



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

**Free Markets. Real Solutions.**  
**[www.rstreet.org](http://www.rstreet.org)**

_____	)	
	)	
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 2020 of the	)	
Telecommunications Act of 1996	)	
_____	)	

### **Comments of the R Street Institute**

The Telecommunications Act of 1996 embraced the idea that competition drives innovation, stressing the importance of promoting that competition in the telecommunications marketplace.<sup>1</sup> Congress, aware that markets shift over time, designed the quadrennial review process with an understanding that technology ecosystems change quickly and are often unpredictable.<sup>2</sup> The Federal Communications Commission (FCC or Commission) is right to refresh the record on the current state of the market, and R Street, a nonprofit, nonpartisan public policy research organization engaged in research and outreach to promote free markets and limited government, offers these comments to highlight competitive pressures and the need to allow broadcasters to compete on even footing.<sup>3</sup>

---

<sup>1</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 11-12 (1996).

<sup>2</sup> *Ibid.*

<sup>3</sup> "Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review," MB Docket No. 18-39, June 4, 2021. <https://ecfsapi.fcc.gov/file/0604160549493/DA-21-657A1.pdf>; "2018 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 2020 of the



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

***Free Markets. Real Solutions.***  
***www.rstreet.org***

- I. The information ecosystem has numerous mechanisms for content distribution which now compete with broadcasters.

The Commission asks about “relevant trends that have been, or are being, observed within the broadcast industry or in related markets.”<sup>4</sup> Over the past few years, public attention has focused on the role of “big tech” in the information ecosystem.<sup>5</sup> Indeed, the House Committee on the Judiciary underwent an extensive review of the current state of competition in digital markets, highlighting how many American’s rely on services like Google, Amazon and Facebook for shopping, communicating and finding the latest news.<sup>6</sup> These technology firms now provide many of the same services that were once available almost exclusively through radio and television broadcasts.

In practice, this means that broadcasters are increasingly competing with technology platforms and online content providers for advertising revenue. A recent report indicates that in 2004, television (both broadcast and cable) and radio combined for a little over 47 percent of the advertising market, with Internet advertising only accounting for about 5 percent.<sup>7</sup> Unsurprisingly, much has changed since 2004: as

---

Telecommunications Act of 1996,” MB Docket No. 18-349, Dec. 13, 2018.

<https://ecfsapi.fcc.gov/file/12130958600004/FCC-18-179A1.pdf>.

<sup>4</sup> “Media Bureau Seeks to Update the Record in the 2018 Quadrennial Regulatory Review,” MB Docket No. 18-39, June 4, 2021. <https://ecfsapi.fcc.gov/file/0604160549493/DA-21-657A1.pdf>.

<sup>5</sup> See, e.g. Sophie Draayer, “FCC Commissioner Carr Says Big Tech Has Too Much Power to Determine What Information Is Seen,” *Broadband Breakfast*, May 26, 2021. <https://broadbandbreakfast.com/2021/05/fcc-commissioner-carr-says-big-tech-has-too-much-power-to-determine-what-information-is-seen>.

<sup>6</sup> Subcommittee on Antitrust, Commercial and Administrative Law of the Committee on the Judiciary, *Investigation of Competition in Digital Markets*, U.S. House of Representatives, 2020.

[https://judiciary.house.gov/uploadedfiles/competition\\_in\\_digital\\_markets.pdf?utm\\_campaign=4493-519](https://judiciary.house.gov/uploadedfiles/competition_in_digital_markets.pdf?utm_campaign=4493-519).

<sup>7</sup> “United States News Media Landscape Trends,” Accenture, June 2021, p. 6. [https://newsmedia-analysis.com/wp-content/uploads/2021/07/accenture\\_analysis\\_USAnewsmedia.pdf](https://newsmedia-analysis.com/wp-content/uploads/2021/07/accenture_analysis_USAnewsmedia.pdf).



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

***Free Markets. Real Solutions.***  
***www.rstreet.org***

of 2019, online advertising makes up 49 percent of the advertising market, with television and radio making up less than 35 percent.<sup>8</sup>

The numbers highlight a difficult problem for broadcasters: advertisers are moving to other mediums to reach consumers, leaving less revenue for broadcasters. However, due to the nature of broadcast licenses and the history of regulation in the United States, often regulators think of broadcasters in isolation, imposing strict regulation on licensees in an effort to protect the public interest.<sup>9</sup> For example, Commission rules prohibit combinations among top four ranked stations in a local market due competition concerns, but ignore the fierce competition these firms face from new and innovative sources.<sup>10</sup> These types of restrictions, which online competitors do not face, limit the ability for broadcasters to create efficiencies and target different demographics within a local community, while more targeted online services continue to ignore the regulatory costs of maintaining a radio license.

The Commission should move past this outdated view of broadcast and understand its role in the larger information ecosystem. Broadcast television and radio both present a way to distribute information. Unlike similar internet-based services like podcasts which deliver linear content to consumers, broadcasts rely on radios to deliver the signal to consumers with a compatible receiver. For a significant portion of American consumers, these two services directly compete with one another.<sup>11</sup>

---

<sup>8</sup> *Ibid.*

<sup>9</sup> See Comments of National Association of Broadcasters, MB Docket No. 18-349, April 29, 2019. <https://ecfsapi.fcc.gov/file/10429077016730/2018%20NAB%20Quadrennial%20Comments%20and%20Attachments.pdf>.

<sup>10</sup> *Ibid* at p. 43.

<sup>11</sup> “Nearly as many Americans prefer to get their local news online as prefer the TV set,” Pew Research Center, March 26, 2019. <https://www.journalism.org/2019/03/26/nearly-as-many-americans-prefer-to-get-their-local-news-online-as-prefer-the-tv-set>.



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

***Free Markets. Real Solutions.***  
***www.rstreet.org***

However, many regulations on broadcasters still treat the medium as something wholly distinct from other tools of communication. Regulators designed ownership restrictions on broadcasters to ensure that no one firm could dominate the communications in a given market, but now Americans communicate with each other on social media and new content creators use websites like Twitch and Youtube to reach audiences.<sup>12</sup> Content regulations requiring education programming for children were designed to ensure that kids had access to content that helped them learn and mature, yet now kids spend more time learning from web-based creators and platforms.<sup>13</sup>

Congress wisely understood that regulations that may have made sense when a local broadcaster was the only source of news may become outdated—thus, the Commission must regularly review the rules.<sup>14</sup> If the Commission wants to maintain competition, especially as consumers and advertisers shift more to the Internet, the Commission must also shift its understanding of “broadcaster” to a view in which broadcast is not a distinct market wholly indistinguishable and free from competitive pressures. Broadcasters simply provide content using a specific medium with different characteristics than other technologies. The Commission should continue to remove the regulatory red tape that exists only for this technology, evening the playing field and allowing broadcasters to compete with new services. Ultimately,

---

<sup>12</sup> *Federal Communications Commission v. Prometheus Radio Project*, 592 U.S. [slip opinion], p. 3, April 1, 2021. [https://www.supremecourt.gov/opinions/20pdf/19-1231\\_i425.pdf](https://www.supremecourt.gov/opinions/20pdf/19-1231_i425.pdf).

<sup>13</sup> Michael O’Rielly, “‘Kid Vid’ TV rules are growing up,” *The Hill*, July 9, 2019. <https://thehill.com/blogs/congress-blog/technology/452064-kid-vid-tv-rules-are-growing-up>.

<sup>14</sup> “2018 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 2020 of the Telecommunications Act of 1996,” MB Docket No. 18-349, para. 6, Dec. 13, 2018. <https://ecfsapi.fcc.gov/file/12130958600004/FCC-18-179A1.pdf>.



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

***Free Markets. Real Solutions.***  
***www.rstreet.org***

with more choice between services, American consumers will be the beneficiary of such pro-market policies.

- II. Changes to the information ecosystem affect the First Amendment analysis of broadcast regulation.

It may also be time for the Commission to consider larger questions about its constitutional authority to continue regulating broadcasters. Most regulations on broadcasters inherently restrict the speech of private parties, and therefore run afoul of the First Amendment absent case law distinguishing broadcast from other mediums like newspapers.<sup>15</sup> As the Court has explained, the Commission passed speech regulation on broadcasters because of the scarcity of the medium: “...it quickly became apparent that broadcast frequencies constituted a scarce resource whose use could be regulated and rationalized only by the Government.”<sup>16</sup> In promoting the public interest, then, the Commission had to put “restraints on licensees in favor of others whose views should be expressed on this unique medium.”<sup>17</sup> The Court reasoned, perhaps correctly at the time, that a broadcaster could only deliver the content to the public without harmful interference if the Commission chose winners and losers, an “appalling responsibility” if ever there was one.<sup>18</sup>

---

<sup>15</sup> *Red Lion Broadcasting Company v. Federal Communications Commission*, 395 U.S. 367 (1969).  
<https://supreme.justia.com/cases/federal/us/395/367/>.

<sup>16</sup> *Ibid* at 376.

<sup>17</sup> *Ibid* at 389.

<sup>18</sup> Federal Radio Commission, *Annual Report of the Federal Radio Commission to the Congress of the United States for the fiscal year ended June 30, 1927*, Department of Commerce, July 1, 1927. <https://www.fcc.gov/document/1st-annual-report-federal-radio-commission-congress-1927>.



1212 New York Ave. NW  
Suite 900  
Washington, D.C. 20005  
202-525-5717

***Free Markets. Real Solutions.***  
***www.rstreet.org***

In light of the changes to the media marketplace, perhaps this logic should no longer guide regulations. The Commission must continue its licensing rights to prevent harmful interference as the scarcity of licenses still remains a challenge, but the idea that the Commission can impose regulations on the licensees regarding the content they may—or may not provide—no longer suffices when alternative avenues for distributing content exist. In other words, though broadcast licenses remain scarce, there is no scarcity in the ability to deliver audio-visual content to consumers.

While ultimately the Court has the final say on this question, it is important for the Commission to begin thinking about its role in defining and promoting the public interest when it comes to broadcast licenses. In the modern information ecosystem, continuing to dictate speech over the airwaves will only serve to limit the ability for these broadcasters to successfully compete.

R Street appreciates the continued work of the Commission to review outdated rules and remove barriers to competition. As it continues this review process, R Street recommends that the Commission do so in the lens of the entire information ecosystem, and not treat broadcasters as an isolated business.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_

Jeff Westling  
*Technology and Innovation Resident Fellow*

Sept. 2, 2021