it to say that Congress' 1992 instruction to the Federal Luncheon Commission to leave untouched its Ham Sandwich Rule does not prevent that commission from regulating pepperoni pizzas in 2019.

It is "unclear" to the NAB how the FCC's authority under Section 151 to oversee radio transmissions throughout the United States authorizes the regulation of how, and from whom, broadcasters purchase goods and services.[25] Section 151 has been among the several jurisdictional bases for a variety of civil rights regulations, including EEO, transactional nondiscrimination, and advertising nondiscrimination.[26] Goods and services, like personnel, station owners' stewardship, and advertising, are key inputs to production that are essential to the ability to broadcast. As to each of these inputs to production, discrimination distorts the marketplace and imposes huge costs on the industry, on society generally, and on minorities and women.[27] Discrimination also closes an on-ramp to becoming a licensee or (when ownership is impossible, as it is for many) to other means of contributing to the communications eco-system.

B. The Cable Procurement Rule is a classically race-neutral measure.

The NAB maintains that strict scrutiny applies because the FCC's longstanding cable procurement rule, if applied to broadcasters, would "pressure broadcasters to recruit or even reach out to job candidates based on racial classifications" and thus "would trigger strict scrutiny" because "[e]ven an audit or review of broadcasters efforts would impermissibly pressure broadcasters to procure goods and services from providers based on their race or gender to avoid FCC scrutiny."[28] That is absolutely not true.

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[25] *See* NAB Comments at 88.

[26] *See* MMTC Comments at 13 for an iteration of sources of jurisdiction, including Section 151 and several others.

[27] *See* Danielle Davis, The Economic Costs of Discrimination, MMTC (2019), *available at* https://www.mmtconline.org/wp-content/uploads/2019/04/Andrew-Brimmer-and-the-Economic-Costs-of-Discrimination-042619.pdf (last visited May 25, 2019) ("Davis").

[28] *See* NAB Comments at 89-90.

Like the Broadcast (and Cable) EEO rules, the Cable Procurement Rule only requires broad recruitment, such as is done for Broadcast EEO on the internet[29] and voluntarily supplemented by notices to potential sources of applicants – a task that can be done by e-mail.[30] Occasional audits ensure that recruitment has been done broadly. There are no quotas. The race or gender of a recruited firm has no impact on the FCC's compliance review under the Cable Procurement Rule,[31] and would have no impact under a Broadcast Procurement Rule either.

Consequently the case the NAB relies on, *MD/DC/DE Broadcasters Association v. FCC*, 236 F.3d 13 (D.C. Cir. 2001)[32] is inapposite here. In that case, broadcasters operating under the former EEO Rule had two options of regulatory paradigms to choose from. The Court held that one of these options ("Option B") "pressured" broadcasters to recruit minorities *instead of* other potential applicants. The Court held that Option B:

> does create pressure to focus recruiting efforts upon women and minorities in order to induce more applications from these groups…. In determining whether recruitment efforts have reached the 'entire community,' the Commission considers the number of women and minorities in the applicant pool. If the licensee reports few or no women and minorities in the applicant pool, then the

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[29] *See Petition for Rulemaking Seeking to Allow the Sole Use of Internet Sources for FCC EEO Recruitment Requirements*, MB Docket No. 16-410, Declaratory Ruling, 32 FCC Rcd 3685, 3691 ¶11 (April 21, 2017).

[30] *Id.* at 3693 ¶14.

[31] *See* 47 C.F.R. §76.75(e), providing that the cable operator shall "[e]ncourage minority and female entrepreneurs to conduct business with all parts of its operation. For example, this requirement may be met by: (1) Recruiting as wide as possible a pool or qualified entrepreneurs from sources such as employee referrals, community groups, contractors, associations, and other sources likely to be representative of minority and female interests." The cable operator must also perform a race- and gender-neutral evaluation of its performance. *See* 47 C.F.R. §76.75(g). All of this is classic race-and gender-neutral broad recruitment language focusing entirely on the recruitment *process* and not one bit on racial recruitment *results*. It puts zero "pressure" on a cable operator to engage minority or women contractors because of their race or gender. Instead the Rule simply makes it possible for qualified minorities and women to learn of opportunities to submit bids.

[32] *See* NAB Comments at 90 and n. 338.

> Commission will investigate the broadcaster's improvement efforts" (citations omitted).[33]

The Court held that Option A created no such "pressure" because, under that option, a licensee was not required to report the race or sex of job applicants or interviewees.[34] The Procurement Rule is like Option A in simply requiring that public notices of opportunities be made broadly available. It lacks the feature of Option B that drew the disapproval of the panel in *MD/DC/DE Broadcasters*. This helps explain why the cable industry, although keenly aware of the *MD/DC/DE Broadcasters* decision, has voiced no objections to the Cable Procurement Rule. Indeed, not one cable company has ever complained that it has been "pressured."[35]

The NAB also asserts that there is no evidence that the Cable Procurement Rule "has successfully launched minority and women entrepreneurs into operating and ownership positions in the cable and satellite industries."[36] But while that is one goal of the Rule, that goal has been frustrated by the unique economics of the cable industry under which independent ownership of cable systems is no longer viable. While 40 years ago there were over 40 minority-owned cable franchises; today there are zero. It is the underlying economics of the cable industry that has made independent ownership of cable systems no longer viable, and frustrating minority cable ownership – not regulations.

Instead, the primary purpose of the Rule is to provide minorities and women with an alternative means of participation in this important industry. The Rule does this by preventing and proscribing discrimination, and by promoting competition. These are worthy goals by any

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[33] *MD/DC/DE Broadcasters,* 236 F.3d at 19.

[34] *Id.*

[35] Cable companies are hardly shrinking violets when it comes to the filing of grievances. *See, e.g.,* NCTA Comments at 2-5 (discussing the television Top Four Policy and Retransmission Consent).

[36] *See* NAB Comments at 90 and n. 339.

measure – goals squarely contemplated by the plain language of Section 151, which created the FCC "[f]or the purpose of regulating interstate and foreign commerce in communication by wire and radio so as to make available, so far as possible, to all the people of the United States, *without discrimination on the basis of race, color, religion, national origin, or sex*, a rapid, efficient, Nation-wide, and world-wide wire and radio communication service…."[37]

Certainly the Rule has been enormously successful in fulfilling Congress' purposes as expressed in Section 151. Congressman Edolphus Towns, the co-author of the Cable Procurement Rule, stated in his April 23, 2019 declaration, which was appended to our Comments, that over the years he has met the principals of several minority and women-owned small businesses that had learned of cable contracts thanks to the Cable Procurement Requirement,

> and had submitted successful bids. Our four lines of legislative text generated tens and probably hundreds of millions of dollars for the payrolls of minority and women small businesses, thereby building the middle class, reducing the cost of cable operations, reducing cable bills, and enhancing the competitiveness of the cable industry.

C. Broadcasters would not be harmed by the proposed Broadcast Procurement Rule.

It is a stretch for the NAB to argue that putting an end to exclusionary and often–discriminatory procurement practices is harmful to its members. It is even more of a stretch for the NAB to designate itself the anti-nondiscrimination advocate for companies in an entirely different industry – one that never anointed the NAB as its spokesman.

The NAB did not even attempt to show that anyone in the cable industry has experienced any harm from outreach that is inclusive of minority and women bidders who are qualified to provide goods and services.

[37] 47 U.S.C. 151 (language added in 1996 italicized).

Nor did the NAB attempt to show that the marginal costs of posting procurement notices online, e-mailing them to community groups, and mailing a copy of routinely-maintained records to the Commission in the rare event of an audit, would be material "burdens" on broadcasters. Indeed, these tiny costs are far exceeded by the benefits of multiple-supplier contract bidding, which yields superior goods and services at lower prices. The NAB, and its members, simply are not harmed by a race-neutral measure that would facilitate nondiscrimination in procurement.

Vested procurement contract "winners" who are part of a "good old boy" system might claim they would suffer harm if they had to compete against qualified minorities and women for contracts. But no one has an inherent right to be shielded from competition from others who might be better qualified to do the work. And in 2019, it should be universally understood, by enlightened industry statesmen and women, that facilitating the full exercise of the skills of *each* American is beneficial to *all* Americans.[38]

III. Tradable Diversity Credits, The Source Diversity Formula, The Tipping Point Formula, And Other New And Innovative Ideas Should Be Considered By The Office Of Economics And Analytics.

If one thing is clear from the record thus far in this proceeding, it is that the local ownership rules are a classic "blunt instrument" for the measurement of diversity and competition. The numbers thrown about by the NAB in its proposal – ten (FM stations in large markets); two (stations that could be incubated); 75+ (the market sizes being sacrificed to potential single-owner status, as well as an incubation desert) are entirely arbitrary. Where do these numbers come from? What is their basis? What econometric studies produced them? And since they are in fact nothing but arbitrary numbers, why is the NAB beating up on MMTC for having produced formulas that at least attempt to have scientific merit?

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[38] *See* Davis, *supra* n. 27.

The NAB is not completely to blame, of course, because the underlying regulations – those in effect today – are equally arbitrary. With few exceptions, they are the progeny of guesswork, political compromises, or both.

The time has come for a new paradigm.[39] To give one example: since the NAB is proposing rules that could yield single-owner monopolies in markets below 75,[40] the Office of Economics and Analytics might take an especially close look at our Tipping Point Formula, whose purpose is to determine the point at which independent voices can no longer survive in a radio market.

Not all stations in a market are equal to one another in coverage. This obvious fact renders the station-counting paradigm for the local radio rules so grossly inexact that it may no longer be suitable as an instrument of policy.[41] Hence our three attempts at more sophisticated paradigms.

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[39] LCCR states that our formulas "are not adequate replacements for the Media Ownership Rules and if intended as such must be rejected." LCCR Comments at 9-10. The formulas are not designed as replacements for the media ownership rules, although perhaps they could supplement and improve the application of those rules, and the Commission could decide to replace its rules with any different paradigm that does a better job at protecting the public. Another commenter, NHMC, misunderstands the Diversity Credits proposal, declaring that "treating people of color…as currency is, at its core, a dehumanization tactic." NHMC Comments at 13. Actually the proposal does just the opposite. Rather than treating minorities as currency, it would *give* minorities currency and afford them free rein to convert it into much-needed capital. It is analogous to and was modeled after "40 acres and a mule." It is aimed specifically at curing the wealth gap and addressing access to capital.

[40] *See* pp. 2-3 *supra*.

[41] Curtis Media Group avers that "[b]y completely failing to account for each station's actual signal reach in population service area, the Nielsen audio methodology ignores the fact that stations in the same market are not necessarily equal competitors." Curtis Media Group Comments at 5. MMTC has no position regarding which methodology is the optimal one, but appreciates Curtis' initiative for thoughtfully pointing out that the Commission's station-counting methodology is flawed.

We cannot leave this discussion of new economic concepts, and the agency's historical aversion to them,[42] without giving credit to parties on the other side of "not invented here." Salem has pointed out that "there are a host of pending proposals before the Commission in the AM Revitalization proceeding – *e.g.,* to increase the level of protected field strength, thereby enabling stations to increase power to overcoming higher levels of manmade noise."[43] Another intriguing new idea, pending cost-benefit analysis, is found in the petition for rulemaking filed May 15, 2019 by WRNJ Radio, Inc., proposing to reallocate the 45-50 MHz spectrum for use by AM on a voluntary basis.[44] There may be other means of saving AM: for example, transitioning to all digital.[45] There are so many potentially worthwhile ideas floating about. Rather than adopting knee-jerk massive and extreme deregulation at the expense of innovative new entrants, small, religious and minority broadcasters, the Commission should avoid its institutional aversion to "not invented here."[46] Instead, it should seek to improve on its current arbitrary,

[42] It took 15 years and a trip to the Third Circuit for the agency to issue even an incorrect NPRM. Notwithstanding this, the NAB, with no basis whatsoever, blamed not the agency, but MMTC, *the party that presented the ideas*, for the agency's delay. *See* NAB Comments at 91.

[43] *See* Salem *Ex Parte*, May 16, 2019, at 2 (citing *Revitalization of the AM Radio Service*, First R&O, Further NPRM and NOI, 30 FCC Rcd 12145 (2015); Second FNPRM, FCC 18-139, rel. October 15, 2018.)

[44] Of course this would require a new generation of receivers, and moving the current users of this spectrum somewhere else. But those issues always arise when spectrum is reallocated, and it always gets worked out by the engineers and economists. It is a classic cost-benefit question, tailor-made for the new Office of Economics and Analytics.

[45] *See* Bryan Broadcasting Petition for Rulemaking to Further AM Revitalization, RM-11836 (filed March 25, 2019), *available at* https://ecfsapi.fcc.gov/file/1032594110486/Bryan%20Broadcasting%20Petition%20for%20Rulemaking.pdf (last visited May 27, 2019); *see also* Broadcasters tell FCC the time has come for digital-only AMs, Inside Radio, May 20, 2019.

[46] *See* David Honig, *How the FCC Suppressed Minority Broadcast Ownership, And How the FCC Can Undo The Damage It Caused,* 12 Southern Journal of Policy and Justice 45, 93 (2018) (discussing the stalling tactic, which often spans years, used by the FCC when proposals for non-controversial, race-neutral civil rights proposals are offered by NGOs.) For example, an inquiry

blunt-instrument approach to measuring competition and diversity, and undertake to create economic measuring tools that avoid monopolies and promote diversity.

Respectfully submitted,

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into reasonable prison payphone prices took 11 years of advocacy, 8+ years for an (adverse) ruling on multilingual broadcasting in emergencies, and 29 years and counting, in eight dockets, for media incubators.