

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

In the Matter of	)	
	)	
Amendment of Section 73.3555(e) of the	)	
Commission's Rules, National Television	)	MB Docket No. 17-318
Multiple Ownership Rule	)	
	)	

OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS
TO PETITION FOR STAY PENDING JUDICIAL REVIEW OF UNITED CHURCH OF CHRIST MEDIA
JUSTICE MINISTRY; PUBLIC KNOWLEDGE; THE NEWSGUILD-COMMUNICATIONS WORKERS
OF AMERICA; NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS-
COMMUNICATIONS WORKERS OF AMERICA LOCAL 51; FUTURE FILM COALITION; FREE
PRESS; REPORTERS WITHOUT BORDERS, INC.; WRITERS GUILD OF AMERICA, WEST, INC.;
AND WRITERS GUILD OF AMERICA EAST, INC.

NATIONAL ASSOCIATION OF
BROADCASTERS
1 M Street, SE
Washington, DC 20003
(202) 429-5430

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Sophia Gonzalez

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TO PETITION FOR STAY PENDING JUDICIAL REVIEW**

Pursuant to Section 1.45(d) of the FCC's Rules, 47 C.F.R. § 1.45(d), the National Association of Broadcasters (NAB)¹ respectfully submits this Opposition to Petition for Stay Pending Judicial Review of United Church of Christ Media Justice Ministry; Public Knowledge; The Newsguild-Communications Workers of America; National Association of Broadcast Employees and Technicians-Communications Workers of America Local 51; Future Film Coalition; Free Press; Reporters Without Borders, Inc.; Writers Guild of America, West, Inc.; and Writers Guild of America East, Inc.² The Petition requests that the Commission stay the

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² See Petition for Stay Pending Judicial Review, *Amendment of Section 73.5555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, United Church of Christ Media Justice Ministry; Public Knowledge; The Newsguild-Communications Workers of America; National Association of Broadcast Employees and Technicians-Communications Workers of America Local 51; Future Film Coalition; Free Press; Reporters Without Borders, Inc.; Writers Guild of America, West, Inc.; and Writers Guild of America East, Inc. (Petitioners), MB Docket No. 17-318 (Oct. 9, 2026) (Petition).

effective date of its repeal of the *ex ante* national television ownership rule pending appeal.³ The FCC must deny the Petition for failing to meet the strict criteria required for a stay.

I. BACKGROUND AND SUMMARY

As the D.C. Circuit has noted, “[a] stay pending appeal is an extraordinary remedy.”⁴ The moving party bears the burden of showing that the circumstances justify a court’s exercise of its discretion to grant such “exceptional relief.”⁵

Under the well-established four-factor standard, stay applicants must (1) make a “strong showing” that they are “likely to succeed on the merits”; (2) demonstrate that they “will be irreparably injured absent a stay”; (3) show that issuing a stay will not “substantially injure the other parties interested in the proceeding”; and (4) establish that the “public interest” favors a stay.⁶ The first two factors of this standard “are the most critical,”⁷ and an applicant’s failure to show it will be irreparably harmed is “fatal” to a stay request.⁸

The Petitioners have not come close to demonstrating they will suffer imminent, tangible, let alone irreparable, harm without the FCC granting an immediate stay of the National TV Cap Order. Courts have set a “high standard for irreparable injury,” and the speculative and attenuated harms that Petitioners allege are not imminent, certain, actual,

³ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, MB Docket No. 17-318, FCC 26-53 (rel. Oct. 1, 2026) (National TV Cap Order or Order).

⁴ *Kalshiex LLC v. CFTC*, 119 F.4th 58, 63 (D.C. Cir. 2024).

⁵ *Id.*; see also *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

⁶ *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). These factors and the factors governing grant of preliminary injunctions are substantially similar. *Id.*, citing *Winter v. NRDC, Inc.*, 555 U.S. 7 (2008).

⁷ *Nken*, 556 U.S. at 434.

⁸ *Kalshiex*, 119 F.4th at 64.

and great, as required.⁹ The Petitioners fail to explain how eliminating the cap in itself creates imminent harm – let alone how that harm may materialize any time soon (if at all) given the long timelines for transaction review and for the impacts of a transaction to become fully realized.

Petitioners also fail to make a “strong” showing that they would likely prevail on the merits. The Petition largely rehashes the same arguments Petitioners offered in their comments in this proceeding that the Commission already has rejected on well-reasoned and fully explained grounds in its Order. Petitioners repeat their claim that the Commission lacks authority to alter or repeal the 39 percent national TV cap but provide no additional legal analysis to refute the Order or to bolster their position. Rather, they merely adopt the arguments made in the pay TV industry’s recent petition for stay of the Order pending judicial review,¹⁰ which NAB refuted just last week.¹¹ Petitioners’ argument that the Order is arbitrary and capricious repeats generic anti-consolidation rhetoric and conclusory assertions that the Commission also has already reasonably rejected. And their complaints about the standards for reviewing individual broadcast TV station transactions going forward and the alleged lack of notice in this proceeding are unmeritorious if not merely desperate.

⁹ *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

¹⁰ Petition for Stay and Injunction Pending Judicial Review, *Amendment of Section 73.3555(e) of the Commission’s Rules, Nat’l Television Multiple Ownership Rule*, Broadband Commc’n Ass’n of Pennsylvania, et al., MB Docket No. 17-318 (Oct. 2, 2026) (Pay TV Petition).

¹¹ Opposition of NAB to Petition for Stay and Injunction Pending Judicial Review, *Amendment of Section 73.3555(e) of the Commission’s Rules, Nat’l Television Multiple Ownership Rule*, Broadband Commc’n Ass’n of Pennsylvania, et al., MB Docket No. 17-318 (Oct. 9, 2026) (NAB Opposition).

If an applicant satisfies the first two factors, the stay inquiry calls for assessing harm to other parties interested in the proceeding and weighing the public interest.¹² Of course, Petitioners do not satisfy the critical two initial factors. In any event, in making its argument on this score, the Petition completely discounts the significant harm that the asymmetric and anti-competitive national TV cap has caused – and would continue to cause in the event of a stay – to television broadcasters, and in turn viewers. Nor do Petitioners adequately refute the FCC’s finding that its decades-old conclusions that the national cap is not needed to promote competition or diversity is “even more incontrovertible today.”¹³ The public, moreover, does not benefit from outmoded rules that impair broadcast TV stations and their free, over-the-air programming, including news, weather, emergency information, and live sports, offered in communities across the country. Given that the Commission concluded that the cap is not only unnecessary to promote localism but is likely undermining that goal, imposition of a stay here will not serve the public interest.¹⁴

II. PETITIONERS FAIL TO MEET THEIR BURDEN OF SHOWING THEY QUALIFY FOR A STAY

The Petition does not establish that the “extraordinary remedy” of a stay is warranted.¹⁵ In particular, the Petitioners’ failure to demonstrate they will suffer harm even remotely approaching “irreparable” dooms their request, which, under court precedent, obviates the need for the Commission even to address the other factors.¹⁶

¹² *Nken*, 556 U.S. at 435.

¹³ National TV Cap Order at ¶ 27.

¹⁴ National TV Cap Order at ¶ 54.

¹⁵ *Kalshiex*, 119 F.4th at 63.

¹⁶ *Id.* at 64 (“showing of irreparable harm is a necessary prerequisite for a stay” and failure to establish such harm is “fatal” to a stay request); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674, 676 (D.C. Cir. 1985) (finding that stay petitioners had not demonstrated they

A. Petitioners Cannot and Do Not Demonstrate They Will Suffer Imminent and Tangible, Let Alone Irreparable, Harm Absent a Stay

The Petitioners do not meet the “high standard for irreparable injury.”¹⁷ Such “injury must be both certain and great; it must be actual and not theoretical,” as well as “imminen[t]” and “substantiate[d].”¹⁸ Mere allegations of harm “are of no value,” and the applicant must show that its claimed harms will “directly result from the action” it seeks to stay – the removal of the 39 percent national TV cap.¹⁹

The Petition here falls far short of satisfying this standard. As an initial matter, NAB notes that the national reach of several TV station groups already exceeds 39 percent – and have done so for years – as long permitted by the FCC’s UHF discount.²⁰ The record shows that the ability to reach broader national audiences has created material public benefits, rather than harming viewers.²¹

Petitioners contend, however, that they will be irreparably harmed in the absence of a stay because somehow the elimination of the national TV ownership rule will lead to various

would suffer irreparable harm and denying the stay requests without addressing the other factors); *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (asserting that movant’s failure to show irreparable harm is grounds for refusing to issue preliminary injunction, “even if the other three factors entering the calculus merit such relief”); *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746-47 (D.C. Cir. 1995) (explaining that movant’s failure to show irreparable injury was sufficient to uphold district court’s denial of preliminary injunction without the appeals court considering the remaining relevant factors).

¹⁷ *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

¹⁸ *Wisconsin Gas*, 758 F.2d at 674 (emphasis in original); accord *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297; *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555-57 (D.C. Cir. 2015).

¹⁹ *Wisconsin Gas*, 758 F.2d at 674.

²⁰ 47 C.F.R. § 73.3555(e)(2).

²¹ See, e.g., Comments of Univision Communications, Inc., MB Docket No. 17-318, at 3-4 (Aug. 4, 2025); Notice of Ex Parte Communication of E.W. Scripps Co., MB Docket No. 17-318, 22-459, Attachment at 1-3 (Sept. 10, 2025); see also National TV Cap Order at ¶ 47 (recognizing benefits from transactions increasing national reach, which would improve the

labor market, employment, collective bargaining, and employee benefit harms; increased prices for pay TV subscribers; and local news coverage and other harms.²² These claims fail for several reasons.

First, while the Petition relies heavily on claims of allegedly irreparable labor market harms,²³ the FCC’s authority does not stretch to encompass employment levels, specific terms of employment, collective bargaining, and related concerns. As NAB earlier explained, these issues are far afield from the FCC’s expertise and purview and cannot be the basis for adoption or retention – or now for staying the elimination – of Commission rules, including the broadcast ownership rules, under the Communications Act of 1934 (Act).²⁴

A growing number of courts and cases demand express delegation of statutory authority before federal agencies, including specifically the Commission, can act in a variety of areas. The U.S. Court of Appeals for the D.C. Circuit, for instance, concluded that the Commission lacked authority to adopt video description rules applicable to broadcasters under its general rulemaking and public interest authority because the “FCC must act pursuant to *delegated authority* before any ‘public interest’ inquiry is made under § 303(r)” of the Act and because the FCC’s authority under Section 4(i) must be “‘reasonably ancillary’

ability of TV stations to access additional capital and ad revenues needed to invest in local programming).

²² Petition at 11-19.

²³ Petition at 11-14, 17-19 (citing unions alleging that broadcast consolidation, *inter alia*, would harm their core activities, including representing members in the collective bargaining process; require them to spend additional time negotiating contracts that may not secure the same quality of outcomes; result in loss of union jobs and reduced union membership dues; and reduce their bargaining power and their ability to negotiate higher wages and better benefits and working conditions for their members).

²⁴ See Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 31 n.91, 62 & n.190 (Aug. 22, 2025).

to other express provisions.”²⁵ The Act lacks any provision delegating authority for the FCC to regulate broadcasters based on the structure or functioning of the labor market.

Just last year, moreover, the Fifth Circuit Court of Appeals struck down an FCC order requiring broadcasters to compile and disclose demographic-specific employment data, finding that this requirement did not serve any of the “targets” of the Communications Act.²⁶ The Court cited *MPAA* and *Cellco P’ship v. FCC* for the proposition that the Commission may not rely on its “‘public-interest provisions without mooring its action to a distinct grant of authority’ from Congress.”²⁷ While the Court recognized that the Act’s licensing provisions (including Sections 307, 309, and 310) “permit the FCC to issue licenses in the public interest, the FCC’s authority to act in the ‘public interest’ does not extend outside of the statutorily prescribed tasks that Congress has instructed the FCC to carry out.”²⁸ Thus, the licensing statutes did not provide authority for the FCC to order broadcasters to collect the employment data – and those same statutes certainly do not support the FCC’s authority to adopt or maintain ownership or other rules so as to impact the labor market more broadly, as Petitioners want. Retaining rules affecting unions and their membership, collective bargaining, and employment is not a “statutorily prescribed task[] that Congress has instructed the FCC to carry out.”²⁹

Second, the Order’s mere removal of the *ex ante* 39 percent limit does not cause *imminent* injury to Petitioners, who do not explain how elimination of the rule will directly

²⁵ *Motion Picture Ass’n of America (MPAA) v. FCC*, 309 F.3d 796, 806 (D.C. Cir. 2002) (emphasis in original). *Accord Gray Television, Inc. v. FCC*, 130 F.4th 1201, 1227 (11th Cir. 2025) (agreeing with *MPAA* on this point).

²⁶ *Nat’l Religious Broadcasters (NRB) v. FCC*, 138 F.4th 282, 291-92 (5th Cir. 2025).

²⁷ *NRB*, 138 F.4th at 292, quoting *Cellco*, 700 F.3d 534, 542 (D.C. Cir. 2012).

²⁸ *NRB*, 138 F.4th at 293.

²⁹ *Id.*

result in the various harms alleged. With regard to increased prices for pay TV subscribers, for example, their argument apparently is that, with the cap lifted, some broadcasters will consider combining to achieve greater scale. With those hypothetical deals down the road, the new combinations presumably will give the station groups materially more bargaining leverage in negotiations for retransmission consent with pay TV operators. Petitioners' argument also assumes that pay TV operators – who do not have limitations on their scale – will fold at the alleged new broadcast combinations' demands, thereby harming their businesses.³⁰ Finally, for any consumer harm to occur, pay TV operators would have to pass those presumed higher retransmission fees on to their subscribers, given that “it is MVPDs that set the prices for their subscribers.”³¹ Even if this entire scenario is somehow true – which it is not – what part of this description makes the harm imminent?³²

³⁰ See Petition 12-13, citing Declaration of Jon Schleuss at ¶¶ 26-28. As NAB explained multiple times in this proceeding, the FCC's authority to regulate or intervene in retransmission consent negotiations is extremely limited. Section 325 of the Act prohibits retransmission of broadcast signals without a broadcasters' consent, and Congress intended the prices, terms, and conditions of retransmission agreements to be established through arms-length, marketplace negotiations, subject only to a requirement that both broadcasters and MVPDs negotiate in good faith. See, e.g., Written Ex Parte Communication of NAB, MB Docket No. 17-318, at 3 (Nov. 24, 2025); Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 73-74 (Aug. 22, 2025). Contentions in this Petition or the Pay TV Petition that the FCC should stay the Order due to any alleged effects on the prices or other terms of retransmission consent agreements therefore must be rejected.

³¹ National TV Cap Order at ¶ 73.

³² Petitioners, moreover, generally offer only “[b]are allegations” of harm, which “are of no value.” *Wisconsin Gas*, 758 F.2d at 674. For instance, the cited declaration purporting to show harm to consumers of pay TV merely offer brief conclusory allegations that the FCC's “rule change would force pay TV operators to pay larger fees to retransmit broadcast programming,” and those increased “fees will be passed on to subscribers.” Decl. of Jon Schleuss at ¶ 28, cited in Petition at 12-13. Such bare assertions do not establish irreparable harm.

Other assertions of harm share this lack of imminence. The alleged labor market harms, for example, would not occur, if at all, until after broadcast groups decide to merge, negotiate deals, obtain approval for their proposed transactions, and consummate their mergers – and then work to combine their companies and make concrete decisions about employment and staffing. Assumptions that removal of the national TV cap will result in harm to local news operations and coverage – even if true, which is highly questionable³³ – would only occur on a similarly lengthy timeline, after transactions are proposed, approved, consummated, and operationally implemented, with the combined company making actual decisions about the staffing and funding of their news operations.

Rather than any causing any imminent harm to Petitioners, in reality the Order only will enable TV broadcasters to propose widely varying station transactions (the size, geographic markets, competitiveness of the stations involved, and other vital details of such transactions as yet unknown), which the Commission must review under Section 310(d) of the Act to ensure they serve the public interest. Various outcomes from this FCC review are possible, as transactions may be approved, approved with conditions, or not approved. And larger transactions or those implicating significant geographic overlap will undergo review by federal and potentially state antitrust authorities as well. Interested parties, including Petitioners, will be able to comment upon, oppose, or propose conditions on these TV station transactions before the Commission makes any decision. Thus, even if Petitioners could show that any harms would result from the elimination of the *ex ante* cap, they certainly have not demonstrated that they face an “imminent” injury, which is required for

³³ See National TV Cap Order at ¶¶ 55-57 (discussing growth of local news and sports programming following expansion of station groups’ reach). Petitioners also conveniently ignore the very real threats to the viability of TV stations and their news operations, as well as to the long-term employment prospects of their workers under the regulatory status quo. *Id.* at ¶¶ 51, 81 (detailing the competitive challenges facing broadcast TV industry).

the extraordinary relief sought. All these processes must play out before any transaction that would be permitted by elimination of the cap can occur. In the absence of any imminent activity – let alone harm – a stay is totally unwarranted. Indeed, the FCC’s removal of the national TV ownership rule will not take effect until 60 days after publication in the Federal Register, and publication has not yet occurred.³⁴ As a result, there is no plausible basis to claim irreparable harm now, when the Order is not yet effective.

Even putting aside these process-related timing considerations, the purported harms alleged by Petitioners would not materialize for months – maybe years – after a transaction occurred. For instance, any potential retransmission consent-related rate changes following an approved and consummated transaction typically would not occur until the next contract negotiation between the broadcaster and pay TV operators. These contracts are often multi-year agreements, so any post-transaction rate changes could be years away (and would not affect Petitioners unless and until pay TV providers ultimately pass any rate increases along to subscribers). In no way is any harm remotely imminent, even assuming actual harm would occur eventually, which Petitioners have not established.³⁵

The same holds true with respect to Petitioners’ allegations about labor market harms. The union petitioners allege they “will be forced to spend more time negotiating contracts and may not be able to secure the same quality of outcomes” for their members.³⁶ But even assuming that TV station transactions enabled by the Order eventually would result

³⁴ National TV Cap Order at ¶¶ 106-107.

³⁵ See *Winter*, 555 U.S. at 22 (stating that a “possibility” of irreparable harm is insufficient).

³⁶ Petition at 12, citing Decl. of Jon Schleuss at ¶ 22. (NAB notes that ¶ 22 of the Schleuss declaration does not make the statement asserted in the Petition or a similar one.) See also Petition at 19, citing Decl. of Michael Isaac at ¶ 9 (claiming that consolidation will reduce union bargaining power and their ability to negotiate higher wages, paid leave, and other benefits).

in collective bargaining agreements less favorable to union members than would otherwise have been negotiated – an unproven assumption – such harms clearly are not certain or imminent. Beyond the lengthy time period for proposed transactions to be approved and consummated, existing collective bargaining agreements and other employee contracts would remain in force until they expire or are renegotiated.

Third, many allegations of “irreparable” harm are in fact wildly speculative and/or supported by irrelevant or inaccurate claims. The Commission, for instance, cannot grant a stay based on highly attenuated claims that a petitioner relies on local news to inform their social justice work and that “consolidation will likely reduce local news coverage” of specific issues, including racial, gender, and LGBTQ equality and education policy affecting trans, non-binary, or LGBTQ children.³⁷ That assertion is rank speculation. Another advocacy group petitioner speculates that consolidation resulting from the Order will reduce the number of independent newsrooms, which will somehow reduce its access to television audiences and require it to “use more staff time for other forms of public outreach.”³⁸ Yet another petitioner offers amorphous assertions about business opportunities lost by small independent businesses in the film and media supply chain allegedly due to broadcast station consolidation (evidently ignoring all the streaming giants, movie studios, video production houses, and pay TV providers that actually dominate this supply chain), as well as the loss of “irreplaceable historical footage destroyed during an ownership transition or subsequent integration.”³⁹ None of these claims fit the definition of certain, great, substantiated, and imminent harms, as required.

³⁷ Petition at 16, citing Decl. of Sara Fitzgerald at ¶¶ 18, 20.

³⁸ Petition at 15, citing Decl. of John Bergmayer at ¶¶ 9, 13-19.

³⁹ Petition at 15, citing Decl. of Jax Deluca at ¶¶ 14, 16-18, 21.

Other petitioners appear confused as to which ownership rule the Order removed. One union decries “market consolidation among owners of broadcast *networks*” but the Order does not address the dual network rule, and also criticizes the effects in one local market of the modest 1999 relaxation of the local TV rule, despite the differences between local in-market “consolidation” and national expansion permitted by repeal of the national TV cap.⁴⁰ Another union claiming harm from removing the national cap similarly cites what “will likely” happen in one local market if a particular merger is approved and two specific local stations with different unions consolidate.⁴¹ But again, that is a question concerning the local TV ownership rule, not the national TV rule at issue here. These confused assertions do not help Petitioners meet the high standard for irreparable injury either.

For all these reasons, Petitioners fail to show how they would be irreparably harmed without a stay of the Order, and their stay request must be denied on that basis alone.

B. Petitioners Fail to Make the Requisite Strong Showing That They Are Likely to Succeed on the Merits

⁴⁰ Petition at 17 (emphasis added), citing Decl. of Laura Blum-Smith at ¶¶ 8-9. As NAB earlier explained, there is a critical distinction between consolidation and expansion. Eliminating the national cap would allow broadcasters to expand into parts of country where they currently have no voice because of the artificial 39% cap. At worst, then, elimination of the national cap could result in the exchange of one broadcaster’s viewpoint for another, rather than reducing the overall number of viewpoints or owners in local markets. In markets where stations are struggling due to weak ad revenues and increased competition, expansion can bring in more financially sound broadcasters, and if a station considers shuttering its news operation due to unsustainable losses or teeters on the brink of failing, repealing the national cap, which could allow an acquisition that would maintain a withering voice, would promote viewpoint diversity and help ensure station employment. Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 48-49 (Aug. 22, 2025); see National TV Cap Order at ¶ 27 (agreeing with the Joint Broadcasters on this point). Petitioners’ assumption of harm to local news operations and viewpoint diversity from removal of the national cap is thus unjustified.

⁴¹ Petition at 13-14, citing Decl. of Carrie Biggs-Adam at ¶ 14 (referencing the local combination of Nexstar’s and TEGNA’s stations in Portland, which are represented by two different unions, and decrying the anticipated harmful effects on those unions).

Petitioners also do not present the required “strong” showing that they would likely prevail on the merits.⁴² The Petition rehashes many of the same arguments the Commission already has rejected on well-reasoned and fully explained grounds in the National TV Cap Order and repeats at length Petitioners’ previous claims in this proceeding that all broadcast consolidation – whether local or national, TV or radio – is bad. But claiming that bigger is inevitably bad does not justify a stay. In that light, Petitioners’ additional complaints about the standards for reviewing individual broadcast TV station transactions and the supposed lack of notice of those standards appear merely desperate.

1. The Commission Has Ample Authority to Alter or Repeal the National Cap

Petitioners repeat their claim that the Commission lacks authority to alter or repeal the 39 percent national TV cap.⁴³ This position is at odds with more than a decade of FCC precedent consistently finding, under both Republican and Democratic Chairs, that the Commission has authority to alter both the national audience reach cap and the UHF discount. The FCC’s conclusions as to its authority also are consistent with existing court precedent.⁴⁴

Notably, Petitioners offer no new or additional legal analyses to support their position or to dispute the FCC’s lengthy and detailed explanation of its authority to repeal the national cap.⁴⁵ Instead, they adopt the rehashed arguments made by the pay TV industry in their recent petition for stay of the Order,⁴⁶ which NAB and broadcasters already have

⁴² *Nken*, 556 U.S. at 434.

⁴³ Petition at 2-3.

⁴⁴ See National TV Cap Order at ¶¶ 87, 91-92, 94.

⁴⁵ See National TV Cap Order at ¶¶ 84-101.

⁴⁶ Petition at 2; see Pay TV Petition at 6-10.

refuted.⁴⁷ Indeed, in this proceeding, NAB has repeatedly refuted the unmeritorious claims of the pay TV industry and advocacy groups, including several of the Petitioners here, that the Commission lacks authority to modify or remove the national TV ownership rule.⁴⁸ Those submissions show that the Commission has authority to alter or eliminate the national TV rule, and NAB will not needlessly repeat all those submissions now.

2. Contrary to Petitioners' Claims, the Commission Provided Well-Reasoned Explanations for its Elimination of the National Cap and Otherwise Met Applicable APA Standards

Petitioners also contend they are likely to succeed on the merits because the Order is arbitrary and capricious and otherwise in violation of the Administrative Procedure Act (APA).⁴⁹ However, the Petition fails to provide a legal or factual basis for this contention. The Commission carefully considered the arguments of Petitioners and others who supported retention of the cap but reached a different conclusion about the evidence in the record. Petitioners' disappointment with the FCC's well-reasoned explanations for its decision does not support grant of stay.

Petitioners contend that the Order "brushes away" certain "inconvenient facts" demonstrating that eliminating the national cap will harm competition, diversity and localism.⁵⁰ The cited "facts," however, are mere recitations of Petitioners' own arguments

⁴⁷ NAB Opposition at 9-13; see Nexstar Media Inc. Opposition to Petition for Stay and Injunction Pending Judicial Review of Broadband Commc'n Ass'n of Pennsylvania, et al., MB Docket No. 17-318, at 6-11 (Oct. 13, 2026) (also refuting the Pay TV Petition's erroneous statutory arguments).

⁴⁸ See, e.g., Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 5-30 (Aug. 22, 2025); Comments of NAB, MB Docket No. 17-318, at 25-29 (Aug. 4, 2025); Written Ex Parte Communication of NAB, MB Docket No. 17-318, at 44-52 (Apr. 2, 2025); Reply Comments of NAB, MB Docket No. 17-318, at 5-14 (Apr. 18, 2018); Comments of NAB, MB Docket No. 17-318, at 6-10 (Mar. 19, 2018).

⁴⁹ Petition at 3-10.

⁵⁰ Petition at 3-7.

already considered and rejected in the Order as well as multiple earlier Commission decisions.⁵¹ As the Order discussed at length, competition and viewpoint diversity have not been public interest rationales for retaining the national television ownership cap in more than 40 years.⁵² The Order renewed the FCC’s decades-old conclusion that the national TV ownership cap is “not necessary to promote competition or viewpoint diversity, most notably because the national scale of a broadcaster has no impact on the number of viewpoints or the concentration of competitors in the local television markets it serves.”⁵³ The proliferation of other media in recent years has only reinforced these earlier findings, leading the Commission to conclude that the rule cannot be justified on competition or viewpoint diversity grounds in today’s media marketplace.⁵⁴ The national cap was retained in 2003 because the Commission determined it played a role in promoting localism. Relying on extensive record evidence and review of studies submitted by Petitioners and others,⁵⁵ the

⁵¹ Some of the cited arguments do not even concern the national television ownership cap, or television at all. Petition at 4 (quoting prior filings asserting that “[i]n 1997, 4,000 of the country’s 11,000 radio stations changed hands” and that “[b]etween 1996 and 2002, the number of radio owners in the U.S. decreased by 34 percent.”). It is unclear how these facts, even if accurate, relate to the FCC’s consideration of the national television ownership cap. Petitioners also do not explain what harm, if any, resulted from the cited ownership changes but merely assume that any broadcast station consolidation must somehow be harmful. Similarly, the Petition mentions a local television ownership change which they assert was harmful. *Id.* at 5. Even if this were correct, same-market *local* television combinations are not governed by the *national* television ownership rule. Notably, in block quoting their own comments, Petitioners inadvertently provide support for repealing the national TV cap by stating that station owners with scale “have the resources to acquire higher-quality programming” allowing “them to attract higher-dollar advertisers that in-turn increase their revenues.” *Id.* at 4. Petitioners evidently fail to recognize that “higher-quality programming” benefits viewers and that stations earning more ad revenues can afford to better serve their communities, including by providing local news and other locally-oriented programming.

⁵² National TV Cap Order at ¶¶ 10-11, 25-29.

⁵³ National TV Cap Order at ¶ 25.

⁵⁴ National TV Cap Order at ¶¶ 10-11, 25-29.

⁵⁵ National TV Cap Order at ¶¶ 10-11, 25-29.

Order concluded that “the cap is not only unnecessary to promote our localism goal but that, in fact, it likely is undermining it.”⁵⁶

Petitioners’ bald assertions that all broadcast consolidation is bad cannot justify retention of the national cap, nor are they grounds for a stay. Like the parties opposing the FCC’s elimination of the cross-ownership rules and other ownership restrictions in *FCC v. Prometheus Radio Project*, Petitioners here will ultimately face the reality that the Commission “did not ignore” evidence submitted in the record, but simply “interpreted [it] differently” than Petitioners, which is entirely acceptable under the APA.⁵⁷

Petitioners contradictorily contend that the standards adopted for review of individual broadcast transactions affecting broadcasters’ national reach are too “amorphous”⁵⁸ and too specific.⁵⁹ First, they contend that the Order “lacks clear standards by which the Commission will conduct the supposed case-by-case analysis of proposed mergers,” thereby “inviting arbitrary application.”⁶⁰ The Commission, however, has applied the public interest standard in the Communications Act to countless transactions across all communications services—including those that have no bright-line rules governing horizontal or vertical ownership—for decades. The lack of *ex ante* restrictions with respect to a broadcaster’s potential audience reach grants the Commission no more ability to act on transactions on

⁵⁶ National TV Cap Order at ¶¶ 54-57; 60-63. See also NAB Opposition at 17-18.

⁵⁷ *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423–27 (2021).

⁵⁸ Petition at 7-8.

⁵⁹ Petition at 8-10.

⁶⁰ Petition at 7-8.

“wholly discretionary grounds”⁶¹ than it has with respect to satellite, cable, wireless or wireline transactions today.⁶²

The FCC’s specific discussion of how it will conduct case-by-case review of TV station transactions also does not place a thumb on the scale in favor of transaction approval, as Petitioners claim.⁶³ The FCC’s analysis of potential harms always has considered only alleged harms that are transaction-specific and rejected allegations of potential harms that would occur regardless of whether a transaction is approved.⁶⁴ The Order’s statement that “a threshold consideration will be the transaction-specific nature of any alleged harms”⁶⁵ is consistent with decades of prior decisions acting on proposed transactions. The Order’s further guidance explaining that parties alleging public interest harms will be expected to compare “likely marketplace *status quo* and likely trajectory absent the transaction, rather

⁶¹ Petition at 7.

⁶² See National TV Cap Order at ¶¶ 44-45 (discussing elimination of various bright-line rules applicable to many services, including broadcasting, over time and the use of a case-by-case approach to evaluating transactions in other services for many years).

⁶³ Petition at 7.

⁶⁴ See, e.g., *Applications of Level 3 Communs., Inc. & CenturyLink, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 9581, 9585 ¶ 11 (2017) (“the Commission has repeatedly held that it will impose conditions ‘only to remedy harms that arise from the transaction (i.e., transaction-specific harms)’ and ‘related to the Commission’s responsibilities under the Communications Act and related statutes,’ and it ‘will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction.’”); *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC for Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and de facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, 23 FCC Rcd 17444, 17463 ¶ 29; *Id.* at 17528-29 ¶ 188 (2008) (explaining that the Commission “will not impose conditions to remedy pre-existing harms or harms that are unrelated to the transaction” and declining to adopt conditions proposed by the Ad Hoc Public Interest Spectrum Coalition that did not address “merger-specific” concerns); *Applications for Consent to the Transfer of Control of Licenses from Comcast Corp. and AT&T Corp., Transferors, to AT&T Comcast Corp., Transferee*, Order, 17 FCC Rcd 22633, 22637 ¶ 11 (2002) (“merger review is limited to consideration of merger-specific effects”).

⁶⁵ National TV Cap Order at ¶ 65.

than some hypothetical ideal marketplace not grounded in practical realities”⁶⁶ is far from “dramatic” or “one-sided.”⁶⁷ It merely makes clear that the Commission will not assume that transacting parties can continue to provide the programming and services being offered at the time of a proposed transaction indefinitely given marketplace realities.⁶⁸ Petitioners would apparently prefer that the Commission ignore such realities, as they consistently have in this and other broadcast ownership proceedings for years.

Nor is there any likelihood – let alone a “strong” one – that a court would agree with Petitioners that the Commission failed to give adequate notice.⁶⁹ Petitioners correctly state that a final rule must be a “logical outgrowth” of the proposed rule so that commenters may have an opportunity to comment.⁷⁰ The *only* change to FCC rules made in the Order is to eliminate the national television ownership rule,⁷¹ which is precisely one of the options proposed in the 2017 rulemaking notice.⁷² There, the Commission extensively discussed the possibility of the elimination of the national cap,⁷³ including seeking comment on the FCC’s

⁶⁶ National TV Cap Order at ¶ 65. See *also id.* at ¶ 83.

⁶⁷ Petition at 7.

⁶⁸ See *also* National TV Cap Order at ¶ 58 (“In reviewing proposed transactions, we will consider *all arguments* supporting or opposing a finding that approval of the transaction would promote localism.”) (emphasis added).

⁶⁹ Petition at 8-10.

⁷⁰ Petition at 9, *citing Long Island Care at Home, Ltd. v. Coke*, 551 U.S. 158, 174 (2007) (“[A] final rule is a logical outgrowth of a proposed rule only if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period[.]”).

⁷¹ Order at Appendix A.

⁷² *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017) (2017 NPRM).

⁷³ 2017 NPRM at ¶¶ 1, 6-17.

statutory authority to eliminate the cap⁷⁴ and the public interest impact of doing so.⁷⁵

Elimination of the rule was expressly supported by multiple parties well ahead of the FCC's June 2025 public notice seeking updates to the record.⁷⁶ And that June 2025 public notice explicitly urged parties to review existing proposals in the record and comment on them.⁷⁷

The FCC's notice obligation was unquestionably satisfied by the 2017 NPRM. The Commission, moreover, cannot ignore or waive its statutory obligation to review TV license assignments and transfers under Section 310(d) of the Act. Thus, the Order's announcement that the Commission will continue to review all station transactions, (including but not limited to those expanding TV broadcasters' potential national reach) even following repeal of the *ex ante* 39 percent national TV cap should surprise no one.

Petitioners cannot complain about lack of notice of the FCC's intention to review individual broadcast station transfers and assignments under a provision that dates back to the Radio

⁷⁴ 2017 NPRM at ¶¶ 7-9.

⁷⁵ 2017 NPRM at ¶¶ 10-17.

⁷⁶ See, e.g., Reply Comments of Univision Communications, Inc., MB Docket No. 17-318 (Apr. 18, 2018) (urging the FCC to eliminate the national cap and asserting that the Commission is "well-equipped" to address public interest concerns about specific transactions "on a case-by-case basis"); Comments of Nexstar Broad., Inc., MB Docket No. 17-318 (Mar. 19, 2018) (asking FCC to repeal national cap rule in its entirety); Comments of Sinclair Group, Inc., MB Docket No. 17-318 (Mar. 19, 2018) (supporting complete elimination of the national cap); Written Ex Parte Communication of NAB, MB Docket No. 17-318 (Apr. 2, 2025) (urging FCC to expeditiously conclude its pending rulemaking and completely repeal the outdated and competitively harmful national TV ownership limit); Letter from Timothy Nelson of Brooks Pierce, Counsel to Graham Media Group et al., to Marlene H. Dortch, FCC Secretary, MB Docket Nos. 22-459, 17-318 (Apr. 28, 2025) (urging the Commission to "act expeditiously to eliminate the archaic . . . National Ownership Cap in order to create opportunities for local broadcasters to meaningfully compete, locally and nationally, against an array of massive, unregulated entities with outsized market power."); Letter from Frank Lamancusa, Morgan Lewis, Counsel to TIG Advisors, to Marlene H. Dortch, FCC Secretary, MB Docket No. 17-318 (May 18, 2025) (highlighting reasons for eliminating the national audience reach cap).

⁷⁷ *Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding*, Public Notice, 40 FCC Rcd 4159, 4160 (MB 2025).

Act of 1927.⁷⁸ To the extent that Petitioners wanted to propose specific approaches the Commission could take in reviewing TV station transactions in the event the national TV rule was repealed or significantly loosened, they should have (and easily could have) done so in response to the FCC's request for comment on whether to eliminate the national cap in 2017 or for comment to update the record in 2025. For the reasons above and those discussed in NAB's Opposition,⁷⁹ the Petitioners are unlikely to persuade a court that the Order does not comport with the APA.

C. Issuance of a Stay Will Injure Television Broadcasters, and the Public Interest Does Not Favor Grant of a Stay

The four-factor stay inquiry calls for assessing harm to other parties interested in the proceeding and weighing the public interest, “[o]nce an applicant satisfies the first two factors.”⁸⁰ But as shown above, Petitioners do not satisfy those “most critical” initial factors.⁸¹ In any event, Petitioners also have not met the remaining stay factors either.

Petitioners assert that a stay “will not injure the Commission, other interested parties, or the public interest” since “it will merely preserve the status quo, which has existed undisturbed for more than 20 years.”⁸² But Petitioners entirely ignore the harm to television broadcasters that the asymmetric national TV ownership rule has caused over the last twenty years, which would only continue in the event of a stay. As the Order found,

⁷⁸ Section 12 of the Radio Act provided that station licenses “shall not be transferred, assigned, or in any manner, either voluntarily or involuntarily, disposed of to any person, firm, company, or corporation without the consent in writing of the licensing authority.” Radio Act of 1927, Public Law 632, 69th Congress, Feb. 23, 1927. This provision was incorporated into Section 310 of the 1934 Act.

⁷⁹ NAB Opposition at 13-18.

⁸⁰ *Nken*, 556 U.S. at 435.

⁸¹ *Id.* at 434.

⁸² Petition at 19. The Petition oddly focuses on whether the FCC will be harmed when it is, in fact, television broadcasters who will be harmed in the event of a stay of the Order.

rather than “promoting localism, the national cap may be undermining it by preventing the Commission from approving specific transactions that,” for example, “would improve the ability of local television stations to access additional capital and advertising revenue needed to invest in local programming,”⁸³ and by “hindering, rather than promoting, investment in innovative developments by limiting broadcasters’ ability to expand their operations and achieve economies of scale in the deployment of new technologies.”⁸⁴ The Order also recognized that the broadcast TV industry has suffered declines in advertising revenue and viewership “for decades,”⁸⁵ harms that the national cap’s restrictions on TV broadcasters’ scale only worsen. The Petition presents no basis for imposing a stay that would continue to exacerbate those proven harms to the broadcast industry.

“[M]erely preserv[ing] the status quo” for even a limited period of time would cause harm to television broadcasters.⁸⁶ For one, broadcasters would be prevented from seeking prompt approval from the Commission on proposed transactions that would be in the public interest.⁸⁷ Additionally, a stay would only serve to inject more uncertainty in the marketplace about the ability of television broadcasters to scale, thereby discouraging necessary investment into broadcasting and undermining station values by reducing the amount of resources broadcasters in turn are able to put into local programming.⁸⁸

⁸³ National TV Cap Order at ¶ 47.

⁸⁴ National TV Cap Order at ¶ 59.

⁸⁵ National TV Cap Order at ¶ 51.

⁸⁶ Petition at 19.

⁸⁷ Petitioners’ contention that “a stay would not *permanently* deprive [broadcasters] of any interest in completing a merger” fails to account for the time-sensitive nature of any proposed transaction. Petition at 21 (emphasis in original).

⁸⁸ See National TV Cap Order at ¶ 47.

In arguing that the balance of equities weighs in favor of a stay, Petitioners simply presume that the Order is unlawful, flatly asserting that “the Commission suffers no cognizable harm from a temporary stay because the Order is unlawful.”⁸⁹ Petitioners also try to downplay the harm of a stay on television broadcasters by contending that any broadcaster who seeks approval of a transaction above the 39 percent cap before the conclusion of judicial review is committing “self-inflicted” harm, again based on the presumed unlawfulness of the order.⁹⁰ But in both instances, Petitioners disregard the “Commission’s longstanding bipartisan position” that it has authority to alter or repeal the national cap.⁹¹ Based on the FCC’s consistent position for more than a decade that it has authority over the national cap and relevant court precedent, Petitioners cannot justify a stay by assuming the Order’s unlawfulness, and in fact broadcasters have “a reasonable expectation of obtaining permission to exceed the 39% cap”⁹² for proposed transactions serving the public interest.

The public interest also favors denying the stay request. To the extent Petitioners contend harm to the public interest based on future consolidation in the broadcast industry, the removal of the *ex ante* national television ownership rule does not automatically result in a flood of approved transactions, let alone greater consolidation, and other avenues exist for challenging transactions.⁹³ Further, any claims of public interest harm are contrary to the Order’s specific conclusions supported by evidence that eliminating the national cap and

⁸⁹ Petition at 20.

⁹⁰ Petition at 20-21.

⁹¹ National TV Cap Order at ¶¶ 92-93; see *supra* Section II.B.1.

⁹² Petition at 20.

⁹³ See National TV Cap Order at ¶¶ 65-66, 76-79, 82-83 (providing guidance on what information to include in opposing proposed assignments and transfers of TV station licenses under the FCC’s review of those transactions).

allowing broadcasters to scale can “improve long-term employment prospects for workers;”⁹⁴ the national cap is unnecessary to promote localism and may in fact be undermining that goal;⁹⁵ and the national cap is not necessary to promote competition or viewpoint diversity in local markets.⁹⁶ The public, moreover, does not benefit from the continuance of outmoded rules that impair overall marketplace competition generally and broadcast TV stations specifically. Viewers directly benefit from competitive local stations and their free, over-the-air programming, including news, weather, emergency information, and live sports, offered in communities across the country. Ultimately, the balance of equities favors denying a stay and allowing the repeal of the *ex ante* national television ownership rule to take effect.

III. CONCLUSION

For the reasons set forth above, Petitioners have failed to meet their burden of showing they qualify for a stay of the effective date of the Order repealing the national TV ownership rule pending judicial review. The Commission must deny the Petition.

⁹⁴ National TV Cap Order at ¶ 81.

⁹⁵ National TV Cap Order at ¶ 47; see *also id.* at ¶¶ 55-57 (explaining how allowing broadcasters to expand their audience reach can promote localism by “enabl[ing] them to produce a higher quality and quantity of local content”).

⁹⁶ National TV Cap Order at ¶ 27.

Respectfully submitted,

**NATIONAL ASSOCIATION OF
BROADCASTERS**

1 M Street, SE
Washington, DC 20003
(202) 429-5430
rkaplan@nab.org

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

Rick Kaplan
Jerianne Timmerman
Erin Dozier
Sophia Gonzalez

October 16, 2026

CERTIFICATE OF SERVICE

I, Jerianne Timmerman, hereby certify that on October 16, 2026, I caused true and correct copies of the foregoing Opposition to be served via email upon the following:

Gigi B. Sohn
G Squared Strategies, LLC
3503 Alton Place, NW
Washington, D.C. 20008
gbsohn@gmail.com

Paul R.Q. Wolfson
Simon C. Brewer
Bradley Girard
Kali Schellenberg
Jason Brovich
Robin F. Thurston
Democracy Forward Foundation
P.O. Box 34553
Washington, D.C. 20043
pwolfson@democracyforward.org
Counsel for Petitioners

_____/s/
Jerianne Timmerman