DISSENTING STATEMENT OF
COMMISSIONER BRENDAN CARR

Re: *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*, MB Docket No. 18-349, Report and Order.

Newton's first law of motion states that an object at rest remains at rest, and an object in motion remains in motion unless acted upon by a sufficient force. Of course, the laws of physics do not constrain the laws of regulation. Indeed, regulatory inertia is a power that has no analog in the physical world. The FCC's media ownership rules at issue here are a case in point.

The FCC has every reason to update this outdated set of broadcast radio and television rules. The law compels us to do so. The facts tell us to do so. And the public interest in promoting local news and information counsel in favor of doing so. Yet the rules will remain in place—impervious to those compelling forces.

Congress passed a law in 1996 that specifically directed the FCC to review these rules every four years and to eliminate them if they become unnecessary as a result of competition. How much has the market evolved in the intervening years? Hulu, Netflix, Disney+, ESPN+, Amazon Prime Video, Sling TV, Apple TV, YouTube, YouTubeTV, Tubi, Vudu, Freevee, Crackle, Pluto TV, NBC News Now, CBS News Streaming Network, CBS Sports HQ, Peacock, The Roku Channel, Paramount+, Max (nee HBO Max), BritBox,DIRECTV Stream, AT&T Now, FuboTV, Pandora, Spotify, SiriusXM, Apple Music, Amazon Music, and other online audio and video streaming services too numerous to quantify or recount have all emerged and fundamentally altered the competitive landscape.

Unfortunately, the Commission has taken an ostrich-like approach to this requirement in nearly every one of its quadrennial reviews, including the instant review. Indeed, the Commission has consistently ignored Congress's deregulatory mandate under the statute, the realities of the modern media marketplace, and the many ways that Americans now consume news, information, and entertainment programming. This failure does not serve anyone's interest, as a broad range of stakeholders have made clear in this record—once again. But despite a record bursting with evidence of a vibrant media marketplace, the Commission continues to advance the fiction that broadcast radio and broadcast television stations exist in markets unto themselves.

It is past time for the FCC to confront the harms that its own media ownership policies have caused. For decades, the FCC prohibited someone from owning a newspaper and a broadcast station in the same market. This restriction was born in an era when newspapers and broadcasters were the only games in town for local news and information. Back then, Americans got their news in the morning when a newspaper clunked onto the front doorstep and in the evening when they tuned into one of three nightly newscasts. But over time, the FCC failed to acknowledge the titanic changes taking place in the news business, particularly with the rise of the Internet. Our prohibition on newspaper-broadcast cross-ownership only made it harder for them to gain the scale needed to compete with the Internet giants. When we finally eliminated the prohibition in 2017, it was too late for much of the industry—1,800 newspapers had gone out of business since 2004 alone. They were facing competition from market segments that the FCC refused even to recognize. The result? Communities across the country lost access to local news and information at least in part because the FCC failed to react quickly enough to changes in the marketplace.

I've seen the impacts of our backwards-looking policies firsthand. During a visit to Powell, Wyoming, a town of about 6,000 people that sits in the northwest corner of the Cowboy State, I stopped by a local radio station, only to find its doors locked. After we were finally able to rouse someone to let us inside, I got a good look at the operations—effectively a Dell laptop playing music pumped in from some big city somewhere else.

A couple of miles away in Cody, there was a local broadcast company that was investing in their community and the types of local news and entertainment programming that are attuned to the needs of their listeners. This company wanted to invest in the Powell station and originate live and local programming for this underserved community. But they couldn't. Not because they lacked the capital or a willing seller, but because the FCC wouldn't let them. Our ownership rules—which are supposed to promote competition, a diversity of viewpoints, and localism—were keeping that laptop powered up while preventing actual investment in local newsgathering and the local jobs that come with it.

These are the very same rules that the FCC votes to retain in this item. What's worse, the FCC is actually tightening the Local Television Ownership Rule, though it attempts to characterize this action as closing a loophole, even though the resulting combinations would not violate any ownership restriction.

This doesn't make much sense to me. In a diverse and growing media marketplace, we need to do everything we can to promote investment in trusted local news and information. Maintaining the regulatory status quo is not going to cut it. The FCC must enact significant reforms to help promote competition and increase access to the local news and information that is so vital yet is too often out of reach for those in rural and other underserved communities.

None of this will happen, however, if we continue to view the market as it was and not where it is going. But this fundamental error taints the entire 2018 quadrennial review and fatally undermines the basis for the rules we adopt today. Because of this, I dissent.