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 Multiple Ownership Rule	)))	MB Docket No. 17-318

REPLY COMMENTS
OF THE JOINT BROADCASTERS

August 22, 2025

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I. INTRODUCTION AND SUMMARY

The National Association of Broadcasters, ABC Owned Television Stations, ABC Television Affiliates Association, CBS News and Stations, CBS Television Network Affiliates Association, Entravision, E.W. Scripps Co., FBC Television Affiliates Association, Fox Television Stations, LLC, NBC Television Affiliates, Nexstar Media Inc., Sinclair Inc., and Trinity Broadcasting Network (collectively, the Joint Broadcasters[1]) strongly urge the Commission to eliminate the national television ownership cap for all TV broadcasters. The Joint Broadcasters have joined together for these reply comments because each association and company believe strongly that, in a marketplace dominated by the likes of Google/YouTube, Amazon, Meta, and Netflix, no justification exists for broadcasters – and only broadcasters – to remain subject to this antiquated and harmful restriction. As the Commission considers next steps, the agency must continue to apply any national audience reach cap equally to all station owners, whether the stations are network-owned, network-affiliated, or independent. All stations meaningfully contribute to the Commission's localism goals by producing and distributing important local news, local public affairs, and other locally oriented programming for the communities they serve and compete in the broader video media marketplace. The

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[1] *See* Attachment A, identifying each of the Joint Broadcasters.

Joint Broadcasters also note the legal complexity of not applying the cap (or lifting it) uniformly and believe the Commission should instead be focused on completing this long-standing rulemaking expeditiously by eliminating the cap universally.

Now in its ninth decade of artificially limiting the audiences of all television broadcasters and unchanged since 2004, the national ownership cap unfairly prevents broadcasters but none of our myriad competitors from reaching more than 39 percent of the total number of TV households in the country.[2] This restriction skews the media and advertising markets in favor of digital advertising behemoths, increasingly consolidated pay TV/broadband providers, and unregulated global streaming platforms, at the expense of the only video service offering increasingly rare local journalism, emergency information, and popular entertainment and sports programming to communities across the nation at no cost to the public. The extensive record here, begun in 2017 and refreshed this year, reveals no basis for retaining the outdated national TV cap.[3] The cap does not support any of the FCC's public interest goals, and its retention directly impedes broadcasters' ability to gain scale economies needed to support their provision of news and other local programming. The Commission must repeal it.

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[2] 47 C.F.R. § 73.3555(e). For purposes of calculating "reach" under the cap, the rule discounts the presumed 100% reach of UHF stations by 50%. *Id*.

[3] FCC, Public Notice, *Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Proceeding*, MB Docket No. 17-318, DA 25-530 (June 18, 2025); Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017). NAB alone has submitted five major filings in this proceeding: Comments of NAB, MB Docket No. 17-318 (Aug. 4, 2025) (NAB Refresh Comments); Written *Ex Parte* Communication of NAB, MB Docket No. 17-318 (Apr. 2, 2025) (NAB 2025 Update); Written *Ex Parte* Communication of NAB, MB Docket No. 17-318 (May 13, 2022) (NAB 2022 Update); Reply Comments of NAB, MB Docket No. 17-318 (Apr. 18, 2018) (NAB Reply Comments); Comments of NAB, MB Docket No. 17-318 (Mar. 19, 2018) (NAB Comments). Other of the Joint Broadcasters have also submitted multiple filings emphasizing the need for elimination of the cap.

The two categories of commenters opposing repeal or reform of the national TV ownership rule – or calling for a tighter rule – rely on outdated arguments and selectively chosen data that do not represent the current state of the media and advertising markets, nor the interests of today's consumers. First, certain ideological advocacy groups continue their decades-long opposition to any relaxation of asymmetric ownership restrictions and other regulatory burdens placed on broadcast stations, regardless of conditions in the media and advertising markets. Indeed, Free Press has opposed any and all reform of broadcast ownership restrictions since 2003 – the year it was founded – during which time the marketplace for news, information, and enterprise journalism has been completely upended by Big Tech.[4] Here, Free Press selectively quotes and overstates sources, misstates facts, makes outlandish *ad hominem* attacks on Chairman Carr, and acts as though today's digital world doesn't exist.

Second, the pay TV industry, led by the American Television Alliance (ATVA) and NCTA – The Internet & Television Association, continues its crusade opposing liberalization of asymmetric FCC rules that keep broadcasters competitively hobbled, and Commission actions that would permit TV broadcasters to innovate and better compete. At the same time, the pay TV industry touts its own need for increased scale and scope in the hyper-competitive video

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[4] *See* Petition for Reconsideration of Free Press, MB Docket No. 02-277 (Sept. 4, 2003) (requesting reconsideration of the FCC's 2002 biennial review order, which had loosened several broadcast ownership restrictions). Beyond consistently opposing the elimination of other burdensome regulations on broadcasters, Free Press has advocated for *reimposing* unnecessary and unduly burdensome rules on broadcasters decades after their elimination. *See* Reply Comments of The Public Interest Public Airwaves Coalition, Center for Creative Voices in Media, Free Press, and the Nat'l Hispanic Media Coalition, MB Docket No. 04-233 (June 11, 2008) (calling for reinstatement of the TV and radio programming guidelines and ascertainment requirements that FCC had eliminated in the early 1980s); *see also, e.g.,* Reply Comments of Free Press, GN Docket No. 25-133 (Apr. 28, 2025) (opposing stopping the collection of EEO information); Comments of Free Press, MB Docket No. 17-106 (July 3, 2017) (opposing repeal of main studio rule).

and advertising markets. The Commission should reject the pay TV industry's anti-competitive and hypocritical arguments.

None of the commenters opposing ownership rule reform add anything to the record that justifies retention of the national TV ownership rule. Notably, nothing in the record warrants the Commission reversing its correct and consistent position that it possesses the authority to modify or eliminate the national TV cap and UHF discount. To argue otherwise, the opponents of reform "interpret" the relevant text of the 2004 Consolidated Appropriations Act (CAA) and the Telecommunications Act of 1996 (1996 Act), which the CAA amended, in a way that reveals what they *wish* those statutes said, rather than what they actually say. Those contending that Congress removed all authority from the FCC to review or alter the 39 percent national cap ignore, overread, or otherwise misconstrue the actual words on the page and improperly rely on flimsy extratextual sources and considerations, including their own opinions and beliefs about congressional intentions, for support. But as Chief Justice John Marshall wrote over 200 years ago, the "intention of the legislature is to be collected from the words they employ."[5]

Similarly, nothing submitted in the record by those opposing ownership rule modernization comes close to warranting reversal of the FCC's determination that, even in the analog marketplace of *1984*, the national TV ownership rule is not needed to ensure competition or viewpoint diversity. Rather than promoting these goals in today's digital, online marketplace, the rule now impedes them by preventing broadcasters from offering more robust competition to other video and advertising market participants and from speaking and providing content to audiences across the country. Free Press's arguments to the contrary

[5] *U.S. v. Wiltberger*, 18 U.S. 76, 95-96 (1820).

lack credibility. Its attempted competition analysis fails, and it misstates antitrust policy, which it first insists should not govern this proceeding anyway but then proceeds to (mis)apply. Free Press's claim that eliminating the national cap will harm localism by leading to less news production is not supported by the evidence; rather, empirical evidence has long shown that increased common ownership of TV stations leads to greater news production. In fact, what commenters like Free Press and Newsmax oppose is *more* viewpoint diversity offered by broadcast groups that would be able to provide programming to communities and viewers they are not currently permitted to serve.

In short, the record shows no reason for the Commission to maintain its *ex ante* national television ownership rule that prevents many potential TV station transactions with significant public benefits. Removing this *ex ante* rule, moreover, would not cause the Commission to forfeit its ability to closely review proposed transfers and assignments of broadcast TV licenses as part of its duty under Section 310(d) of the Communications Act of 1934 (Act or 1934 Act).

For all these reasons, the Commission must repeal the increasingly harmful national TV rule. The Joint Broadcasters urge the FCC to quickly conclude this proceeding and eliminate the national cap for all TV broadcasters. The rule's retention is inconsistent with the Act and the Administrative Procedure Act (APA), impairs the vitality, or even the viability, of broadcast TV stations that provide free over-the-air services to viewers everywhere, and does not promote the public interest.

II. THOSE ERRONEOUSLY CONTENDING THE FCC LACKS AUTHORITY TO ALTER THE NATIONAL TV CAP IGNORE OR MISCONSTRUE RELEVANT STATUTORY TEXT, AGAIN TRY TO SPLIT THE STATUTORY BABY, AND MISREAD RECENT CASE LAW

Those parties supporting retaining or even effectively tightening the national TV cap by eliminating the UHF discount follow their long history of reflexively opposing any efforts to reform any of the asymmetric broadcast ownership rules without regard to vast marketplace and technological changes. In their support for the status quo, these commenters not only fail to justify retention of any national TV cap but also fail (1) to explain why 39 percent specifically or any other particular percentage is the "right" level of restriction to be placed on TV broadcasters; (2) to justify or even address the fundamentally flawed 100 percent reach metric that underlies the entire rule; or (3) address the fact that "reach" itself – whether 100, 75, 66, or 33 percent or some other arbitrary number – is not a metric rationally related to FCC goals.[6]

Recognizing the weakness of their substantive arguments, opponents of any reform fall back to misreading or ignoring entirely the relevant statutory language to claim that the Commission cannot *loosen or repeal* the 39 percent cap – although it can still somehow *tighten* the rule by eliminating the UHF discount. Their strained statutory reading must be rejected. As clear from the discussion below, the Commission has full authority to repeal the national TV ownership rule in its entirety.

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[6] NAB previously explained in detail that another fatal flaw in the national TV rule is its faulty premise that stations "reach" 100% of the TV households in the DMAs in which they are located. *See* 47 C.F.R. § 73.3555(e)(2)(i). But that premise, referred to as "theoretical" by the FCC when it first adopted a national audience reach cap in 1985, was a fiction then and is a greater fiction today, when broadcasters' actual reach is *single digit*, even during peak prime time viewing hours. Because the national TV rule is based on an irrational premise, the record offers no rational basis for retaining the 39 percent cap, or a cap set at any other level, using the flawed 100% reach metric -- or any other arbitrary reach metric, given the lack of a credible connection between the concept of "reach" and the FCC's goals. NAB 2025 Update at 39-43; NAB Refresh Comments at 11-12. Most commenters supporting retention of the national TV rule simply ignore the problem of "reach" altogether, while one assumes without rational justification that the fictional 100% "potential" reach metric is appropriate. *See* Comments of Free Press, MB Docket No. 17-318, at 21 & n.54 (Aug. 4, 2025).

A. A Proper Interpretation of Statutory Text Supports the FCC's Long-Held Conclusion It Possesses Authority to Revise or Repeal the National TV Rule

In 2018 and 2025, NAB and many broadcasters explained in detail that Congress never enshrined the national TV ownership cap into statute and that the specific language used by Congress in the 1996 Act and the 2004 CAA did not prevent the Commission from modifying or repealing the current 39 percent cap or its method of calculating compliance with the cap.[7] The Commission has repeatedly reached the same conclusion as well.[8] For the reasons discussed in earlier filings and again below, the FCC's and broadcasters' interpretation is the "best reading" of the relevant statutes.[9]

Those contending that Congress removed all of the FCC's authority over the national cap ignore, overread, or otherwise misconstrue the actual "words on the page" and improperly rely on "extratextual considerations" to assert unwarranted claims about congressional intentions and expectations.[10] But "it is ultimately the provisions of [ ] legislative commands ...

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[7] *See, e.g.,* NAB Refresh Comments at 25-29; NAB 2025 Update at 44-52; NAB Comments at 6-10; NAB Reply Comments at 5-14; Comments of Nexstar Media Inc., MB Docket No. 17-318, at 18-25 (Aug. 4, 2025); Comments of E.W. Scripps Co., MB Docket No. 17-318, at 2-3 (Aug. 4, 2025); Joint Comments of the Four Affiliates Assn's, MB Docket No. 17-318, at 16-18 (Aug. 4, 2025).

[8] The FCC has consistently concluded in multiple decisions under former Acting Chairwoman Clyburn, former Chairman Wheeler, and former Chairman Pai that under the 1996 Act and the CAA it possesses authority to revise or remove the national TV rule, including the UHF discount. *See* NAB 2025 Update at 47-49 (describing these decisions at length). Opponents of ownership reform ignore this inconvenient fact entirely, *see, e.g.*, Comments of ATVA, MB Docket No. 17-318, at 14-22 (Aug. 4, 2025), or resort to citing multiple times the only FCC commissioner who ever interpreted the CAA as they prefer. *See, e.g.*, Free Press Comments at 15-16.

[9] *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244, 2266 (2024).

[10] *Bostock v. Clayton County*, 590 U.S. 644, 653-54, 683 (2020).

by which we are governed,"[11] and the actual commands in the 1996 Act and the CAA do not say what the opponents of reform want them to say.

The "one, cardinal canon" in interpreting a statute is that one "must presume that a legislature says in a statute what it means and means in a statute what it says there."[12] Thus, the starting point in construing Section 629 of the CAA, and the provisions of the 1996 Act that the CAA referred back to and amended, must be the precise language of the statutes.[13]

Congress in Section 202(c)(1)(B) of the 1996 Act did not set a statutory cap, but merely directed the Commission to "*modify its rules* for multiple ownership set forth in section 73.3555 of its regulations . . . by increasing the national audience reach limitation for television stations to 35 percent."[14] Indeed, the whole point of Section 202 of the 1996 Act was to direct the Commission to revise various ownership rules (including but not limited to the national TV rule) and then to require the Commission to review, and potentially "repeal or modify," all those rules every two (now four) years going forward.[15] The Commission therefore had clear authority to repeal or modify the 35 percent cap under the "original" Section 202(c)(1)(B). Importantly, the U.S. Court of Appeals for the D.C. Circuit agreed with this interpretation of Section 202, concluding in 2002 that the 1996 Act had *not* "enshrined the

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[11] *Bostock*, 590 U.S. at 674.

[12] *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

[13] "When interpreting a statute, we begin with the text." *Lackey v. Stinnie*, 145 S. Ct. 659, 666 (2025).

[14] 1996 Act, Pub. L. No. 104-104, § 202(c)(1)(B), 110 Stat. 56, 111 (emphasis added).

[15] 1996 Act, § 202(h) (directing the FCC to review its rules adopted pursuant to Section 202 and all its ownership rules biennially, determine whether any of them remain necessary in the public interest as the result of competition, and "repeal or modify any regulation it determines to be no longer in the public interest").

35% cap in the statute itself" and that the FCC's *retention* of the 35 percent cap in the 1998 biennial review was arbitrary and capricious.[16]

When Congress revisited the national cap in 2004 after the Commission had raised it to 45 percent in its 2002 biennial review, Congress did not question the FCC's authority to change the cap. All Congress did in Section 629(1) of the CAA was direct the Commission to amend Section 202(c)(1)(B) of the 1996 Act by inserting "39 percent" in place of "35 percent."[17] That is, Section 629(1) directed the Commission, again, to merely *modify its rules* for multiple ownership by increasing the national audience reach limitation for television stations, this time to 39 percent, as Congress left untouched the original language of Section 202(c)(1)(B) that had only directed the Commission to amend its regulation. In neither 2004 nor in 1996 did Congress enshrine a numerical cap into statute.

Notably, Congress in 2004 easily could have prevented the Commission from ever altering the national cap in the future by establishing a 39 percent limit in the CAA or by amending the 1934 Act. In either case, a very simple statutory provision would have sufficed: "The Commission shall not grant any application or construction permit for a full-power commercial TV station license to any entity if doing so would result in that entity owning or controlling TV stations that, in the aggregate, reach more than 39 percent of U.S. TV households nationwide." Congress, however, did not take that step. It left untouched the FCC's broad powers over broadcast licensing and its extensive authority to adopt, maintain,

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[16] NAB 2025 Update at 44, quoting *Fox Television Stations, Inc. v. FCC,* 293 F.3d 537, 540 (D.C. Cir. 2002). ATVA misrepresents this citation of *Fox* in NAB's 2025 Update. *See* ATVA Comments at 20. ATVA erroneously claims that NAB relied on *Fox*'s opining about whether the then-35% cap should be reviewed under a more deferential standard than other ownership rules subject to Section 202(h). *Id*. NAB did not. ATVA, moreover, continues on from this misrepresentation to make a confusing and irrelevant argument which the FCC should ignore, given that it appears unrelated to the actual text of Section 629.

[17] CAA, Pub. L. No. 108-199, § 629(1), 118 Stat. 3, 99 (Jan. 23, 2004).

modify, and repeal regulations, including ownership rules,[18] even though Congress was well aware of the FCC's long history of regulating ownership of broadcast stations under its 1934 Act authority,[19] which the Supreme Court has cited to uphold FCC enactment and repeal of a range of ownership restrictions.[20] In sum, Congress's action in Section 629(1) of the CAA – referring back to the 1996 Act and its direction to modify a Commission rule rather than establishing a statutory national reach limit – did not usurp the FCC's clear rulemaking authority under the 1934 Act in this area.[21]

While a few commenters continue to erroneously assert that Congress "codified" the 39 percent audience reach limit in the CAA,[22] most opponents of ownership rule reform do not seriously dispute the FCC's and broadcasters' interpretation of Section 629(1). Beyond

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[18] *See* 47 U.S.C. §§ 303, 307, 308, 309, 310, and 154(i).

[19] *See* H.R. Rep. No. 104-204, at 54 (1995) (noting that FCC regulation of broadcast ownership dates to the 1940s); *Hall v. U.S.*, 566 U.S. 506, 516 (2012) ("We assume that Congress is aware of existing law when it passes legislation.") (citation omitted).

[20] *See FCC v. NCCB*, 436 U.S. 775, 793-94 (1978) (upholding adoption of newspaper/broadcast cross-ownership rule pursuant to the FCC's authority under the Act to "issue regulations codifying its view of the public-interest licensing standard"); *NBC v. U.S.*, 319 U.S. 190, 214-218 (1943) (finding that the Act grants the FCC "broad licensing and regulatory powers" and upholding adoption of chain broadcasting rules as permissible exercise of its power to license stations in the public interest); *U.S.* v. *Storer Broad. Co.,* 351 U.S. 192, 201-203 (1956) (concluding that FCC had authority to impose rules limiting the multiple ownership of AM, FM, and TV stations under its public interest rulemaking and licensing authority); *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1155 (2021) (stating that FCC possesses broad statutory authority to regulate broadcast media and, exercising that authority, it has historically maintained strict ownership rules).

[21] *See* NAB Refresh Comments at 25-26; NAB 2025 Update at 44-45; NAB Comments at 6-8; NAB Reply Comments at 5-7; Nexstar Comments at 20; Scripps Comments at 2; Affiliates Ass'ns Comments at 16-17.

[22] Comments of C. Terry, C.R. Carlson, and J.I. Balderas, MB Docket No. 17-318, at 4 (July 31, 2025) (Terry/Carlson/Balderas Comments).

briefly invoking Section 629(2),[23] these commenters heavily rely on Section 629(3), which cannot bear the weight they place upon it.[24] As described in detail below, Section 629(3) does not actually say what these reform opponents insist that it must mean.

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[23] The perfunctory references to Section 629(2) by some opponents of ownership reform do not show that the exclusion of the national TV cap from the FCC's forbearance authority meant Congress intended to permanently remove the cap from FCC review. *See, e.g.*, NABET-CWA Comments at n.45, n.49; ATVA Comments at n.60; Newsmax Comments at n.56; Free Press Comments at 17. This subsection confusingly states that the FCC may not apply its forbearance authority under Section 10 of the Act, 47 U.S.C. § 160, to any entity exceeding the 39 percent cap in Section 202(c)(1)(B) – but forbearance authority applies to regulation of telecommunications carriers, not to broadcasters under Title III of the Act. In any event, Congress's prohibition on forbearance does not preclude other types of relief from the cap's restrictions, including relaxation or repeal of the cap itself. The FCC, moreover, has already rejected these commenters' claim. *See* Report and Order, 31 FCC Rcd 10213, 10222-23 n.77 (2016). The Joint Broadcasters agree with the FCC that this provision does not prevent it "from reexamining and revising the national audience reach cap or the UHF discount." *Id*. at 10223 n.77. Significantly, Section 629(2) refers specifically to the 39 percent cap in Section 202(c)(1)(B) of the 1996 Act, which, as discussed above, only directs the FCC to modify the national TV cap, does not enshrine the cap into statute, and does not prohibit the FCC from "changing its rules at a later date." *Id*. The divestiture provision in Section 629(2) similarly does not say that the FCC is prohibited from reviewing and altering the national TV cap, but again expressly refers to the FCC rule modified in Section 202(c)(1)(B) and only states that a broadcaster exceeding the 39% cap by obtaining an additional TV station license must come into compliance with the cap within two years. *See* ATVA Comments at 18; Free Press Comments at 17; Newsmax Comments at 26 (citing divestiture provision). When granting applications for assignments/transfers of TV and radio station licenses, the FCC for decades has provided brief time periods for acquiring parties to come into compliance with existing ownership rules via divestiture; this provision sets a specific limit on such time periods. And Section 629(2)'s provision that a broadcast owner whose stations exceed 39% due to population growth will not be forced to divest merely restates FCC policy enacted when the FCC first adopted a national audience reach cap in 1985. *See* Memorandum Opinion and Order, 100 FCC 2d 74, 92 n.52 (1985).

[24] *See* Comments of Nat'l Ass'n of Broad. Employees and Technicians – Communications Workers of America (NABET-CWA), MB Docket No. 17-318, at 14-15 (Aug. 4, 2025); Comments of Newsmax, MB Docket No. 17-318, at 25-27 (July 23, 2025); Free Press Comments at 18-19; ATVA Comments at 17; Comments of NCTA – The Internet & Television Ass'n, MB Docket No. 17-318, at 2 (Aug. 4, 2025); Comments of Center for Regulatory Freedom, MB Docket No. 17-318, at 2, 4 (Aug. 4, 2025); Comments of Nat'l Hispanic Media Coalition (NHMC), MB Docket No. 17-318, at 1 (Aug. 4, 2025) (all claiming that FCC lacks any authority over the national audience reach cap because Congress "removed" it from Section 202(h)'s quadrennial review process in Section 629(3) of the CAA).

As broadcasters already have explained,[25] Section 629(3) of the CAA does not strip the Commission of its authority to modify or repeal the 39 percent national audience reach limit. By its terms, this provision (1) changed the required periodic reviews of all the ownership rules from biennially to quadrennially, and (2) relieved the FCC of its mandatory duty under Section 202(h) of the 1996 Act to review the national TV cap every four years. Specifically, Section 629(3) does not *prohibit* the Commission from reviewing the cap, but only provides that Section 202(h)'s affirmative obligation to review all the broadcast ownership rules quadrennially "does not apply to any rules relating to" the 39 percent national audience cap.[26] Because the plain language of Section 629(3) merely provides that the Commission is not *required* to review the national audience reach cap quadrennially, it says nothing about whether the Commission is *allowed* to review that rule at any point in time.

Thus, on its face, Section 629(3) does not prevent the FCC from reviewing and altering the national cap, as the Commission has consistently determined since 2013.[27] Congress clearly knows how to prohibit and has in the past prohibited the FCC from taking various specific actions.[28] In amending the 1996 Act in the CAA, however, Congress chose not to forbid the Commission from revising or repealing the national TV cap. Congress's choice must

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[25] *See, e.g.*, NAB 2025 Update at 45-46; NAB Refresh Comments at 26-27; Scripps Comments at 3.

[26] CAA, § 629(3) (providing that subsection 202(h) "does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B)").

[27] *See* NAB 2025 Update at 47-49 (setting forth the FCC's earlier decisions and its analysis of the statutory language).

[28] Nexstar identified four such prohibitory provisions in the 1934 Act, *see* Nexstar Comments at 21-22, and NAB previously identified additional express prohibitions on FCC authority. NAB Reply Comments at 8.

be construed as intentional and purposeful.[29] Contrary to those commenters erroneously asserting that the *non*-prohibitory language of Section 629(3) should be read as prohibiting any and all FCC action with regard to the national audience reach cap,[30] the FCC's long-standing position that it retains the power to review and alter the cap appropriately reflects Congress' specific choice of language.[31]

Section 629 does not expressly prohibit FCC review and alteration of the national TV rule, and that rule's exemption from mandatory quadrennial reviews cannot be viewed as any implied repeal of the FCC's powers under the 1934 Act to adopt, revise, and eliminate broadcast ownership regulations, as NAB and broadcasters have explained.[32] The Supreme Court made clear decades ago – even calling it a "cardinal rule" – that any repeals by implication are strongly disfavored.[33] Presented with two statutes, the Court will regard each

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[29] *See, e.g., Barnhart v. Sigmon Coal Co*., 534 U.S. 438, 452-53 (2002) ("it is generally presumed that Congress acts intentionally and purposefully in the disparate inclusion or exclusion" of language in different sections of the same statute); *see also Breuer v. Jim's Concrete of Brevard, Inc*., 538 U.S. 619, 696 (2003) (in finding that a particular statutory provision did not prevent removal of an action from state to federal court, the Court relied on "examples of indisputable prohibitions on removal in a number of other statutes").

[30] *See*, *e.g*., NABET-CWA Comments at 14-15; ATVA Comments at 14-17; Free Press Comments at 18-19; Newsmax Comments at 25-27.

[31] A prohibition plainly absent from the relevant statutory language should not be inferred. *See, e.g., Breur*, 538 U.S. at 694 (declining to find a statutory provision prevented removal of an action from state to federal court where "[n]othing on the face" of the statute "look[ed] like an express prohibition of removal"); *Freeman v. Seligson*, 405 F.2d 1326, 1348 (D.C. Cir. 1968) (declining to imply a prohibition preventing the disclosure of certain information in judicial proceedings "[i]n the absence of a specific prohibition against disclosure" in the statutory provision at issue); *Christie v. Marston* 551 F.2d 1080, 1084 n.8 (7th Cir. 1977) (questioning the government's position in age discrimination case because it would "require reading into the statute" a prohibition "which is not present on its face").

[32] *See, e.g*., NAB 2025 Update at 46-47; NAB Refresh Comments at 27; Nexstar Comments at 21-22; Affiliates Ass'ns Comments at 16-17, n.34.

[33] *Tennessee Valley Auth. v. Hill*, 437 U.S. 153, 189 (1978), quoting *Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936); *accord Morton v. Mancari*, 417 U.S. 535, 549 (1974); *Me.*

as effective unless Congress' intention to repeal is "clear and manifest" or the two laws are "irreconcilable."[34]

Given Congress's silence in Section 629 about the FCC's broad licensing and rulemaking authority under the 1934 Act, and its notable choices *not* to enshrine the 39 percent limit into statute and *not* to prohibit the Commission from reviewing and altering the national TV rule, Congress obviously had no "clear and manifest" intention to suspend the FCC's power under the Act to reexamine and revise that rule. The CAA and the 1934 Act, moreover, are in no way "irreconcilable," as both can be – and are – effective. Contrary to claims that the FCC's and broadcasters' interpretation of Section 629 makes it ineffective, superfluous, or meaningless,[35] that section has served a significant regulatory purpose in accordance with its terms. The Commission, as directed, modified its rules to set the cap at 39 percent, and as allowed, has left it unchanged since the CAA's enactment, even while other ownership rules were eliminated or substantially loosened in the 2006, 2010, 2014, and 2018 quadrennial reviews. Likewise, the FCC's correct and consistent construction of the CAA permits it to review and revise or remove the cap in this proceeding pursuant to its fully effective authority under the 1934 Act. In light of the FCC's affirmative duty under administrative law to reexamine its rules as marketplace and technological circumstances

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Cmty. Health Options v. U.S., 590 U.S. 296, 315 (2020); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018).

[34] *Me. Cmty. Health*, 590 U.S. at 315, quoting *Morton*, 417 U.S. at 550-51; *Tennessee Valley Auth.,* 437 U.S. at 189.

[35] *See* Free Press Comments at 19; ATVA Comments at 14; Comments of The Free State Foundation (FSF), MB Docket No. 17-318, at 6 (Aug. 4, 2025).

change,[36] the Commission is in fact obligated to conduct and conclude this proceeding by repealing the national cap.[37]

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[36] *See, e.g., Cincinnati Bell Tel. Co. v. FCC*, 69 F.3d 752, 767 (6th Cir. 1995); *ACLU v. FCC*, 823 F.2d 1554, 1565 (D.C. Cir. 1987); *Bechtel v. FCC*, 957 F.2d 873, 881 (D.C. Cir. 1992); *Geller v. FCC*, 610 F.2d 973, 979-80 (D.C. Cir. 1979).

[37] ATVA claims that NAB's argument about repeals by implication is irrelevant because Congress's "determination of a precise 39 percent cap was explicit." ATVA Comments at 21. But ATVA misses the point. Yes, Congress' direction to the FCC to "modify its rules" to change the cap from 35% to 39% was "explicit," but the direction to *change a rule* did not enshrine "39%" into statute and says nothing about the FCC's "broad licensing and regulatory powers" under the Act. *NBC*, 319 U.S. at 214-15 (citing, *inter alia*, Sections 303, 307, 309, and 310 of the Act in upholding FCC's chain broadcasting rules). ATVA is simply wrong in asserting that Congress's direction to the FCC to modify its rule setting forth the level of the national cap "*expressly* displaced the FCC's [statutory] authority." ATVA Comments at 21-22 (emphasis in original). Rather than "express," the alleged displacement of the FCC's licensing and rulemaking power is nonexistent. ATVA similarly asserts that, when Congress adopts specific legislation in an area over which an agency has general regulatory authority, Congress "displaces" that general authority. *Id*. at 15, 21. That would be true ***if*** Congress' action had enshrined "39%" into statute in Section 629(1) and/or had adopted an explicit prohibition on the FCC reviewing and altering the 39% national cap rule in Section 629(3). But Congress did neither, so Section 629 cannot be read as repealing the FCC's broad licensing and rulemaking powers. (ATVA's citation of *Util. Air Reg. Grp. v. EPA*, 573 U.S. 302, 336-37 (2014), suffers from the same flaw, as that case was about the EPA rewriting numerical thresholds expressly set by statute, rather than a statutory direction that an agency amend its rules.) Finally, ATVA completely misreads NAB's reference to Section 201(b) of the Act in an earlier submission that had discussed FCC authority and implied repeals. *See* NAB 2025 Update at 46-47. NAB observed that, in the communications context, the Supreme Court had found that the FCC's general rulemaking authority under Section 201(b) was not displaced by later provisions of the 1996 Act entrusting various tasks to state commissions. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 383-385 (1999) (concluding that the 1996 Act's local competition provisions entrusting several jobs, including establishing rates, to state commissions were "not enough to displace" the FCC's general rulemaking authority in Section 201(b) and that the FCC retained authority to promulgate pricing and other local competition rules). This case is a relevant example of later specific congressional action not displacing FCC general rulemaking authority, but ATVA (at 21) mischaracterizes this brief discussion as NAB claiming that the FCC could "still invoke" its Section 201(b) rulemaking authority to justify taking action on the 39% cap. NAB has not claimed and is not claiming that FCC rulemaking authority under Section 201(b) of the Act is relevant here. The Joint Broadcasters do claim that Section 629 did not repeal the FCC's broad power over station licensing and its rulemaking authority in Sections 303, 307, 308, 309, 310, and 154(i) to adopt, modify, or eliminate ownership regulations, including the national TV rule. *See* ATVA Comments at 22 (also asserting that FCC cannot exercise its § 303(r) rulemaking authority to alter the cap because such action would be "inconsistent with law" and thus beyond the scope of its § 303 authority, but again premising that argument on the erroneous claim that the 39% cap "is prescribed by statute").

Those commenters disputing the FCC's and broadcasters' position commit serious errors in their "interpretation" of the 1996 Act's and the CAA's statutory text. They rely on Section 629(3) because they tacitly realize that Congress did not enshrine the 39 percent cap (or the 35 percent cap before it) into statute.[38] As shown by the FCC's, NAB's, and other broadcasters' statutory analyses, Section 629(3) does not mandate a permanent 39 percent national ownership cap.

First, the opponents of reform assert that Section 629(3) prevents the Commission from ever reviewing or altering the 39 percent national audience reach limit because that subsection removed or excluded it from the FCC's Section 202(h) obligation to review all its ownership rules periodically.[39] But removing an affirmative duty to review the national TV cap every four years is plainly not the same as prohibiting the Commission from ever reviewing the cap again. After all, just because someone isn't required to cook dinner or mow the lawn, it doesn't mean they aren't allowed to do so. As discussed in considerable detail above and in broadcasters' earlier comments, the reform opponents' argument must fail because it is contrary to the text of the statute, which contains nary a hint of any prohibitory language, and "[o]nly the written word is the law."[40]

Second, because certain commenters do not want to accept what the "words on the page" say, they argue about what they believe Congress must have meant in the 2004 CAA,

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[38] *See* NABET-CWA Comments at 14-15; Newsmax Comments at 25, 27, 29; ATVA Comments at 14, 16-17; Free Press Comments at 18-19; NCTA Comments at 2 (comparing Congress' action in the 1996 Act with its action in the CAA and identifying the CAA's treatment of the national cap in the FCC's periodic ownership reviews as the key difference between the two).

[39] NABET-CWA Comments at 14-15; Newsmax Comments at 25, 27; ATVA Comments at 14-19; NCTA Comments at 2; Free Press Comments at 18-19; NHMC Comments at 1; Center for Regulatory Freedom Comments at 4.

[40] *Bostock*, 590 U.S. at 653.

despite the statutory text. In doing so, these opponents of reform commit various errors beyond misreading the statutory text itself. For example, to bolster their claims, certain commenters point to extratextual sources, including press reports, which are irrelevant to any valid statutory analysis.[41] Free Press also dwells on the legislative sausage making following the FCC's adoption of a 45 percent national TV cap in the 2002 biennial review and the eventual inclusion of a rider in the 2004 CAA directing the Commission to amend its rules to set a 39 percent cap.[42] But all this is irrelevant too. Even if appropriate legislative history could effectively refashion the text of Section 629(3) to somehow find a prohibition that isn't there – which it cannot – Free Press cites no language from any Senate or House of Representative committee report and certainly provides no report language indicating that Section 629(3) might potentially mean something other than what it says on its face.[43] In addition, commenters point out what they say are unexpected results or unintended consequences that would flow or could have flowed from the FCC's and broadcasters'

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[41] For example, ATVA (comments at 16) cites Broadcasting & Cable's reporting on the political compromise that lead to the 39% level for the national TV cap, and Free Press (comments at 14, 17) cites Washington Post reporting on the same legislative process, as supposed support for their claim that Congress made the 39% cap permanent. The Supreme Court has recognized that even reliance on the opinions of individual *legislators* is dubious at best, *see, e.g., NLRB v. SW General, Inc*., 580 U.S. 288, 307 (2017), rendering the suggestion that a *news report* can alter the meaning of statutory text truly absurd.

[42] *See* Free Press Comments at 14-17.

[43] Free Press states that the Senate's "final compromise" on the national TV cap in the CAA did not appear in the Conference Report until after the Senate adopted the CAA. But that Conference Report only recites the text of Section 629, which does not support Free Press's cause here. *See* Free Press Comments at 17 n.39, *citing* H.R. Rep. No. 108-401, at 98 (2003). In any event, the Supreme Court appears increasingly skeptical of relying on legislative history at all. *See, e.g., Bostock*, 590 U.S. at 674 (stating that "[l]egislative history, *for those who take it into account*, is meant to clear up ambiguity, not create it") (citation omitted) (emphasis added).

construction of the actual statutory text.[44] But the Supreme Court has rejected this type of so-called statutory analysis, concluding that "suppositions" about congressional "intentions" or "expectations," or complaints about the unexpected operation or result of a statutory reading, cannot alter the meaning of statutory language.[45]

Third, the logic of these commenters' argument sweeps far too broadly. To be clear, they claim that Section 629(3)'s removal of the mandate to review the national TV cap every four years in reviews conducted under Section 202(h) means that the Commission *no longer has any authority to ever review and change the national cap*, even outside the quadrennial reviews. That argument logically implies that Congress in the 1996 Act made Section 202(h) the *only* mechanism by which the FCC is allowed to review its ownership rules, and that the Commission no longer has authority to reexamine the local radio ownership caps, the dual network rule, and the local TV rule *except* as part of the every-four-year reviews under Section 202(h).[46] Although the opponents of reform naturally shy away from the inexorable logic of

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[44] Free Press and ATVA, for example, assert that if the CAA permitted the FCC to modify or eliminate the national TV cap, then immediately after the CAA became law in 2004, the FCC could have initiated a proceeding outside the quadrennial review process to increase the just-set 39% cap. Free Press Comments at 18; ATVA Comments at 14-15, 19. But these commenters overlook the critical point that the FCC did not take that step. Rather than flouting congressional directives, the FCC followed the terms of Section 629 by amending its rules to raise the audience reach cap to 39%, and it has not modified the 39% cap during the past 21 years. Congress' goals, as expressed in the statutory text, thus have been accomplished. Free Press and ATVA also ignore an independent check on FCC action: Reading the statute as allowing the FCC to reform its national TV cap does not mean that the FCC may modify that rule on a whim. Even under the correct interpretation of the CAA, the APA still requires the FCC to show, as the record does in this proceeding, that changes to the rule are justified by changes in the marketplace.

[45] *Bostock*, 590 U.S. at 666, 675-76, 683.

[46] Section 202(h) of the 1996 Act requires the FCC to "review its rules adopted pursuant to" Section 202 (which originally included the national TV cap and still includes the local radio caps under Section 202(b)) "and all of its ownership rules" quadrennially. If the CAA's removal of the national TV cap from this requirement results in the FCC losing all its power to review

their own argument,[47] their flawed construction of the CAA and Section 629(3) means that the Commission can only implement any changes to any of its ownership rules every four years, but otherwise cannot touch them regardless of significant marketplace, technological, or competitive developments. But Congress cannot be presumed to have virtually silently used Section 202(h) to suspend the FCC's power under the 1934 Act to review, revise, and repeal its own ownership rules, which the Supreme Court has upheld since the World War II era. As the Court has repeatedly said, "Congress 'does not alter the fundamental details of a regulatory scheme in vague terms,'"[48] and it would not silently hide the elephant of suspending the FCC's broad licensing and rulemaking authority under the agency's foundational statute in any statutory mousehole, let alone one consisting of an ancillary, less than 200-word rider to an approximately 200,000-word appropriations bill.

Finally, ATVA argues at some length that NAB's interpretation of the CAA as permitting the Commission to review and change the national TV ownership rule just doesn't make sense.[49] But in fact, it is the argument of ATVA and other anti-reform commenters that fails the "common sense" theory of statutory interpretation. Had Congress intended the CAA to

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the national cap, then the FCC's only authority to review the local radio caps and "all of its ownership rules" is under the Section 202(h) quadrennial reviews.

[47] Anti-broadcaster advocates such as Free Press obviously have not thought through the consequences of their argument here. If the FCC's only authority to review all its ownership rules is via Section 202(h)'s quadrennial reviews, then under the Eighth Circuit's recent decision in *Zimmer Radio*, the FCC only has authority to *loosen or repeal* those rules. The Court there found the FCC's *tightening* of the local TV rule to be "in excess of the FCC's authority under Section 202(h)" because that section is "deregulatory." *Zimmer Radio of Mid-Missouri, Inc. v. FCC*, No. 24-1380, at 37-38, 41 (8th Cir. July 23, 2025) (interpreting Section 202(h)'s "two-step process" and concluding that "modify" in the statute cannot be read as permitting the tightening of rules subject 202(h) review).

[48] *Bostock*, 590 U.S. at 680, quoting *Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457, 468 (2001).

[49] *See* ATVA Comments at 15-16, 19, 22.

prevent the Commission from ever again touching the 39% national audience reach cap, then why does the statute merely remove the requirement that the Commission affirmatively review the cap every four years under Section 202(h)? The actual statutory language is not remotely equivalent to prohibiting the Commission from ever reviewing or changing the national cap or from granting applications for TV station licenses if doing so would result in a broadcaster exceeding the 39% audience reach limit. Congress would have – and easily could have – adopted a statute permanently disabling Commission authority if it had so intended. It did not. Instead, Congress made two choices that show intent *not* to remove all FCC authority over the national TV cap: (1) It chose again to direct the FCC to modify its rules, instead of enshrining the 39 percent limit into statute (which would have taken one sentence);[50] and (2) it chose not to *restrict* the FCC *in any way* from reviewing its rule.[51]

In short, reform opponents – because the statutory language fails them – fall back on their opinions and beliefs about congressional intentions as support. But as the Supreme Court has made clear since the time of Chief Justice John Marshall, the "intention of the legislature is to be collected from the words they employ"[52] – and the relevant words of the 1996 Act and the CAA do not say what these commenters wished they said. For all these

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[50] This simple action also would have directly responded to the D.C. Circuit's conclusion that the 1996 Act had not "enshrined the 35% cap in the statute itself." *Fox*, 293 F.3d at 540.

[51] ATVA and other commenters also recite the three subsections in Section 629 to suggest that "well, if Congress went to so much effort," then it must have really meant to prohibit the FCC from any further action on the national TV reach limit. ATVA Comments at 17-19; Free Press Comments at 17-18. But three subsections all lacking any prohibitory language that effectively forestalls FCC action do not add up to a prohibition on the FCC's long-standing statutory authority to regulate ownership of broadcast stations. Multiplication times zero always results in zero.

[52] *U.S. v. Wiltberger*, 18 U.S. 76, 95-96 (1820).

reasons, claims that the CAA prohibits the Commission from reviewing and modifying or repealing the national TV rule cannot stand.

B. Splitting the Statutory Baby Is Not Remotely the "Best Reading" of the Relevant Text

Certain commenters again contend that the Commission should tighten the national TV ownership rule by eliminating the UHF discount, while at the same time still asserting that the FCC lacks statutory authority to alter the 39 percent limit[53] -- even though repealing the discount significantly alters the cap, as the Commission has explicitly and frequently recognized.[54] This "split the statutory baby" approach is outcome determinative, illogical, and contrary to FCC precedent, the CAA's terms, the APA, and the 1934 Act.[55]

To be clear, these commenters are effectively contending that the FCC lacks statutory authority to modify the cap by making it *less* restrictive, but somehow possesses the authority to modify the cap by making it *more* restrictive.[56] This statutory reading should be rejected, as it reflects these parties' longstanding goal to increase restrictions on TV broadcasters and not the actual language and effect of the CAA and the 1996 Act. A desire to impose stricter

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[53] *See, e.g.,* Free Press Comments at 19-21; NABET-CWA Comments at 16-17; Newsmax Comments at 25-26, 29-32.

[54] In multiple decisions, the FCC repeatedly referred to the UHF discount as being a "component," "part," or "element" of the national TV rule and even as being "inextricably linked" to the national cap. Accordingly, the FCC has stated that "[a]ny adjustment to the UHF discount affects compliance with the national audience reach cap" and that elimination of the discount had the effect of "substantially tightening" the cap. *See* NAB 2025 Update at 36-38, citing multiple FCC decisions from 2006 to 2017.

[55] To satisfy the APA and the Act, those commenters advocating for the 39% cap's retention and the UHF discount's elimination would need to (1) acknowledge that they are proposing to effectively alter the ownership cap itself; (2) provide a reasoned analysis supported by evidence for tightening the national cap; and (3) demonstrate that a stricter cap would serve the FCC's public interest goals today, given that the Act requires all FCC regulations, including ownership rules, to serve the public interest. *See* NAB 2025 Update at 38 & n.142; NAB Comments at 23-24.

[56] *See* NAB 2025 Update at 50-52; *see also* NAB Reply Comments at 5-14 (refuting these arguments by, *e.g.*, Free Press, DISH, and Newsmax).

asymmetric ownership rules on broadcast TV stations does not constitute a valid basis for the FCC to alter its consistent interpretation of an unchanged statute.

Specifically, the arguments of those supporting a more restrictive national TV rule by insisting that the Commission is required to retain the 39 percent cap (due to its removal from mandatory quadrennial reviews) but can jettison the UHF discount are contrary to the CAA's text. As stated above, Section 629(3) of the CAA amends Section 202(h) of the 1996 Act by adding a provision stating that Section 202(h) "does not apply to *any rules relating to* the 39 percent national audience reach limitation in subsection (c)(1)(B)."[57] Without doubt, "rules relating" to the 39 percent cap include the UHF discount. The Third Circuit Court of Appeals and the Commission have reached that exact conclusion,[58] and because the UHF discount is a rule "relating to" the national audience reach cap, the court (and the FCC) further concluded that the "discount is insulated" from Section 202(h)'s periodic review requirements.[59]

If one believes that removing the requirement for the FCC to review the national audience reach cap quadrennially means that the Commission has no authority to review or alter the 39 percent cap – as several opponents of reform assert – then by their own logic, the language removing the UHF discount from the required Section 202(h) reviews means

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[57] CAA, Section 629(3) (emphasis added). As a reminder, in Section 629(1) of the CAA, Congress amended Section 202(c)(1)(B) of the 1996 Act by directing the FCC to modify its rules by replacing "35 percent" with "39 percent."

[58] The order concluding the 2006 quadrennial review cited the Third Circuit's decision in *Prometheus I* as "holding that the UHF discount is a rule 'relating to' the national reach limitation" under the terms of the 2004 CAA. *2006 Quadrennial Regulatory Review*, Report and Order and Order on Reconsideration, 23 FCC Rcd 2010, 2084 (2008), *citing Prometheus Radio Project v. FCC*, 373 F.3d 372, 396-97 (3d Cir. 2004) (*Prometheus I*).

[59] *Prometheus I*, 373 F.3d at 397; *2006 Quadrennial Regulatory Review*, 23 FCC Rcd at 2085.

that the Commission similarly lacks any authority to review the discount. To get around this problem, these commenters ignore the actual words in Section 629(3) and pretend that it only refers to the national audience reach cap itself.[60] Free Press flatly asserts that Congress "did not mention the UHF discount in the 2004 CAA," while failing to analyze or even cite the precise language of Section 629(3).[61] The Commission should ignore this unsound "split the statutory baby" argument as it is forestalled by relevant statutory language.

Even assuming, however, one could rationally contend, consistent with the statute, that the FCC has authority to repeal the UHF discount but not to touch the 39 percent cap, the Commission still would have no statutory excuse (or other basis) for ignoring today's fiercely competitive and diverse marketplace and effectively tightening the cap. After all, if the FCC has authority to modify its calculation of national audience reach by repealing the UHF discount, then it also would have authority to change the method of calculating national audience reach in other ways.[62] In fact, Free Press asserts that "Congress left the manner by which a license holder's national reach is determined to the Commission's reasoned judgement."[63]

Let's spin this out a bit further. First, the FCC, while repealing the UHF discount and leaving the 39 percent limit intact, could account for all stations at an audience "reach" level significantly lower than the wholly unrealistic 100 percent, given the highly competitive nature

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[60] *See* NABET-CWA Comments at 16-17; Newsmax Comments at 25-26, 29-30.

[61] Free Press Comments at 21; *accord* Comments of Free Press, MB Docket No. 17-318, at 22 (Mar. 19, 2018).

[62] *See* NAB 2025 Update at 51-52; NAB Reply Comments at 10-11.

[63] Free Press Comments at 19; *see also* NABET-CWA Comments at 16 (stating that Congress in the CAA "offered no guidance in any form as to how the FCC should implement" the 39% limit); Newsmax Comments at 29 (stating that Congress did not mention "how the FCC was to implement the [39%] limit").

of the current marketplace and the arbitrariness of pretending that TV stations effectively reach any level even approaching 100 percent of the TV households in their markets.[64] Or, given that national audience reach generally – and especially at the presumed 100 percent – is a flawed metric lacking connection to the FCC's public interest goals,[65] the FCC could replace presumed audience reach with a different metric for determining compliance with the cap, such as actual viewership, market share, or amount of advertising revenues, as the original rulemaking notice in this proceeding indicated.[66] Third, the Commission could adopt a parallel VHF discount.[67]

Certain parties in this proceeding have tried to "split the statutory baby" three ways to address this hole in their argument by suggesting that the *only* change the FCC could make to

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[64] To determine compliance with the national audience reach cap, a broadcaster is absurdly presumed to "reach" 100% of the TV households in every DMA in which it owns stations. *See* 47 C.F.R. § 73.3555(e)(2)(i) (defining national audience reach as the *total number of TV households in the DMAs in which the relevant stations are located*, divided by the total number of TV households nationwide, and discounting the presumed reach of UHF stations by half). No commenter supporting retention of the 39% cap justifies – and most do not even mention – the irrational 100% reach metric.

[65] *See* NAB 2025 Update at 39-43; NAB 2025 Refresh Comments at 11-12.

[66] Notice of Proposed Rulemaking, 32 FCC Rcd 10785, 10793 (2017). Such metrics appear more closely connected to traditional FCC competition and diversity concerns. *See*, *e.g.*, Letter from Mace Rosenstein, Covington & Burling, to Marlene Dortch, Secretary, FCC, Notice of *Ex Parte* Communication, MB Docket No. 17-318, at 1-2 (Mar. 30, 2018) (discussing the logical inconsistency and inherent inaccuracy of a methodology for calculating national reach based solely on theoretical reach, rather than "penetration," *i.e.*, the number of TV households in a market actually watching a station, and urging the FCC to use an objective measure of actual reach, *e.g.*, ratings, for calculating reach under the national TV cap).

[67] Notice, 32 FCC Rcd at 10794 (seeking comment on the FCC's previous conclusions about adopting a VHF discount); *see, e.g.*, Comments of K.M. Richards Programming Services, MB Docket No. 17-318, at 1 (July 6, 2025) (supporting adoption of VHF discount because it is now VHF stations that are "at a disadvantage").

its calculation methodology would be repealing the UHF discount.[68] The CAA's language, however, cannot reasonably be twisted into an argument that the FCC (1) lacks authority to modify the 39 percent audience reach cap, yet nonetheless (2) possesses the authority to tighten the cap by eliminating the UHF discount, but (3) cannot make other changes to its method of calculating compliance with the cap, especially if doing so would allow greater common ownership of TV stations. Such a tortured interpretation cannot be regarded as the "best reading" of the statutory language under *Loper Bright*.

Finally, these commenters also erroneously claim that eliminating the UHF discount would "reflect the will of Congress"[69] and would "faithfully comply" with the CAA's establishment of a 39 percent cap.[70] The Third Circuit in *Prometheus I* found otherwise, observing that the Commission had long defined "national audience reach" utilizing the UHF discount and that, under Supreme Court precedent, Congress presumably intended "national audience reach" in the CAA to have its administratively defined meaning (i.e., to include the UHF discount).[71] The Third Circuit, moreover, concluded that reducing or eliminating the UHF discount would effectively alter the audience reach limit, thereby undermining Congress' direction to the FCC for its rules to specify "a precise 39% cap"[72] – a cap that certain commenters urging elimination of the UHF discount nonetheless insist cannot be changed.

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[68] NAB Reply Comments at 11-12 (refuting these claims made by Free Press and Newsmax in 2018); *see* Free Press Comments at 19-20 (still objecting to the very idea that the FCC might consider any form of a discount other than the UHF discount).

[69] Newsmax Comments at 29.

[70] Free Press Comments at 21.

[71] *Prometheus I,* 373 F.3d at 396, *citing Bragdon v. Abbott*, 524 U.S. 624, 631 (1998) ("Congress' repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with its pre-existing regulatory interpretations.").

[72] *Prometheus I*, 373 F.3d at 396.

Repealing the UHF discount would neither "reflect the will of Congress" or "faithfully comply" with the CAA.[73]

Despite the length and detail of this discussion, claims that the CAA forbids the Commission from reviewing, modifying, or eliminating the national TV audience reach limit, while still allowing the Commission to repeal the UHF discount, can be satisfactorily refuted in one short answer: "Congress did not write the statute that way."[74] All of the verbiage and strained logic offered by the opponents of reform cannot obscure or overcome that single determinative fact.

C. Beyond Misinterpreting Relevant Statutory Language, Certain Commenters Also Ignore or Completely Misread Recent Case Law

In *Loper Bright*, the Supreme Court concluded that reviewing courts, rather than deferring to agency interpretations of ambiguous statutes under *Chevron*, must use their "traditional tools of statutory construction" to independently determine the "best reading" of statutes.[75] The Court made clear, however, that "courts may – as they have from the start – seek aid from the interpretations of those responsible for implementing particular statutes," emphasizing that agency interpretations issued contemporaneously with the statute in

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[73] Newsmax Comments at 29; Free Press Comments at 21. These two commenters also emphasize the technological obsolescence of the UHF discount. *See* Newsmax Comments at 30-31; Free Press Comments at 20. But the merits or demerits of that particular calculation methodology have no bearing on whether the CAA's text can be construed to support these parties' torturous statutory reading – which it clearly cannot.

[74] *Corley v. U.S.*, 556 U.S. 303, 315 (2009) (citations omitted).

[75] *Loper Bright*, 144 S. Ct. at 2266, 2273 (overruling *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)).

question and "*remain[ing] consistent over time*" may be "especially useful in determining the statute's meaning."[76]

Commenters opposing the FCC's long-standing and consistent interpretation of its statutory authority to revise or repeal the national TV rule understandably ignore this highly relevant language from *Loper Bright* entirely – or even ignore the *fact* that the Commission has consistently maintained it has authority to repeal the rule. Indeed, one commenter thinks that NAB alone has interpreted the 1996 Act and the 2004 CAA in this manner.[77]

Another commenter misreads *Loper Bright*, contending that the case "casts serious doubts on the FCC's ability to act" to alter the national TV rule and indicating that *Chevron*'s overturning somehow changed how the 1996 Act and the CAA should be interpreted and what the "best reading" of the statutes would be.[78] That is incorrect. Nothing in *Loper Bright* changes how the relevant statutory provisions should be construed, nor alters the FCC's conclusion that it has authority to modify or remove the national cap and the UHF discount.[79] *Chevron*'s overruling was about *the court's* role in the process – or more specifically judicial deference to agency interpretations of statutes – not how agencies should interpret statutes, and in fact, *Loper Bright* stressed usage of the "traditional tools of statutory construction."[80] That case in no way affects the FCC's ability to act in this proceeding.

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[76] *Loper Bright*, 144 S. Ct. at 2262 (emphasis added); *see Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944) for the proposition that an agency's statutory interpretation "'consisten[t] with earlier and later pronouncements' has 'power to persuade'"); *see also* NAB Refresh Comments at 28; NAB 2025 Update at 50.

[77] *See* ATVA Comments at 14-22.

[78] FSF Comments at 5-6 (capitalizations in heading eliminated).

[79] *See* NAB Refresh Comments at 28.

[80] *Loper Bright* at 2266, 2268.

Certain commenters also claim that the major questions doctrine prevents the Commission from eliminating the cap.[81] These commenters misunderstand that doctrine and the cases applying it and fail to show that the doctrine supports their position.

The major questions doctrine was created as an exception to *Chevron* and provides that a reviewing court should not apply *Chevron* deference when reviewing an agency's interpretation of an ambiguous statute in "extraordinary cases" where that agency claimed authority to regulate on issues of "deep economic and political significance" in the absence of a clear congressional authorization.[82] *Chevron* deference, of course, no longer exists, so that aspect of the doctrine has lost its relevance.

In addition, while the major questions doctrine applies to instances in which an agency claims "extravagant statutory power over the national economy" in the absence of clear authority from Congress, that is not the case here.[83] The FCC has exercised its general licensing and rulemaking authority over broadcasters' national reach with judicial approval since the 1940s, and when Congress legislated in 1996 and 2004 on the national TV rule it directed the Commission each time to modify its audience reach cap to change the percentage. Thus, Congress recognized the FCC's long-standing regulatory authority in this area by merely directing a modification to an *existing FCC rule*, rather than passing a statute that removed the FCC's 1934 Act authority to regulate the ownership of broadcast stations.

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[81] *See* Newsmax Comments at 27-29; Terry/Carlson/Balderas Comments at 4; *see also* NABET-CWA Comments at 15 (briefly referring to Newsmax's comments raising the major questions doctrine).

[82] *King v. Burwell*, 576 U.S. 473, 485-86 (2015) (citations omitted); *see also Loper Bright*, 144 S. Ct. at 2268-69 (identifying various limitations, including the major questions doctrine, placed on *Chevron* to illustrate the problems with *Chevron* deference and to justify its overturning).

[83] *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

The only real issue contested by commenters here is whether the 2004 CAA (in particular, Section 629(3)) repealed the FCC's authority under the 1934 Act. Indeed, those arguing that the question whether the Commission can change or eliminate the cap is a "major question" assume the correctness of their own position, *viz*. that Congress "codif[ied]" a 39 percent limit[84] – which, as explained above, it did not, either expressly or impliedly. Opponents of repeal thus ask the FCC to turn the doctrine on its head by finding that Section 629 worked a major change to the agency's broadcasting regulatory scheme through the sparse, terse, and oblique language of that provision.

It is also significant that the Supreme Court has applied its doctrine in circumstances markedly different from the present case.[85] For example, the Court has invoked the doctrine when an agency claims to newly "'discover in a long-extant statute an unheralded power' representing a 'transformative expansion in [its] regulatory authority.'"[86] Given that the FCC's power over broadcast ownership regulation has been regularly exercised by the Commission and approved by the Supreme Court since the 1940s, that authority is obviously not newly discovered in a hidden corner of the 1934 Act or vastly expanded upon in this proceeding. In addition, the Court has applied the major questions doctrine when an agency "regulates outside its wheelhouse,"[87] or in cases of "mismatches" between broad invocations of power

[84] Terry/Carlson/Balderas Comments at 4.

[85] *See Biden v. Nebraska*, 600 U.S. 477, 517-520 (2023) (examining the Court's case law in this area) (Barrett, J., concurring).

[86] *West Virginia v. EPA*, 142 S. Ct. 2587, 2610 (2022), quoting *Utility Air,* 573 U.S. at 324; *see Biden v. Nebraska*, 600 U.S. at 519 (citing additional cases).

[87] *Biden v. Nebraska*, 600 U.S. at 518, *citing*, among other cases, *King v. Burwell*, 576 U.S. at 486, in which the IRS – not known for its "expertise in crafting health insurance policy" – had asserted authority to make key decisions about a central part of the Affordable Care Act, which involved billions of dollars in annual spending and affected the price of healthcare insurance for millions of people.

by agencies and the narrow statutes that purport to delegate that power.[88] Neither of those circumstances are present here. The Commission is clearly not regulating outside its area of expertise, nor is it invoking expansive power from a narrow statute, as the 1934 Act gives the Commission "broad statutory authority to regulate broadcast media."[89]

For these reasons, the major questions doctrine does not support retention of the national cap. The few commenters referencing the doctrine fail to discuss any of the issues identified by the Joint Broadcasters, fail to address the doctrine in any detail, and/or do not analyze or misapply the only cases they cite.[90]

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[88] *Biden v. Nebraska*, 600 U.S. at 517-18, *citing*, among other cases, *West Virginia v. EPA*, 142 S. Ct. at 2613, in which the EPA had relied on a "previously little-used backwater" provision in the Clean Air Act to justify its rule that would restructure the entire country's mix of electricity generation.

[89] *FCC v. Prometheus Radio Project*, 141 S. Ct. 1150, 1155 (2021).

[90] Newsmax relies on *Biden v. Nebraska*, contending that this case makes clear that the FCC, under the major questions doctrine, cannot alter the 39% national cap. Newsmax Comments at 27-28. It does not. In *Biden*, the Court found that the Secretary of Education lacked authority to cancel hundreds of billions of student loan principal under a statute that only allowed the Secretary, in connection with a national emergency, to "waive or modify" certain existing provisions. The case turned on the meaning of "modify" under that specific statute, which the Court found did not give the Secretary authority "to rewrite th[e] statute from the ground up" to the tune of costing taxpayers around $500 billion. *Biden v. Nebraska*, 600 U.S. at 494, 502; *see also* Newsmax Comments at 28 (erroneously citing *MCI Telecomms. Corp. v. AT&T*, 512 U.S. 218, 225 (1994), which construed a statutory provision allowing the FCC to "modify any requirement" in Section 203(b)(2) of the Act). In contrast, eliminating the national TV rule will cost taxpayers nothing, and the FCC has broad authority under the 1934 Act to adopt, maintain, modify, or repeal broadcast ownership rules. Again, Newsmax's argument is not really about the major questions doctrine but the flawed one discussed above, i.e., that Section 629(3) of the CAA somehow repealed the FCC's authority under the 1934 Act, which, as shown in Section II.A., it did not. The Terry/Carlson/Balderas Comments (at 4) very briefly reference *King v. Burwell* and *West Virginia v. EPA*, but do not examine those cases or explain how they support the commenters' position.

III. PARTIES SUPPORTING OUTDATED ASYMMETRIC REGULATION OF BROADCAST TELEVISION IGNORE OR OBFUSCATE MARKETPLACE REALITIES OR EVEN INADVERTENTLY SUPPORT THE CASE FOR REPEAL OF THE NATIONAL TV RULE

The record shows that the national TV ownership cap constrains broadcasters from serving TV households nationwide, restricting their ability to effectively compete for audiences, advertising revenues, high-quality and costly programming, and investment against regulatorily unencumbered platforms with national and even global scale. As a result, the national TV rule now seriously hinders rather than serves the FCC's goals and significantly impairs local TV stations' provision of their most important public service – offering news, emergency information, and valued entertainment and sports programming in local communities across the country, free to all viewers. For the reasons discussed below, certain commenters' contentions that the antiquated national TV rule remains necessary today to promote the traditional public interest values of competition, viewpoint diversity, and localism – despite the FCC's conclusion to the contrary 41 years ago with regard to competition and viewpoint diversity – are unavailing.[91] Indeed, their current filings are just another version of what they and other parties reflexively opposed to any reform of asymmetric broadcast restrictions have said for decades.

[91] The FCC should reject attempts to expand the concerns implicated by the national TV rule to include the labor market and workers' wages and benefits. *See* NABET-CWA Comments at 2-4. These issues are far afield from the FCC's expertise and purview and should not be considered. The Fifth Circuit Court of Appeals recently held that the "FCC's public-interest authority must be interpreted in light of the 'targets' of the Communications Act." *Nat'l Religious Broad., et al. v. FCC,* 138 F. 4th 282, 292 (5th Cir. 2025) (concluding that the collection of employment data under the EEO rules was not one of the FCC's functions under the Act). Clearly, the labor market is not one of the "targets" of the Act and, thus, the FCC's public interest authority does not stretch to adopting or retaining rules to address concerns about workers and employment.

A. The Rule Is Not Necessary to Promote Localism But Instead Impedes TV Stations' Provision of Quality Programming, Including Local News and Sports, to Viewers Everywhere

The record demonstrates that in today's marketplace, the national television ownership cap affirmatively harms localism. By preventing broadcasters from achieving scale, the rule impedes their ability to acquire and produce quality programming of all types and to earn the advertising revenues needed to support locally oriented programming offered at no cost to the public. Allowing TV broadcasters to offer larger, nationwide audiences to advertisers and to program distributors would enhance their attractiveness in both the advertising and video programming markets and enable broadcasters to better serve viewers in all their communities.

A wide range of broadcasters echo these concerns. Univision states that its current reach is what has allowed it to invest in the programming that has made it successful and that economies of scale permitted by national audience reach are critical to investing in localism.[92] Nexstar provides specific examples of improvements in local programming as a result of station acquisitions that expanded its national reach, observing that over the course of the five years following its acquisition of Tribune, it increased local news coverage by more than 28,000 hours annually, earning hundreds of journalism awards.[93] Commenters also

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[92] Comments of Univision Communications, Inc., MB Docket No. 17-318, at 3 (Aug. 4, 2025).

[93] Nexstar Comments at 13. Nexstar also expanded other forms of local content by nearly 10,000 hours per year during that period. *Id*. Other commenters provide specific examples of their investment in local service. For example, Sinclair employs approximately 3,000 people across its newsrooms, including 1,200 journalists, and produces more than 2,500 hours of local news programming per week, representing an investment of more than $300 million per year. Comments of Sinclair Inc., MB Docket No. 17-318, at 8 (Aug. 4, 2025). FTS states that its stations collectively produce nearly 1,200 hours of local news programming per week, equating to approximately 60-80 hours per station per week. Comments of Fox Television Stations, LLC (FTS), MB Docket No. 17-318, at 4 (Aug. 4, 2025). In addition to traditional local news, FTS stations, such as Station WTTG in Washington, D.C., air "innovative locally produced and locally focused programs" on a daily and weekly basis. *Id*.

emphasize that eliminating the artificial national ownership cap will allow broadcasters to gain sufficient scale to fully support the infrastructure investment necessary to fully deploy ATSC 3.0 and ensure that all consumers can realize its benefits.[94] Multiple commenters emphasize the urgency of modifying the cap, given that broadcasting is alone among its competitors in providing locally-oriented content.[95] Without reforms that allow broadcasters a reasonable opportunity to compete, commenters are concerned that TV broadcasters may go the way of newspapers, thereby "ending localism and local news for good."[96]

Television broadcasters have every incentive to provide their communities of license with locally-oriented content to distinguish themselves from the unprecedented number of competing outlets readily available to consumers, thereby attracting audiences and advertising revenues.[97] Indeed, the Commission elsewhere has recognized that "[l]ocal news programming, and the advertising presented alongside it, are vital to broadcast stations."[98] Thus, those broadcasters that do not air locally originated news or that have had to make

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[94] Comments of Trinity Broadcasting Network, MB Docket No. 17-318, at 7 (Aug. 4, 2025).

[95] *See, e.g.,* FTS Comments at 5 ("by constraining local television stations' ability to compete on a level playing field with other providers of video programming, the National Cap harms the only competitors in the marketplace that support the Commission's localism goal"); Trinity Broadcasting at 6 (Aug. 4, 2025) (broadcast television's competitors like Big Tech and streaming services "do not share broadcasters' commitment to local audiences and do not engage with local citizens"); Letter from Tim Nelson of Brooks Pierce, LLP on behalf of Graham Media Group, News-Press & Gazette Company, Morgan Murphy Media, Hearst Television Inc., Gray Media, Inc., TEGNA Inc., E.W. Scripps Company and Cox Media Group to Marlene H. Dortch, Secretary, FCC, MB Docket Nos. 17-318, *et al*. (Apr. 28, 2025) (local television broadcast stations "are the first, and in many instances the only, source of free, factual, relevant, timely, and trusted local news, weather, traffic, public affairs, and emergency video programming").

[96] Sinclair Comments at 2, 9-11; *accord* Comments of Entravision Communications Corp., MB Docket No. 17-318, at 3-4 (Aug. 4, 2025).

[97] *See* NAB 2025 Update at 31-32.

[98] *2024 Communications Marketplace Report*, 39 FCC Rcd 14116, 14283 ¶ 261 (2024).

difficult decisions regarding maintaining independent local news operations did not make those decisions due to a lack of commitment to serving their local communities; but rather, to the lack of resources and/or their inability to economically sustain news operations in a highly competitive marketplace.[99]

Despite the extensive record evidence of broadcasters' incentives to distinguish themselves from their competitors by offering local news and other locally focused programming and evidence of increases in the amount of local news offered following previous changes in the rules that allowed broadcasters to gain scale, certain commenters still assert that expanding national reach will somehow reduce local news production or otherwise harm localism. These claims are discussed and debunked below.

1. Commenters That Support Retention of the National Cap Fail to Controvert Extensive Evidence that Eliminating the Cap will Promote Localism

A few commenters contend that retaining the cap is the only means to promote localism. Their views lack any record support and are completely divorced from the economic realities of station ownership and operations or the competitive realities of attempting to sell advertising against Big Tech behemoths.

For example, Free Press erroneously and simplistically assumes that the only way broadcasters can maximize profits is to focus on the cost side of the equation. But to drive growth, stations must primarily aim to increase their revenue. For example, Univision observes that:

> [Our] own history and the record in this proceeding demonstrate that the economies of scale permitted by national audience reach

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[99] A 2021 study by the FCC's Office of Economics and Analytics (OEA) found a strong relationship between the number of independent local TV news operations in a market and market size, with only a limited number of large markets able to support four independent news operations. K. Makuch and J. Levy, *Market Size and Local Television News*, OEA Working Paper 52, at 4, 21 (Jan. 15, 2021).

> is precisely what enables these owners to invest in localism. UCI's current reach has enabled it to invest further in Univision's high-quality Spanish-language television programming such that the network ranks number one among Hispanic Americans, regardless of language, and its locally owned and operated Univision and UniMas stations are routinely recognized for their outstanding locally produced news and other content.[100]

Even a station interested in cutting costs, if it also focused on maximizing profits, it would not cut revenue-growing investments. As many broadcasters have noted, local news is one of the competitive differentiators for broadcast TV stations desperately trying to compete. So why would stations that feel the ever-present heat of competition from pay TV, streaming services, and social media and technology platforms produce *less* content that attracts viewers to their channels?

Free Press attempts to connect the dots by claiming that broadcast TV stations are cutting costs by skimping on original reporting and playing up partisan and sensationalist content and national content – notably because good journalism isn't as attractive to viewers as "infotainment fare."[101] To buttress its faulty conclusions, Free Press cites a study by Gregory Martin and Joshua McCrain. But in its 2022 Update, NAB thoroughly refuted this study:[102]

- The Martin-McCrain Paper relies on an extremely small sample of TV stations – looking at changes in just 10 commercial stations over a very limited period. This corresponds to less than three-quarters of one percent of all U.S. commercial TV stations. The paper also looked at one modest transaction involving one station owner. Therefore, this is not a serious study: consider the sampling basis (and bias) and statistical significance for starters.

- Had the paper exclusively used just one transaction to make descriptive claims about that single transaction, that would be one thing. But the paper went much further,

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[100] Univision Comments at 3.

[101] Free Press Comments at 41. *See also* ATVA Comments at 12.

[102] NAB 2022 Update at 19-27 (analyzing Gregory J. Martin & Joshua McCrain, *Local News and National Politics*, Am. Pol. Sci. Rev. 372 (2019)).

making broad and unproven assertions about how consolidation affects local TV news content writ large and the alleged tendency of large station groups to shift away from local news coverage towards more national news coverage.

- As a comparison group, the paper compares the cohort with other stations, but it did not identify those other stations. Without knowing the identity of the other stations, we cannot reasonably draw conclusions about what impact large group ownership might have, if any, on the type and skew of news presented.

For these and additional reasons, the Martin-McCrain paper has fundamental limitations that make it inappropriate for drawing broad-based takeaways concerning the Commission eliminating its 39 percent national cap.

Free Press also relies heavily (but very selectively) upon a report by the Shorenstein Center, which conducted a survey of local commercial TV stations inquiring about the competitive and other characteristics of stations' markets; stations' news hours, staffing, and challenges; and stations' potential expansion of their news coverage, especially digitally, and their constraints in doing so.[103] This survey did not (and did not purport to) compare the views of news directors and station managers before and after any station mergers or across ownership group sizes. The Shorenstein Report's usefulness in judging the impacts of changes in station groups' national reach therefore is very limited, at best.

Even when Free Press finds survey responses that seem to fit its biased narrative, that is often because Free Press misinterprets the question and/or the response. For example, a respondent's subjective view that the quality of news in a local market has declined in recent years has no bearing on whether national TV ownership concentration affects localism because the question asked respondents to consider "*all* TV, radio, print, and digital news

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[103] Free Press Comments at 47, *citing* Thomas E. Patterson, *Can They Do Good and Still Do Well? Local TV Stations and Communities' Information Needs*, Harv. Kennedy Sch. Shorenstein Ctr. on Media, Pol. & Pub. Pol'y (June 2025), available at: https://shorensteincenter.org/wp-content/uploads/2025/06/TV-News-Study_Patterson_June-Final.pdf (Shorenstein Report).

outlets in your news market with the exception of your station" (emphasis added).[104] The Joint Broadcasters agree that because of the crisis in the newspaper industry, the quality of news in many local markets has overall declined, but that says nothing about common ownership of TV stations, either nationally or locally. Rather, it points to the need for the Commission to remove asymmetric ownership restrictions that impair the competitiveness of broadcast television in today's marketplace, so that local TV stations can try to better fill the gap left by the print industry's decline.

Free Press also seizes on responses to a question about stations' use of outside content, contending they prove that large station groups are less likely to produce their own content.[105] But this conclusion is based on an imprecise review of the Report's results (and/or imprecision in the Report itself). First, most stations surveyed (68 percent) said they used "not much" (17 percent) or only "some" (51 percent) outside content, so this is already a relatively uncommon practice. The Shorenstein Report states that those stations who relied "quite a bit" (28 percent) or "a lot" (6 percent) on external sources are more likely to be part of "large" station groups.[106] The station groups identified as "large" for purposes of analyzing responses to this question, however, are wide-ranging in size, and include one station group

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[104] *Compare* Free Press Comments at 47 (citing Shorenstein Report for proposition that 60% of respondents viewed local news as in decline), *with* Shorenstein Report at Appendix A, Question 10 (asking respondents to consider all TV, radio, print, and digital news outlets); *see also* Shorenstein Report at 7.

[105] Free Press Comments at 42-43. *See also* ATVA Comments at 11-12.

[106] Shorenstein Report at 13. The report identifies respondents from Allen Media Group, Sinclair, and Gray as those who are "part of a large ownership group" for purposes of its analysis of responses to this question, but Allen Media Group is very different in size from the other two, making it unclear whether size is actually a factor in whether stations choose to rely on external sources of content.

that reaches only 3.2 percent of U.S. households.[107] The Report also identifies another group of respondents, only 26 percent of whom report relying on external sources of information "quite a bit" or "a lot,"[108] and each of them works at a station group with national reach ranging from approximately 20-26 percent.[109] This makes it entirely unclear whether a station group's size is actually a factor at all in whether stations choose to rely on external sources of content. Given these flaws, the Commission should not rely upon these data as evidence that small or large groups are more or less likely to use external content.

The staffing and budgetary challenges discussed by some of the respondents in the Shorenstein Report and quoted by Free Press are precisely the kinds of challenges stations are seeking to address by realizing greater economies of scale and scope.[110] Ironically, one of the solutions to the challenges faced by local news departments that the Report puts forth is anathema to Free Press: sharing of station resources, particularly as it concerns news production.[111] Needless to say, Free Press *did not* mention the Shorenstein Report's discussion of the value of any form of sharing or collaboration by TV stations.

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[107] *See TVN's Top 30 Station Groups: A Volatile Year Delivered Few Changes*, TVNewsCheck (Aug. 28, 2024), available at: https://tvnewscheck.com/business/article/tvns-top-30-station-groups-a-volatile-year-delivered-few-changes/ (TVN Group List).

[108] Shorenstein Report at 13 (discussing responses from those employed at stations owned and operated by one of the four largest broadcast networks).

[109] *See* TVN Group List.

[110] *See* Free Press Comments at 47-48; Shorenstein Report at 27-28.

[111] Shorenstein Report at 26-27. The report states that: "A promising avenue for support within stations' control is partnering with other news organizations . . . ," with one news director observing that "partnerships are critical to expand coverage areas, quality of stories, depth of investigative stories, number of stories, and overall benefit to the public." *Id.* While sharing arrangements are generally more relevant to achieving efficiencies in local markets (not nationally) and are *not* a substitute for more comprehensive and permanent forms of ownership relief, the Report's significant discussion of the public interest benefits of sharing arrangements stands in stark contrast to Free Press's longstanding opposition to them.

While Free Press tries to contort the Shorenstein Report into some sort of defense of the national cap rule, the Report generally verifies what broadcast TV stations have said about the challenges they face competing in the broader media ecosystem, and their commitment to localism despite these challenges. Free Press does not acknowledge any aspects of the Report that does not fit its image of broadcasters as modern-day robber-barons.

For example, given its stated position that news should support the functions of a democracy,[112] one would think Free Press would be interested in the fact that four of the top five areas of increasing focus in local news coverage included schools, politics and elections, business and economy, and government/officials, but it did not cite these data.[113] Free Press also disregards the Shorenstein Report's finding that an overwhelming majority of respondents (93 percent) state that their stations "adhere[] to the traditional model of impartial reporting rather than tilting to the left or right,"[114] contrary to Free Press's ideologically-based and unproven assumption that large ownership groups emphasize "partisan and sensationalistic content."[115] Free Press also ignores that Shorenstein Report respondents further identified increases in enterprise journalism (49 percent), investigative reporting (45 percent), and community journalism (29 percent), leading the Report to conclude that "[o]verall, the trend is in a direction that can deepen residents' understanding

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[112] Free Press Comments at 21-25.

[113] Shorenstein Report at 20-21, Fig. 8.

[114] Shorenstein Report at 14.

[115] Free Press Comments at 41 and n.115. Free Press also forgot to cite the Shorenstein Report's finding that only 9% of respondents stated that "intrusion of national politics on local politics/issues" was a "very significant" issue in their station's policies and planning, and two-thirds deemed it insignificant. Shorenstein Report at 14. This would contradict Free Press's view that media concentration results in "substitution of local coverage with national content." Free Press Comments at 41 and n.115.

of their community."[116] In short, broadcast TV stations continue to deliver local news to the best of their ability with the resources they have, but as news directors and station managers attest, additional resources are needed to support more investment in local news operations.

Free Press additionally places great weight on its own analysis of RTDNA data showing that fewer stations originate local news in 2025 than did in 1996,[117] but ignores RTDNA data showing that the percentage of TV stations reporting that their local news operations show a profit dropped from 72 percent in 1996 to only half in 2025.[118] RTDNA's numbers do not support the notion that the national cap is "working." If anything, these numbers demonstrate the peril of continuing to impede broadcasters' ability to invest further in news and other local programming. Not only does the selectively chosen factoid touted by Free Press say nothing relevant about the national cap, but also it is quite remarkable that so many local stations have managed to maintain their local news operations considering the daunting competitive challenges and financial pressures faced by broadcasters over this period.

Free Press also complains that an increasing number of stations began airing local news programming that originated on another station during this period.[119] Free Press does not explain why the Commission should treat the airing of news programming from another

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[116] Shorenstein Report at 22. Per the report, enterprise journalism involves stories that reporters pursue independently without relying on external prompts like press releases or news conferences; community journalism focuses on covering local neighborhoods and groups; and investigative reporting seeks to uncover developments that are not readily evident.

[117] Free Press Comments at 39-40 and Fig. 2 (finding that 51 fewer stations originated local news in 2025 compared to 1996). NAB has not verified the results of the Free Press analysis.

[118] NAB Refresh Comments at 21, *citing* B. Papper, K. Henderson, and T. Mirabito, RTDNA/Syracuse University, *TV news profitability drops to lowest level since 2010*, at 1 (July 28, 2025) (reporting that the number of local news operations showing a profit declined over RTDNA's last three surveys).

[119] Free Press Comments at 39-40 and Fig. 2 (the number of stations airing local news originated by another station increased from 18 in 1995 to 422 in 2025).

station as a public interest harm, particularly given that, as Free Press acknowledges, this may result in the availability of news on "stations that . . . never had any local news to begin with" or stations that have had to cease producing their own local news.[120] A station airing local news provided by another station gives additional options for viewing news on different channels at different times of the day and results in more viewers watching local news. Moreover, the local news programming aired by the originating station and the receiving station often differ in certain respects and are not identical.[121] By treating the airing of news that does not originate on a station as if it does not "count," Free Press is simply refusing to acknowledge the reality that not every station can economically sustain independent local news operations, even though it is in every station's interest to do so.[122] In any event, Free Press, despite droning on about the Yanich & Bagozzi Study, still fails to show how or why a report overwhelmingly about same-market news sharing arrangements has any relevance for the national cap.

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[120] *Id.* at 40.

[121] Free Press Comments at 43-46, *citing* Danilo Yanich & Benjamin E. Bagozzi, *Reusing the News: Duplicating Local TV Content*, SNF Ithaca Research Report, at 33 (Aug. 2025) (Yanich & Bagozzi Study) (study of news content supplied by another television station demonstrates that an average of approximately 69% of the content was duplicative during the time period studied). Free Press apparently believes that the Yanich & Bagozzi Study has significant implications for national television ownership (Free Press Comments at 43-46), but the study does not purport to analyze the current or potential effects of national concentration. Among other things, only 13 of the 96 combinations studied involved supply of local news to a station in a different market. It also does not seem surprising that a study of stations receiving and airing news provided by another station would yield a finding that some (or even much) of the news content is duplicative.

[122] *See* OEA, *Market Size and Local Television News*, Work Paper 52 at 4, 21 (finding that only a limited number of larger markets can support four independent local news operations, and concluding that even a merger that eliminated a source of local news programming – which would likely be a "local" merger between two same-market TV stations, rather than a "national" merger – may be optimal, if the merged entity enhances the quality or increases the amount of local news).

Moreover, Free Press's data do not controvert evidence in the record that television stations originating local news increased the amount of local news aired by 54 percent from 2003 (when the cap was 35 percent) to 2016.[123] Currently, stations that provide news air an average of 6.5 hours of local news each weekday, 2.4 hours on Saturday, and 2.5 hours on Sunday, for an average total of 37.4 hours of local news per week.[124] That represents a 76.4 percent increase in the amount of local news aired from 2003, showing that scale encourages, not discourages, local news production.[125] Free Press also does not dispute NAB's detailed data showing that greater common ownership of TV stations has significantly increased the amount of local news provided to audiences. From November 2011-November 2023, as TV station groups producing/airing news increased in scale but decreased in number (from 140 separate groups to 62), the number of local news telecasts and hours of local news increased by 41.7 percent and 49.7 percent, respectively.[126]

In support of its view that localism will decline if the Commission eliminates or modifies the national cap, Free Press shuns the most straightforward logic and attempts to use a rudimentary understanding of economics to intuit broadcast TV stations' post-merger incentives. Free Press imagines that because a business must minimize costs and maximize revenues, national expansion will undoubtedly lead to newsroom cuts and thus less local news. Not so, as the Joint Broadcasters have shown.

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[123] NAB Comments at 21; *accord* NAB 2025 Update at 29-30.

[124] B. Papper, K. Henderson, and T. Mirabito, *Amount of local news stays steady – for a change*, RTDNA/Syracuse University, at 1 (July 21, 2025).

[125] In 2003, TV stations aired, on average, 3.7 hours of local news on weekdays, 1.4 hours on Saturday, and 1.3 hours on Sunday, totaling an average of 21.2 hours of local news per week. *See* NAB Comments at 21, *citing* 2004 RTNDA/Ball State University newsroom survey.

[126] NAB Refresh Comments at 22, *citing* NAB Staff Analysis of Nielsen and BIA MAPro data (providing detail on numbers of telecasts and numbers of local news hours); *accord* NAB 2025 Update at 30.

Like Free Press, ATVA tries (and fails) to argue that localism will be disserved by elimination of the national cap, citing a 2021 filing it submitted to attempt to refute a 2020 broadcaster study on the impact of changes in *local* TV ownership concentration on local news output.[127] This study already has been refuted in the 2018 quadrennial review proceeding by multiple commenters.[128] Moreover, even if its assertions had been accurate (which they were not), none of them have any bearing on whether changes to the *national* TV ownership cap would affect local news. The Joint Broadcasters urge the Commission to disregard ATVA's self-serving calls to retain or even further tighten the grip of regulation on broadcasters while ATVA's benefactors continue to seek relief from regulation at every opportunity. Neither ATVA nor any other commenter has presented data to counter the extensive record evidence that the national cap is impeding broadcasters' ability to invest in locally focused programming to serve their communities of license.

2. Contrary to the Views of Free Press, Artificially Weakening Broadcasters' Competitive Position in the Marketplace Does Not Promote Localism

As a corollary to its unsupported argument that eliminating the national cap will lead to less news, Free Press claims that broadcast TV station groups are profitable and therefore do not require elimination of the national cap.[129] It contends that consolidation increases profits, which is good for shareholders, but apparently cannot "map cleanly onto" the public interest, is maybe "orthogonal" to the public interest, but more likely is "diametrically" opposed to the

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[127] ATVA Comments at 11, *citing* Comments of ATVA, MB Docket No. 18-349 (Sept. 2, 2021) at Exhibit A, Thomas N. Hubbard Comments on Dr. Mark R. Fratrik's "The Impact on the Amount of News Programming from Consolidation in the Local Television Station Industry."

[128] *See, e.g.,* NAB Reply Comments, MB Docket No. 18-349, at 37-44 (Oct. 2, 2021); Comments of Gray Television, Inc., MB Docket No. 18-349, at 41-44 (Oct. 2, 2021); *id.* at Exhibit A, Response to Dr. Thomas Hubbard's Comments on the Gray Television News Programming Study.

[129] Free Press Comments at 42, 52-58, 77-92. *See also* ATVA Comments at 9-10.

public interest.[130] Too bad Pythagoras isn't around to help us identify the correct geometrical relationship. While brooding about how for-profit companies trying to make a profit while providing high quality local news and other programming to the public aren't serving the public interest well enough, Free Press wistfully observes that even though broadcast TV stations are seeing a secular decline in viewers, "this particular decline is not a cause for great concern."[131]

It is worth pausing at this point as we come to the end of Free Press's disorienting logic and unpack what it really has said. Free Press claims that offering local news to the public is a critical feature of local broadcast TV stations;[132] and in fact, it is so important to viewers that it influences how voters make political decisions.[133] But also, people apparently don't really love high quality news that much,[134] which is why viewing audiences are declining.[135] So notwithstanding how wonderful, important, and indeed critical the news is to voters, making great, attractive local news programs isn't good business for broadcast TV stations. And so national broadcast TV station groups (which, for some reason, face totally different incentives than stations operating in one geographic area or in a smaller region) will want to diminish the competitive differentiator that makes them wonderful, important, and highly desirable to voters . . . all to become more profitable. On Free Press's telling, broadcast TV stations will want to cut out their hearts to save the body. This makes no sense.

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[130] Free Press Comments at 42.
[131] *Id*. at 76.
[132] *Id*. at 22.
[133] *Id*. at 21-25.
[134] *Id*. at 41.
[135] *Id*.

The better logical construct is "Occam's Razor": The simplest explanation is often the best one. Broadcast TV stations invest in the news because it is a critical piece of what they offer to the public. And as for-profit entities, they offer high-quality local news because it is a competitive differentiator that sets apart one station from other stations and also sets broadcast stations apart from pay TV, social media, technology platforms, and streaming services. TV broadcasters aren't trying to destroy the feature of their programming that makes them desirable; they want to eliminate the national cap so they can offer more, better local news (and other popular locally-oriented programming, including sports) to the viewing public all across the country.

Finally, the Joint Broadcasters address what Free Press wants to say but (badly) tries to say *sotto voce*: Broadcast stations shouldn't try to be profitable, or at least not *too* profitable, because of their public interest obligations.[136] Broadcast TV stations are for-profit entities. That is the paradigm Congress created. The best way to ensure the continued vitality of local news operations is to put TV broadcasters in the best position to spread costs and generate new revenue opportunities, including but not limited to increasing advertising revenues, to improve their stations' financial condition. There has been a substantial secular decline in broadcast TV stations' real advertising revenues over two decades.[137] This trend is not

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[136] *See* Free Press Comments at 71-87. Free Press contends (at 77-85) that the historical financial performance of the five largest TV station groups "generally shows positive results." But their purported "analysis" of broadcasters' historical performance improperly cherry-picks time periods as far back as the mid-1990s and 2024, thereby conflating growth from mergers and acquisitions (of which there were many between 2011 and 2021) with actual growth in the industry and therefore should be disregarded.

[137] NAB Refresh Comments at 13-19; NAB 2025 Update at 15-21; *see* BIA Advisory Services, *BIA 2025 Forecast Update: $169 Billion in U.S. Local Advertising and 2.4% Year-Over-Year Decline* (Aug. 13, 2025) (cutting $3.5 billion from its forecast of local advertising dollars to be spent on traditional media in 2025, while raising its forecast for local ad spending on digital by almost $1 billion in part due to "the ongoing fragmentation of the media landscape").

reversing. It is imperative the Commission eliminates ownership restrictions and other rules that hobble broadcast TV stations to at least somewhat level the playing field for broadcasters vis-à-vis their competitors.[138]

While trying to manufacture a factual dispute by claiming broadcast TV stations are in fact very profitable, Free Press ignores the reality that many individual stations struggle financially with very thin margins (or are unprofitable) and cannot properly support independent local news operations.[139] According to RTDNA, as noted above, only about half of

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[138] The most recent financial reports of top broadcast television station groups show significant declines. *See, e.g.*, Nexstar, Second Quarter 2025 Earnings Release, at 3 (Aug. 7, 2025), https://tinyurl.com/39zdvejz (reporting 3.2% decrease in overall revenues, including a 9% drop in advertising revenue); Gray Media, Gray Media Announces Second Quarter Financial Results, at 1 (Aug. 8, 2025), https://graytv.gcs-web.com/static-files/685c327c-9167-4ae4-ac3c-8b3635947727 (reporting 7% decrease in total revenues, 3% decrease in core (non-political) advertising revenue, and 81% decrease in political advertising revenue); The E.W. Scripps Company, Scripps Reports Q2 2025 Financial Results (Aug. 7, 2025), https://tinyurl.com/rjntv337 (reporting 5.8% decrease in total revenue, 8.3% decrease in local media revenue, 1.9% decrease in core (non-political) advertising revenue); TEGNA Inc., TEGNA Inc. Reports Second Quarter 2025 Results and Provides Third Quarter Guidance (Aug. 7, 2025), https://tinyurl.com/35rzyz78 (reporting 5% decrease in total revenue). Broadcast station owners experienced these losses while MVPDs and Big Tech saw increased revenue. *See, e.g.*, Meta Reports Second Quarter 2025 Results (July 30, 2025), https://tinyurl.com/ymrachjj (22% revenue increase); Alphabet Announces Second Quarter 2025 Results (July 23, 2025), https://tinyurl.com/ye22pf3h (14% revenue increase); Comcast, Comcast Reports 2nd Quarter 2025 Results (July 31, 2025), https://tinyurl.com/euz9z4t6 (2.1% revenue increase). Although part of broadcasters' 2025 revenue declines flows from lower political advertising revenue in a non-election year, they still experienced declines even excluding political, and the increased popularity of streaming and other digital platforms is impacting political spending as well. *See* Brennan Center, *Online Ad Spending in 2024 Election Totaled at Least $1.9 Billion* (July 2, 2025), https://tinyurl.com/52a6u6dy (reporting that political advertisers spent $1.9 billion on online ads across Meta, Google, Snap, and X, while millions were spent by political candidates on digital content creators and influencers).

[139] Free Press also argues that certain broadcast station groups' share prices have risen significantly. Free Press Comments at 79-80. As a starting point for its stock-price argument, Free Press uses March 2009 and calculates the overall share appreciation from that cherry-picked starting point. But why not start the analysis when more major streaming platforms launched in 2019? If you rewind the clock back just five years, for example, Sinclair, Scripps, and Gray had flat or falling stock values while the S&P 500 has significantly

TV stations now report that their local news operations show a profit, a significant decline over time.[140] And when local news operations or stations themselves are unprofitable – as more frequently occurs in smaller markets with limited available ad revenues[141] – sharing resources within the station group and spreading fixed costs is the best way to ensure broadcast stations remain viable and able to provide quality programming. Yet again, Free Press's favored Shorenstein Report highlights the daftness of its position. As the Report notes:

> Stations with limited staff can struggle to maintain their current programming and cannot easily make the initial investment required to develop meaningful, productive partnerships. Although joint efforts increase capacity over time, they demand an upfront investment that can be difficult to manage. TV stations in our survey with a staff of twenty-five or fewer were 28 percent less likely than other stations to have partnered with news outlets.[142]

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risen. *Compare* Sinclair, Inc. (SBGI) (retrieved Aug. 20, 2025) (stock price and chart), https://finance.yahoo.com/quote/SBGI/, *and* The E.W. Scripps Company (SSP) (retrieved Aug. 20, 2025) (stock price and chart), https://finance.yahoo.com/quote/SSP/, *and* Gray Media, Inc. (GTN) (retrieved Aug. 20, 2025) (stock price and chart), https://finance.yahoo.com/quote/GTN/, *with* S&P 500 (^GPSC) (retrieved Aug. 20, 2025) (market value and chart), https://finance.yahoo.com/quote/%5EGSPC/ (showing a flat or share price decline for Sinclair, Scripps, and Gray over the past five years while there is a sharp increase in the S&P 500). Or why not start the analysis when HBO Now was introduced in 2015? Free Press strategically picks a date that predates the entry of several major streaming platforms and thus does not account for the recent significant upswing in competition from Big Tech and streaming media companies.

[140] NAB Refresh Comments at 21-22.

[141] NAB 2025 Update at 17-18 (showing that in 2023, the average TV station in DMAs 151-210, 101-150, and 51-100 earned merely 10.8%, 15.3%, and 21.7%, respectively, of the revenues earned by the average station in the ten largest DMAs); *see also* NAB Refresh Comments 16-17 (showing similar disparities between smaller and large market station revenues in 2024).

[142] Shorenstein Report at 27.

Put simply, the stations that would benefit the most from forming partnerships and conducting joint reporting with other outlets are ones with smaller staff that might struggle to maintain current levels of programming.

B. The Rule Is Not Necessary to Promote Viewpoint Diversity But Impairs It by Artificially Limiting To Whom TV Broadcasters Can Speak

The FCC found in 1984 and reconfirmed in its 2002 biennial ownership review that the national TV rule was not needed to promote viewpoint diversity.[143] And since then, cable TV has expanded, satellite TV and radio have launched, and social media and technology platforms have come to dominate the media landscape so thoroughly that they are now the subject of antitrust monopoly cases. If the rule wasn't needed to promote viewpoint diversity over the last 41 years, why would it be needed now? As NAB and others have explained, the asymmetric rule harms viewpoint diversity in the media marketplace by preventing TV station groups from offering their content, including local news, in many markets that are all reached by streaming platforms, social media, technology platforms, and cable/satellite. Commenters supporting retention of the rule offer nothing remotely sufficient to overturn the FCC's long-standing conclusion that the rule isn't needed to ensure viewpoint diversity – a conclusion that is even more true and valid today than in 1984.

Commenters such as Newsmax and Free Press open by contending that consolidation occurring after the elimination of the national cap would harm viewpoint diversity.[144] The term "consolidation" is a misnomer as it mistakes a critical distinction between *consolidation* and *expansion*. Eliminating the national cap would allow broadcast stations to *expand* into parts of

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[143] *See Biennial* Regulatory *Review*, Report and Order, 18 FCC Rcd 13620, 13826-27 (2003) (affirming FCC's 1984 decision that the national market has an abundance of diverse viewpoints; that the geographic market relevant to viewpoint diversity is local; and that national ownership rules are not pertinent to assuring a diversity of views to the public).

[144] Newsmax Comments at 16-25; Free Press Comments at 26-31, 40-46.

the country where they currently have no voice because of this artificially created regulatory muzzle. 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. In markets where stations are struggling due to weak ad revenues and increased competition, expansion can bring in more financially sound and therefore more vibrant broadcast voices, in contrast to ones that lack the resources to offer premium content. And of course, if a station considers shuttering its news operation due to its unsustainable losses or teeters on the brink of failing, the elimination of the national cap, which could allow an acquisition that would maintain an otherwise withering voice, would *promote* viewpoint diversity. The Joint Broadcasters state this argument first because the false assumption about how eliminating the national cap will facilitate "consolidation" underpins all other arguments that commenters seeking to preserve that outdated cap have offered here.

More specifically, Newsmax and Free Press argue that due to newspapers' demise, broadcast TV stations are a key source of local news, and eliminating the cap thus will diminish viewpoint diversity in local news.[145] But as described above, eliminating the national cap will enable station groups that have the resources to invest in news and other programming to expand into new markets and bring more robust offerings to new communities. Rather than stifling viewpoint diversity, eliminating the rule will contribute to a more vibrant media ecosystem.

To support their claim, Free Press cites TVB's recent Voter Funnel Study, which surveyed voters in nine competitive states following the 2024 election to evaluate the influence of media platforms on voters and found that "TV was the most important influence

[145] Newsmax Comments at 11-13; Free Press Comments at 22-24, 51-52.

throughout the voter decision process"[146] – but this overall finding counted both broadcast and cable TV combined.[147] While the Joint Broadcasters agree that news programming aired on broadcast TV offers critical election and other information to the public,[148] that only highlights why the national cap should be *eliminated*, not retained. All the national cap does is impede TV broadcasters from serving new viewers and by expanding in ways that would make stations more competitive and financially sound, which in turn would enable them to invest more in news and other programming, including highly valued (and costly to acquire) sports programming.[149] To the extent individual stations are financially struggling, repealing the national cap would allow station groups with healthier balance sheets to expand into new markets, acquire those stations, and provide those communities with more robust locally-oriented programming.

These observations are not new. The FCC in the *2002* biennial concluded that the ability of TV stations to compete successfully in the video marketplace "is meaningfully (and

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[146] Free Press Comments at 23 (quoting TVB Insights, Weekly Research and Analysis, 2024/25 Season – Week 11 (12/2-12/8/24)).

[147] *See* TVB Insights, Weekly Research and Analysis, 2024/25 Season – Week 11 (12/2-12/8/24); Dynata/TVB 2024 Voter Funnel, Adults 18+. While TVB's voter funnel surveys report some findings about broadcast TV specifically, many other TVB findings are about "TV" generally (broadcast and cable).

[148] For example, TVB's 2024 voter survey found that, of those who cited "TV" as the most important in the "awareness" stage of the voter decision process, seven out of ten cited broadcast TV over cable. Dynata/TVB 2024 Voter Funnel, Adults 18+.

[149] *See* NAB Refresh Comments at 23-24 (observing that some of the largest TV station groups have succeeded in obtaining limited local rights to air at least some live sports programming, including some NHL, MLB, NBA, and WNBA games, due to the recent decline of cable regional sports networks, but explaining that broadcasters need greater scale, with opportunities to serve more viewers and earn more ad revenues, to enhance their ability to retain those rights and to compete for additional popular sports programming to provide free OTA to all viewers).

negatively) affected in mid-sized and smaller markets."[150] Then in 2017, the Commission eliminated the "Eight-Voices Test,"[151] acknowledging the "potential public interest benefits of common ownership," which potentially allows broadcast stations to "invest more resources in news or other public interest programming."[152] The Commission specifically observed that "many small and mid-sized markets that have less advertising revenue to fund local programming" are the places where scale efficiencies can yield the greatest benefits.[153] The FCC's 2017 findings are even truer today because scale economies realized by station groups can help not only better manage costs but also add resources to more effectively leverage digital technologies and social media and technology platforms.

Free Press further posits that eliminating the national cap will result in various long-term and short-term harmful effects.[154] It claims that local TV stations may neglect certain issues and increase the vulnerability of a station group to government censorship, and asserts that, in the short term, the reduction in diversity of ownership may lead to a less fulsome debate on public issues. There is no reason to think that the provision of one voice into new markets that a TV broadcast group did not previously reach will be substituting a valuable, democracy-promoting viewpoint with a viewpoint leading to societal harm. That predisposition for preferring individual stations over station groups that have the resources to

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[150] *2002 Biennial Regulatory Review*, 18 FCC Rcd at 13698.

[151] *2014 Quadrennial Regulatory Review*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 Rcd at 9802, 9834 (2017) (removing requirement that at least eight full-power commercial and noncommercial TV stations remain in a DMA following a TV station combination).

[152] *Id*. at 9836.

[153] *Id*.

[154] Free Press Comments at 29.

invest in local news and other programming has no basis other than some romantic notion about the political leanings of individual station owners versus larger station groups.

The Joint Broadcasters can go point-by-point and explain – as we amply have -- why these viewpoint diversity arguments are meritless. But the context – or perhaps the subtext – to these complaints shouldn't go unnoticed. A progressive organization, Free Press, and a conservative, national pay TV channel, Newsmax, are the biggest proponents of the view that eliminating the national cap will harm viewpoint diversity. Even more curiously, these organizations make conflicting predictions on what is likely to happen if the national cap rule is eliminated. Free Press frets that eliminating the cap will place broadcast stations in the hands of wealthy owners who largely favor conservative causes.[155] Newsmax warns that eliminating the cap will lead to centralized decision-making, which somehow translates into more left-leaning content.[156]

The post-expansion political leanings of the content broadcast TV stations will air is clearly not a legally or constitutionally cognizable topic for the FCC's consideration. As a result, these musings aren't relevant one way or another. Both entities are worried about introducing more national competition among conservative media voices. Free Press is worried about a potentially conservative-leaning group expanding its reach and expressing its views to a wider over-the-air audience. Newsmax is concerned about the same, not because of the ideas that might be espoused over-the-air, but instead because that would provide a more robust competitor to its own news brand. Thus, the prime motivation for this unified opposition from these strange bedfellows has absolutely nothing to do with safeguarding viewpoint diversity, and everything to do with fearing – whether justified or not – the emergence of another

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[155] *Id.* at 13.

[156] Newsmax Comments at 16-17.

strong, national conservative viewpoint. Put differently, their shared call to preserve the cap isn't about promoting viewpoint diversity, it is about silencing a viewpoint.

C. The Rule Is Not Necessary to Promote Competition, But the Preservation of the Rule Clearly Harms Competition Today

The FCC found in 1984 and reconfirmed in the 2002 biennial review that the national TV rule wasn't needed to promote competition.[157] The rule wasn't needed to promote competition in the analog era before the expansion of cable TV channels. It wasn't needed to facilitate the launch of satellite TV and radio. It wasn't needed for the development and exponential growth of the Internet and digital devices, myriad online content providers, and social media. Nor was it needed to enable the emergence of massive technology platforms that dominate both advertising and online content discovery. As NAB and others have documented:

- Smart TVs, smartphones, and other viewing devices are ubiquitous in U.S. TV households.[158] Video streaming has almost total market penetration in the United States.[159] FAST channels and AVOD are rapidly growing, and household penetration is rapidly increasing.[160]

- Streaming's share of total usage of television has grown to 47.3 percent according to Nielsen's latest version of *The Gauge,* while broadcast TV's share continues to drop – now at its lowest level ever of 18.4 percent.[161]

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[157] *See 2002 Biennial Regulatory Review*, Report and Order, 18 FCC Rcd 13620 (2002) (affirming 1984 decision).

[158] NAB Refresh Comments at 7 (citing studies showing that nearly 82 percent of U.S. TV households own smart TVs, 66 percent stream weekly via smart TVs, consumers use an average of three different screens to watch content, and mobile devices are the most popular screen for watching streaming).

[159] *Id*. at 7-8 (citing Kantar and Adtaxi).

[160] NAB Refresh Comments at 8 (citing studies showing that U.S. viewers of AVOD will rise from 200 million in 2024 to over 278 million by 2029, and the number of FAST users is expected to grow from nearly 150 million in 2024 to around 250 million in 2029).

[161] Nielsen, The Gauge, July 2025 (rel. Aug. 19, 2025).

- As a result of competition from non-broadcast TV sources, ratings for the top-rated scripted programs on broadcast TV have plummeted 72.1 percent since 2004 (when the national cap was last marginally raised), 78.3 percent since the 1996 Act was passed, and 86.4 percent since the mid-1980s.[162]

- In 2025, U.S. monthly social media users are projected to exceed the number of linear television viewers.[163]

- A recent Borrell Associates report estimated that digital advertising accounted for 70 percent of all local ad spending in 2024 and projected that digital's share will approach 75 percent by 2028.[164]

- Over the past 25 years, ad revenues for broadcast TV stations have declined significantly in real dollar terms.[165]

- Two-thirds of media buyers have suggested that connected TV ads are crucial to their media-buying plans.[166]

- Digital video advertising is projected to be four times larger than broadcast TV station ad revenues in 2025.[167]

- Despite facing zero content costs, social media platforms earn twice the revenue per hour of engagement as linear television.[168]

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162 NAB Refresh Comments at 11 (citing Nielsen data).

163 Sinclair Comments at 4, *citing* Meaghan Yuen, "Social media users will surpass linear TV viewers next year," (Aug. 29, 2024), https://www.emarketer.com/content/social-media-users-will-surpass-linear-tv-viewers.

164 NAB Refresh Comments at 14-15.

165 NAB Refresh Comments at 15-16 (detailing a real decline of nearly 43% from 2000-2024, a real decline of over 57 percent from 2000-2025, and even a nominal decline of close to 20% from 2007 (broadcast TV's non-election year, pre-Great Recession ad level) to 2025).

166 Nexstar Comments at 8, *citing* Interactive Advertising Bureau, 2025 Digital Video Ad Spend & Strategy Report, at 9 (July 2025), https://tinyurl.com/7y3ccwjz.

167 NAB Refresh Comments at 17 (citing data from Interactive Advertising Bureau and BIA Advisory Services).

168 Sinclair Comments at 5, *citing* Michael Beach, *Social Media Has Become a Video Powerhouse, but Do TV Advertisers Care?* Cross Screen Media (Oct. 18, 2024), https://crossscreen.media/state-of-the-screens/social-media-has-become-a-video-powerhouse-but-do-tv-advertisers-care/.

As NAB and others have explained, the asymmetric national TV rule only harms competition in the video and ad markets by artificially limiting broadcasters' ability to even potentially attract viewers nationwide and offer larger audiences to advertisers, thereby hobbling their competitiveness against the vast array of pay TV, streaming services, and social media and tech platforms. Even the FCC has long concluded that the rule isn't needed to promote competition. And yet, certain commenters claim that somehow the rule still is required to promote competition.

Those commenters claiming that somehow the rule is required to promote competition ignore competitive realities in the media and ad markets, misconstrue other legal paradigms to confer some legitimacy to their ill-conceived ideas, and misrepresent or obfuscate inapposite studies to try to create support for their arguments. Underlying it all, however, those commenters simply don't want broadcast TV stations to grow, modernize, and blossom into full-fledged competitors to pay TV, streaming services, and social media or technology platforms.

The Joint Broadcasters address two primary sets of competition-based complaints from commenters. First, we explain why the commenters who claim that broadcast TV stations mostly compete among themselves and no one else are wrong. Second, we discuss why concerns about how eliminating the national cap supposedly will reduce broadcast TV newsroom employment are unfounded.

1. Commenters Who Claim Broadcast TV Stations Mainly Compete Among Themselves Misapply or Misstate Legal Frameworks and Marketplace Realities

Certain commenters strain to argue that broadcast TV stations only compete amongst themselves and therefore elimination of the national cap will only facilitate further industry consolidation. In service of this effort, these commenters mangle legal doctrines, misconstrue studies, and misstate facts – essentially do whatever they can to fabricate a record that supports their position. But when faced with common sense and facts, these arguments quickly wither away.

As evident from the discussion of their other fallacious arguments above, perhaps the biggest offender here is Free Press. In desperately trying to stop any reform of the FCC's antiquated national cap rule, their comments throw in misconceived readings of antitrust law, contorted logic, selectively cited or overstated studies, or irrelevant or overstated facts to try to paint a false picture of competition in the media marketplace.

More specifically, Free Press misapplies and misstates the antitrust legal paradigm to obfuscate the competitive realities supporting elimination of the national cap rule. Free Press claims that antitrust analysis shouldn't govern this proceeding, but it also contradictorily says antitrust market-definition analysis should be probative for identifying the competition that broadcast TV faces.[169] At the outset, let's start with a place of agreement – antitrust analysis isn't relevant to the core question of this proceeding: Should the Commission continue to shackle broadcast TV stations from serving audiences nationally while their competitors in the pay TV industry, streaming services, social media, and Big Tech face no regulatory obstacles to their ability to compete nationally or even globally? And yet, while claiming antitrust is irrelevant to this proceeding, Free Press goes on to misapply antitrust market-definition analysis to argue that Big Tech companies and streaming services do not compete with broadcasters.[170]

First, it is important to clarify what an antitrust market definition is and is not. Market definition is often a necessary formality in antitrust cases; it is not a Rosetta Stone for how all regulatory agencies should evaluate competition. Free Press misuses antitrust market

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[169] *Compare* Free Press Comments at 27-31, *with id*. at 58-64.
[170] *Id*. at 58-61.

definition to contend that competition should be evaluated only among broadcast TV stations. But even courts that have conducted a market-definition analysis explicitly recognize that competition exists from sources outside of this artificial boundary.[171] In fact, competitors may significantly impact an industry's revenue streams and still be excluded from an antitrust market definition.[172] Tellingly, many leading antitrust scholars have argued for doing away entirely with the market-definition exercise because they consider it a formality that gets in the way of the substantive analysis.[173]

Along those lines, Free Press cites the fact that the U.S. Department of Justice (DOJ) and U.S. Federal Trade Commission (FTC) are arguing in court that: Alphabet competes in general search services, publisher ad servers, ad exchanges, and advertiser ad network markets; Meta competes in a personal social networking market; and Amazon competes in online marketplace services and online superstore product markets.[174] And because of the DOJ's and FTC's alleged market definitions in certain antitrust complaints (and in findings made in select court decisions) that exclude broadcast TV stations as an alternative, Free Press claims that broadcast TV stations really only compete in a marketplace for television

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[171] *See, e.g.*, *Federal Trade Comm'n v. IQVIA Holdings Inc.*, 710 F. Supp. 3d 329, 359 (S.D.N.Y. 2023) (conceding that certain services that defendants allege should be in the relevant market with services in the relevant product market while finding a narrower product market); *Federal Trade Comm'n v. Peabody Energy Corp.*, 492 F. Supp. 3d 865, 895 (E.D. Mo. 2020) (recognizing that the merging parties' ordinary course documents recognize many different competitors outside of the merging parties' core industry).

[172] *See, e.g.*, *Peabody Energy Corp.*, 492 F. Supp. 3d at 879 (excluding natural gas and renewable energy from the market even though Southern Powder Rim Basin coal experienced a significant decline in usage as a result of alternative energy sources).

[173] *See, e.g.*, Louis Kaplow, *Why (Ever) Define Markets?*, 124 Harv. L. Rev. 437, 440 (2010) (questioning the continued vitality of market-definition analysis); Herbert Hovenkamp, *Markets in Merger Analysis*, 57 Antitrust Bull. 887 (2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1945964.

[174] Free Press Comments at 59-60.

spot advertising markets within a DMA – not in a broader market featuring digital advertising. This argument inverts the antitrust analysis. That Alphabet, Meta, and Amazon do not face sufficient competition from broadcast TV in *their* respective markets does *not* mean that broadcast TV stations don't face competition from Alphabet, Meta, and Amazon. Indeed, competition is rarely perfectly symmetric (or even remotely symmetric) except in the most stylized textbook examples. In the real world, competition is virtually always asymmetrical. Let's consider some illustrative scenarios:

- Consider a local community pharmacy down the street from several CVS Pharmacy or Walgreens locations. Does anyone really think that CVS or Walgreens feel the exact same competitive pressure from the independent pharmacy as the independent pharmacy feels from several proximately located CVS or Walgreens stores?

- Or how about a bagel cart serving coffee across the street from Starbucks or Compass Coffee? Does anyone believe that the ubiquitous coffee chains experience the same intensity of competition from the bagel cart as the bagel cart feels from the coffee chains?

- Coming back to the media ecosystem: According to the DOJ and FTC complaints, newspapers aren't in the same relevant market as Alphabet, Meta, or Amazon. But does anyone with a pulse really think these Big Tech companies haven't economically eviscerated newspapers?

Even critics calling to maintain the national cap rule agree that "the economic model for news production has been undercut by technology platforms owned by the likes of Alphabet, Amazon and Meta, which have offered an advertising model for better targeting readers, listeners and viewers, and attracted much of the advertising revenue that once funded local journalism."[175] It is clear that other players in the modern media marketplace have cut into and are continuing to cut into broadcast TV ad revenues and thus are providing

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[175] Comments of Courtney Radsch, Open Markets Institute, *et al*., MB Docket No. 17-318, at 2 (Aug. 4, 2025).

ever-present competitive discipline on broadcast TV stations (or even competitive pressure sufficient to threaten the vitality, if not the viability, of broadcast TV stations).

Some commenters have taken the flip side of the argument and claimed not only that broadcast TV stations don't compete with streaming services, social media, and technology platforms – but that they can't. For instance, NABET-CWA claims because Big Tech does not provide local news, consolidation in the broadcast TV industry will not counteract the market power for Big Tech firms.[176] NABET-CWA misses the point here, as eliminating the national cap is not about directly addressing or attempting to reduce the market power of the dominant Big Tech, social media, and streaming platforms. It is about enabling broadcast TV groups to reach audiences nationwide and therefore to attract advertisers wanting to reach larger regional and nationwide audiences. Similarly, Common Frequency argues that expanding the national cap is the wrong way for broadcast TV stations to compete with Big Tech and online streaming services.[177]

To the extent broadcast TV stations provide only limited competition to Alphabet, Meta, and Amazon, it is *because* broadcast TV stations have faced strict artificial limits on their ability to grow. No one can know whether broadcast television might develop more robustly competitive services unless the FCC stops asymmetrically shackling broadcast TV stations with onerous regulations. Moreover, it is a fallacy to think that broadcast TV stations cannot better compete with larger, better capitalized players because they don't possess a comparable market cap to these digital media competitors. Contrary to NABET-CWA's

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[176] NABET-CWA Comments at 8-11.

[177] Comments of Common Frequency, MB Docket No. 17-318, at 2-5 (Aug. 4, 2025). Some of Common Frequency's opinions as to a superior competitive strategy for the broadcast TV industry are downright bizarre. *See id*. at 4 (positing that if NAB "simply built a broadcast channel web platform for each television market, and marketed it correctly, it might quell the broadcast viewership collapse").

contentions, a national broadcast TV station group may be able to use its competitive differentiator, local news (along with sports, game shows, talk shows, and other content that garners significant audience viewership) to develop new and innovative offerings.[178] Indeed, stations already have employees focused on digital media; are investing to make their content better focused on competing with social media and other digital platforms; are leveraging third-party digital platforms to better understand their audiences and bring audiences back onto their platforms; and are reworking their visual and audio presence to appeal to viewers on over-the-air and digital platforms. And when the Commission sets a mandatory transition date to ATSC 3.0 and eliminates requirements that broadcasters must provide substantially similar signals to an ATSC 1.0 signal, broadcasters have a chance to use this innovative technology standard to better compete against digital media competitors.[179]

Continuing its "nobody competes with broadcast TV" line, Free Press additionally argues that because online video services do not provide local news, they do not compete with broadcast TV stations.[180] Free Press avers that because advertisers want to advertise during the local news, broadcast TV stations must be a market onto themselves. Not so. While local news is a vital element of what broadcast TV stations bring to the viewing public, from a competitive perspective it is merely a competitive differentiator. Stations invest in local news because it attracts viewers in a highly competitive video marketplace that includes pay TV, streaming services, and social media or technology platforms.[181] Taking Free Press's logic to its conclusion, any program that provides special, attractive advertising opportunities could

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[178] *See* NAB Refresh Comments at 20-24.

[179] *See* Petition for Rulemaking of NAB, GN Docket No. 16-142 (Feb. 26, 2025).

[180] Free Press Comments at 64-68.

[181] *See supra* Section III.A.

make that program or the channel it is on a market onto itself. That is undoubtedly wrong. And it is undoubtedly right that because local news is a major competitive differentiator for broadcast TV stations, they have every incentive to *expand* local news coverage, which, in fact, is consistent with what broadcasters have done when they have had the opportunity to combine station operations.[182]

Finally, Free Press argues that the decline in linear TV has disproportionately impacted pay TV and thus has not materially affected broadcast TV.[183] Free Press starts by presenting data from Nielsen's *The Gauge* from May 2021 to June 2025. While acknowledging that "cord-cutting and streaming have decreased broadcast viewership too," it dismisses the importance of that development by arguing that broadcast viewership has declined less than viewership of linear cable networks.[184] Although pay TV has seen a decline in its share of total TV usage, so has broadcast TV. In May 2021 when *The Gauge* was introduced, broadcast TV's share of total TV usage was nearly 15 percentage points lower than cable's share. And ever since, it has experienced an inexorable decline in its share to its lowest level of 18.4 percent in July 2025, while streaming accounted for nearly half (47.3 percent) of all TV viewing last month, with YouTube alone garnering 13.4 percent of total TV usage.[185] And of course, the only reason that pay TV's share has appeared to drop so much is because it started from a much higher baseline share than broadcast TV.[186] To satisfy Free Press, broadcast TV's share

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[182] *See*, *e.g*., NAB 2025 Update at 29-32.

[183] Free Press Comments at 69-70.

[184] *Id.* at 69, 75.

[185] Nielsen, The Gauge, July 2025 (Aug. 19, 2025). YouTube and Netflix combined for 22.2% of total TV usage, well exceeding broadcast TV's share of 18.4%.

[186] As Nexstar points out, TV broadcasting "has been under increasing siege since 2002 when cable surpassed broadcasters in primetime viewership." Nexstar Comments at 1, *citing* M. Reynolds, *2002: Cable's Breakout Nielsen Year,* Multichannel News (Jan. 5, 2003).

of viewing would have to plummet to zero before they acknowledged that maybe – *just maybe* – broadcast TV is facing the same torrent of competition from streaming services and social media and technology platforms.

Indeed, the Shorenstein Report referenced above observes that "[a]nother concern of our [broadcast station] respondents was the 'shift of audience to digital,' which 80 percent identified as a 'significant' or 'very significant' challenge."[187] The Report further observes: "That shift has been more pronounced among younger adults than older ones and, not surprisingly, 'attracting young viewers' also ranked as a top concern, with 75 percent of respondents seeing it as a 'significant' or 'very significant' challenge."[188] Unsurprisingly, Free Press fails to mention this critical aspect of the Report.

2. Commenters' Claims that Eliminating the National Cap Will Lead to Less Newsroom Employment are Baseless and Belied by the Evidence

Commenters also claim that eliminating the national cap will somehow lead to a decline in employment, lower wages and benefits, and decreased job security.[189] But regulating the labor market is not one of the FCC's functions under the Act.[190] As a matter of logic, moreover, this argument misses the mark. They claim that broadcast TV station groups are not increasing their staffing levels, and yet, somehow, they believe that by preserving the status quo and stopping stations from growing nationally, the number of reporters employed

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[187] Shorenstein Report at 11. *See* Section III.A. for a more in-depth discussion of Free Press's strategic misuse of the Shorenstein Report's findings.

[188] Shorenstein Report at 11.

[189] Free Press Comments at 71-72; NABET-CWA Comments at 2-3.

[190] The Joint Broadcasters explained at the beginning of Section III that the labor market and workers' wages and benefits are outside the FCC's expertise and purview and that the FCC's public interest authority cannot stretch to addressing labor and employment issues. Earlier this year, the Fifth Circuit made clear that the "FCC's public-interest authority must be interpreted in light of the 'targets' of the Communications Act," *Nat'l Religious Broad.*, 138 F.4th at 292, and the labor market is not one of those "targets."

in newsrooms would somehow magically increase or even stay the same. It is worth pausing to entertain that breathtaking break in logic. Taking Free Press at its word, there is no basis to think that maintaining the rule as is will somehow redound to the benefit of newsroom employment. In fact, the one sure way to guarantee that newsroom employment *decreases* is by continuing to place broadcast TV stations at a competitive disadvantage such that stations are less profitable, unprofitable, or even insolvent. The fate of the newspaper industry is highly instructive here.

As a close cousin to this argument, Free Press claims newsroom employment has remained flat while U.S. broadcast TV station revenues have grown faster than the rate of inflation.[191] NAB has previously refuted spurious claims from Free Press about newsroom employment.[192] As NAB's 2025 Update and comments explain, while TV broadcast ad revenues have secularly declined over the past quarter of a century,[193] RTDNA recently reported that newsroom employment is actually *up*. In 2024, RTDNA reported that local TV news employment rose one percent, following a 5.1 percent increase in the previous year.[194] Local TV news salaries also generally have increased more than inflation according to recent RTDNA surveys.[195]

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[191] Free Press Comments at 71-72.

[192] *See, e.g.*, Reply Comments of NAB, MB Docket No. 18-349, at 22 (May 29, 2019).

[193] NAB Refresh Comments at 14-18; NAB 2025 Update at 14-18.

[194] Bob Papper & Keren Henderson, RTDNA/Syracuse University, *Local TV news staffing rises despite burnout challenges* (May 21, 2024).

[195] Bob Papper, Keren Henderson & Tim Mirabito, RTDNA/Syracuse University, *Good News: TV salaries beat inflation . . . but just barely* (Apr. 23, 2025) (reporting that local TV news salaries rose 3.2% in 2024 and 7.5% in 2023).

NABET-CWA also claims consolidation of economic power will harm workers.[196] But this argument rests on a flawed premise. Eliminating the national cap merely will allow broadcast station groups to extend their reach into other markets where they do not currently operate. In such a case, they will be competing for workers in an entirely new geographic area. As explained earlier, eliminating the national cap will facilitate expansion – not consolidation.[197] And expansion to national scale will, for myriad reasons set forth in the record here, redound to the benefit of TV broadcasters and, more importantly, to viewers of free over-the-air television services throughout the country.

IV. THE PAY TV INDUSTRY OPPOSES BROADCASTERS ACHIEVING GREATER SCALE FOR SELF-INTERESTED, HYPOCRITICAL, AND ANTI-COMPETITIVE REASONS

Earlier this month, NAB anticipated that pay TV providers would submit comments intended to protect their competitively dominant position,[198] and the industry did not disappoint, with filings from both of their leading advocacy groups,[199] a pay TV "think tank,"[200] and even a rogue pay TV provider apparently at odds with the rest of the industry.[201] Individual

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[196] NABET-CWA Comments at 2.

[197] *See supra* Section III.B.

[198] NAB Refresh Comments at 5.

[199] *See* NCTA Comments; ATVA Comments. *See also* Comments of NTCA – The Rural Broadband Association, MB Docket No. 17-318 (Aug. 4, 2025).

[200] *See* FSF Comments. FSF received $170,000 in "general support" donations from NCTA in 2023, the second highest amount of any other NCTA gift that year. *See* NCTA Form 990, 2023 at Schedule I, available at: https://projects.propublica.org/nonprofits/organizations/530222396/202413199349307766/IRS990ScheduleI. In 2021, NCTA gave FSF $160,000 (again, its second largest donation that year). See NCTA Form 990, 2021 at Schedule I, available at: https://www.causeiq.com/organizations/view_990/530222396/6c54e56c34c23a2c9ccaad74428fbbef.

[201] Comments of Cincinnati Bell Extended Territories LLC, d/b/a/ altafiber (Altafiber), MB Docket No. 17-318 (Aug. 4, 2025). *See also* Andrew Long, Free State Foundation, *Don't Revive "Social Contracts" to Address Video Marketplace Inefficiencies*, Perspectives from FSF Scholars, July 7, 2025, Vol. 20, No. 31.

pay TV providers are too busy working on securing approval for transactions to file individual comments, with the largest pay TV provider, Charter, in the process of acquiring the third largest cable multiple system operator, Cox Cable.[202] Although broadcasters have refuted many of the pay TV industry's arguments in the past, we address their latest contentions below.

A. The "Harms" Really Concerning the Pay TV Industry Are About Competing with Others on a More Level Playing Field and Paying Market Value for the Signals It Packages and Resells

Pay TV providers contend that a variety of public interest harms will result from changes to the national cap, just as they have argued in dozens of filings in multiple proceedings where broadcasters sought to modernize local broadcast ownership rules,[203] obtain approval for transactions,[204] update technical standards to foster broadcast

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[202] Applications of Cox Enterprises, Inc., Transferor (Cox Cable), and Charter Communications, Inc., Transferee, WC Docket No. 25-233 (Jul. 14, 2025) (Charter).

[203] NCTA and ATVA alone submitted over 20 filings in the 2018 quadrennial review proceeding (MB Docket No. 18-349) in support of making the local television ownership cap more restrictive, *See* Comments of NAB, GN Docket No. 24-119 (Jun. 6, 2024) at 44-45, n. 118, and even intervened in support of the FCC during subsequent litigation.

[204] *See, e.g.*, Letter to Marlene H. Dortch, Secretary, FCC, from Mary Beth Murphy, NCTA (June 25, 2025) (requesting special public notices in addition to routine public notices of broadcast applications if a waiver request is made to facilitate NCTA's filing of oppositions); Letter from Radhika Bhat, NCTA, to Marlene H. Dortch, FCC, MB Docket No. 22-162 (June 22, 2022) (urging FCC to impose conditions on proposed Standard General (SG)-TEGNA transaction); Comments of NCTA, MB Docket No. 22-162 (Jan. 13, 2023) (discussing six proposed conditions on SG-TEGNA transaction); Comments of ATVA, MB Docket No. 22-162 (June 22, 2022) (one of several ATVA filings urging FCC to request more information about and impose conditions on SG-TEGNA deal); Comments of NCTA, MB Docket No. 19-30 (Mar. 18, 2019) (urging FCC to impose conditions on proposed Nexstar-Tribune transaction); Comments of ATVA, MB Docket No. 19-30 (Mar. 18, 2019) (seeking to delay FCC consideration of Nexstar-Tribune transaction); Informal Objection of NCTA, File No. 0000214896 (June 20, 2023) (objecting to assignment of a single station in Michigan).

innovation,[205] or reduce regulations on all providers (which they agree with, except as applied to broadcasters).[206] Their relentless opposition to even the most modest forms of regulatory relief[207] reveals their true motive: to ensure that broadcasters remain smaller, weaker, and less capable of successfully competing for audiences, advertising, or content and negotiating with pay TV providers. Keeping broadcasters small, weak, and at a competitive disadvantage is part of their business strategy. Unsurprisingly, pay TV providers continue to fail to provide an evidentiary basis for any actual public interest harms.

Altafiber asserts that eliminating the national television ownership cap will harm the public interest, but its contentions are unsupported and sometimes illogical. For example,

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[205] NCTA and ATVA have attempted to burden and impede the broadcast industry's transition to ATSC 3.0, despite the enhanced services this standard enables TV stations to offer to consumers. *See, e.g.*, Comments of NCTA, GN Docket No. 16-142 (May 7, 2025); Comments of NCTA, GN Docket No. 16-142 (May 7, 2025) (each opposing establishment of nationwide, uniform 3.0 transition date); Letter from Mary Beth Murphy to Marlene H. Dortch, FCC, GN Docket No. 16-142 (Feb. 23, 2023) (urging FCC to require that broadcasters make a showing of necessity before being permitted to engage in lateral hosting to continue to provide ATSC 1.0 service during the transition); Comments of NCTA, GN Docket No. 16-142 (Feb. 11, 2022) (urging FCC to adopt limits on the provision of multicast streams during the transition to Next Gen TV); Petition for Reconsideration of NCTA, GN Docket No. 16-142 (Mar. 5, 2018) (proposing requirements that would: (i) force broadcasters to provide high definition streams on their ATSC 1.0 signals throughout the transition to Next Gen TV, (ii) prohibit broadcasters from negotiating with cable companies to provide for voluntary carriage of ATSC 3.0 signals, and (iii) create new requirements regarding patent licensing by entities not participating in a standards development process or regulated by the FCC); Petition for Reconsideration of ATVA, GN Docket No. 16-142 (Mar. 5, 2018) (urging FCC to: (i) restrict negotiations for carriage of ATSC 3.0 signals, (ii) prohibit low-power and translator stations from flash-cutting to ATSC 3.0, and (iii) require stations to provide advance notice before changing the resolution or picture quality of programming).

[206] *See, e.g.,* Reply Comments of ATVA, GN Docket No. 25-133 (Apr. 28, 2025); Reply Comments of NCTA, GN Docket No. 25-133 at 5-10 (Apr. 28, 2025) (opposing modification of broadcast ownership rules).

[207] NCTA is so conditioned to opposing broadcaster attempts to level the playing field that it even reflexively objected to NAB's proposed reforms to the FCC's regulatory fee assessment methodologies, despite the fact the proposed changes would have helped NCTA members. *See, e.g.*, Reply Comments of NCTA, MD Docket Nos. 22-223 and 22-301 (Nov. 25, 2022).

Altafiber claims that a harmful "rapid decline in cable subscriptions" can be attributed to the price of basic cable.[208] First, a decline in cable subscriptions is not a public interest harm for the Commission to address. Even assuming price is the leading factor for such a decline – and not cable's historically poor customer service record[209] – Altafiber provides zero evidence for its claims that the price of basic cable is "driven largely by . . . retransmission consent fees,"[210] or that those who have terminated their cable subscriptions now lack access to broadcast signals either over-the-air or through other pay TV services.[211] Altafiber seems fascinated by broadcasters' increased reliance on retransmission consent revenue as compared to advertising revenue,[212] even though this change is entirely unsurprising given the well-documented decline in TV stations' advertising revenues and meteoric rise of digital advertising.[213] Moreover, as NAB has previously established, total MVPD retransmission consent fees are no longer on the rise. According to Kagan, the growth rate in total fees fell

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[208] Altafiber Comments at 6.

[209] Pay TV service has historically been among the lowest-ranked industries in consumer satisfaction across all industries in the U.S. and remains the lowest as of the American Consumer Satisfaction Index's latest report. *See* American Consumer Satisfaction Index, ACSI® Telecommunications, Cell Phone, and Smartwatch Study 2025 (May 20, 2025) at 20, available at: https://theacsi.org/wp-content/uploads/2025/05/25may_ISP-Wireless-Cell-Smartwatch-Study-FINAL.pdf.

[210] Altafiber Comments at 6.

[211] *Id*.

[212] *Id*. at 4 (observing that the percentage of local broadcast television station revenue derived from advertising declined from 2016 to 2024 according to FCC Communications Marketplace Reports while the percentage of revenue from retransmission consent increased). *Id.* at 9 and n.35 (referencing similar findings with respect to specific broadcasters).

[213] *See, e.g.,* NAB Refresh Comments at 15-16 (TV stations' total advertising revenue (OTA + digital) fell 42.9 percent from 2000-2024 on a real (i.e., inflation-adjusted) basis); *Id.* at 13-15 (annual U.S. ad revenues of Alphabet, Meta, and Amazon *each* exceed the total amount of OTA and digital ad revenues earned annually by *all* TV and radio stations in the country; local digital advertising reached $103 billion in 2024, topping the "historic" $100 billion threshold for the first time and accounting for about 70 percent of all local ad spending).

sharply after 2021, became negative in 2023, and are projected to remain negative through at least 2030.[214] Absolutely none of the data presented by Altafiber demonstrates that elimination of the national cap will change retransmission consent rates, or that its removal will result in any public interest harms.

ATVA and NCTA have likewise failed to show that eliminating the cap will raise retransmission consent fee rates or cause public interest harms. ATVA dusts off the previously filed "testimony" of ACA Connects member companies which purportedly shows that "national media consolidation has led to higher retransmission consent fees."[215] ATVA is referring to a pair of letters summarizing ex parte meetings held by pay TV providers more than six years ago, not sworn affidavits or declarations as the phrase "testimony" suggests. Moreover, the material discussed in the letters is anecdotal, incomplete, outdated, and unclear at best. The *2019* letter contains anecdotes from only three pay TV providers.[216] Not all of the anecdotes in the letter include dates, but some of the anecdotes are now ten years old.[217] The anecdotes also leave many variables and facts unaccounted for, such as whether programming has changed,[218] or even whether the broadcast groups being compared were in

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[214] *U.S. TV Station MVPD Retransmission Projections, 2025*, Kagan, the media research group of S&P Global Market Intelligence.

[215] ATVA Comments at 4, *citing* Letter from Mary Lovejoy of ACA Connects – America's Communications Association (ACA Connects or ACA), to Marlene H. Dortch, FCC Secretary, MB Docket Nos. 17-318, *et al*. (Mar. 25, 2019) (ACA March 2019 Letter); Letter from Mary Lovejoy of ACA, to Marlene H. Dortch, FCC Secretary, MB Docket Nos. 17-318, *et al.*, at 7-8 (Mar. 26, 2018) (ACA March 2018 Letter).

[216] ACA March 2019 Letter at 7-8.

[217] *Id.* at 7 (discussing alleged fee increases following a broadcast transaction in 2015).

[218] In one example, ACA contends that "programming remain[ed] the same" before and after the alleged retransmission consent fee increases. ACA March 2019 Letter at 7. Programming does not simply "remain the same" over time. Even if there is no change in network affiliation, other programming changes may change the value of a station's signal, such as the addition or removal of NFL or other sports rights on the network a station is affiliated with. A variety of

fact large or small.[219] The earlier ACA letter contains no anecdotes but just an assertion by an unnamed "executive" of an unnamed company that it allegedly pays 47 percent more for stations owned by "large" broadcast groups than for "smaller, independent" station groups.[220] There is no explanation of how "large" and "smaller, independent" groups were defined, or how the figure was calculated. Given some of the other analyses proffered in the past by ACA, the comparison could have involved an unequal number of stations, a disproportionate mix of independent and network affiliated stations (or even must carry stations), or a definition of "large" that does not relate to the definition in the national television ownership rule.[221] Similarly, NCTA attempts to simply cut-and-paste complex, transaction-specific Department of Justice analyses concerning *local television combinations* into an analysis of the potential competitive effects of an *ex ante* national television ownership cap.[222] Nothing about these

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factors could be contributing to the alleged price difference, so the information provided fails to show that national reach was the reason for the change in price.

[219] Similarly, one pay TV provider claims that it pays more to broadcasters that own 4-6 stations *within its footprint* than it does for broadcasters that own 1-3 stations within its footprint. ACA March 2019 Letter at 7-8. But a broadcaster that owns 4-6 stations within a pay TV provider's footprint could actually have a smaller national reach than one that owns 1-3 stations in a provider's footprint. There is no way to know, so this has no bearing on national television ownership.

[220] ACA March 18 Letter at 7.

[221] ATVA also cites declarations filed by a pay TV provider in connection with a transaction which NAB refuted in earlier comments in this proceeding. *See* ATVA Comments at 4-5, *citing* Declaration of Janusz A. Ordover, attached to Petition to Dismiss or Deny of DISH Network L.L.C. at Ex. D, MB Docket No. 17-179 (Aug. 7, 2017); Reply Declaration of Janusz A. Ordover, attached to Reply Comments of DISH Network, L.L.C. at Ex. C, MB Docket No. 17-179 (Aug. 29, 2017) (Ordover Declarations). *See also* NAB Reply Comments at 28-31 ("Even assuming the accuracy of . . . DISH's analysis (which NAB cannot verify and which has been disputed), their claim says little about whether those retransmission fees are anticompetitive, let alone anticompetitive as a result of broadcaster market power).

[222] NCTA Comments at 3-4 & n.9.

DOJ findings relates to a rule change that would allow broadcasters to propose transactions where they could have greater (potential) national reach.[223]

NCTA might have considered sitting this one out given that two of the three largest cable operators have a pending application for Commission approval to combine, but the pending deal apparently did not stop NCTA's reflexive fear-mongering about what would happen if TV broadcasters faced fewer asymmetric ownership regulations.[224] Broadcasters are merely seeking the ability to apply for case-by-case consideration of transactions without an *ex ante* restriction on the number of TV households they can *potentially* reach.[225] Cable operators already can seek FCC approval for combinations involving actual reach to every cable household in the country because they have long operated without any "cap."[226]

The parallels between what Charter and Cox Cable are seeking, albeit within the context of a specific transaction, and what broadcasters are seeking in the context of the cap are hard to ignore. For example, the merging parties want to achieve "economies of scale and

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[223] NCTA also cites its comments and a study it filed in connection with a proposed transaction as evidence that eliminating the national cap will result in higher retransmission consent fees. NCTA Comments at 4, *citing* Comments of NCTA, MB Docket No. 17-179, at 13 (June 20, 2018) and Att. A ¶ 35 (Economic Analysis of Bryan Keating and Jon Orszag). The cited economic exhibit is overwhelmingly focused on the impact of the proposed transaction on local markets and does not present or analyze empirical data concerning national reach, other than to agree with one of the Ordover Declarations, which, as noted above, has been refuted by NAB and others. *See infra* note 221.

[224] NCTA Comments at 1, 3-4.

[225] The Joint Broadcasters emphasize potential – or, more accurately, theoretical reach – because, as discussed here and in previous filings, the national cap rests on the false premise that stations "reach" 100% of the TV households in the DMAs in which they are located. That presumed 100% reach has never represented stations' actual reach, particularly not in today's marketplace, when broadcasters' actual reach is in the single digits. *See infra note 6*; NAB Refresh Comments at 11-12; NAB 2025 Update at 39-43.

[226] *See Comcast Corp. v. FCC,* 579 F.3d 1 (D.C. Cir. 2009) (vacating the FCC's cable horizontal ownership cap).

geographic scope,”[227] which they claim will reduce their costs of providing services to consumers and allow them to “to invest and innovate more aggressively.”[228] Similarly, NAB and other commenters have explained how the television broadcasting industry is subject to strong economies of scale and scope, particularly with respect to news production, and discussed how the cap impedes broadcasters’ ability to achieve economies of scale and scope.[229] The merging parties contend that since they operate in different geographic markets, allowing them to combine and have a broader national reach will not eliminate any head-to-head competition.[230] The same can be said of broadcast licensees, whose stations may compete head-to-head in local markets, but not nationally, so eliminating the cap will not allow for FCC consideration of transactions that eliminate any direct competitors in local markets.

The comment cycle has not yet begun in the Charter-Cox Cable transaction. Perhaps NCTA, with its new consumer-oriented focus, will be filing an opposition or proposed conditions on the deal. Otherwise, NCTA has come here to oppose the very same arguments its largest member is making to support the proposed acquisition of its third largest member.

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[227] *See* Applications of Applications of Cox Cable, Transferor, and Charter Communications, Inc., Transferee, WC Docket No. 25-233 (Jul. 14, 2025) at Public Interest Statement (Charter-Cox Cable Public Interest Statement), Exhibit E, Declaration of Bryan Keating and Jonathan Orszag, Founding Partners, Econic Partners (Keating/Orszag Decl.), ¶ 17. The phrase “economies of scale” is mentioned 22 times in the redacted version of the application’s public interest statement and exhibits.

[228] Charter-Cox Cable Public Interest Statement at 25.

[229] *See, e.g.*, NAB 2025 Update at 21-31; Sinclair Comments at 8; NAB Comments at 13, *citing* J.A. Eisenach and K.W. Caves, The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting, at 1-2 (2011), Attachment A to Reply Decl. of J.A. Eisenach and K.W. Caves, NAB Reply Comments at Appendix A, MB Docket No. 10-71 (June 27, 2011); Decl. of Mark Israel and Allan Shampine, Compass Lexecon, Comments of NAB, MB Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014).

[230] Charter-Cox Cable Public Interest Statement at 73-74; Keating/Orszag Decl. at ¶¶ 15-18.

The Joint Broadcasters hope that everyone following these proceedings can keep the pay TV industry's arguments straight: efficiencies and combinations are good so long as they involve large pay TV/broadband providers, but not-so-good if they involve broadcasters of any size.

The Free State Foundation suggests that the elimination of the national cap would somehow amount to "asymmetric" regulatory relief.[231] This claim is puzzling given that the cable industry was relieved of its national horizontal cap more than 15 years ago and has never been subject to any local or regional ownership limits. FSF apparently believes that the "one-sided" relief from ownership rules that MVPDs enjoy should not be afforded broadcasters until the so-called "heavily regulated" relationship between local television stations and facilities-based MVPDs has changed.[232] The only aspects of this relationship FSF is concerned about, however, are business-to-business, market-based negotiations for retransmission consent, which the law requires the government *not* to regulate absent setting forth and enforcing good faith negotiations standards. These relationships are *not* presently heavily regulated. The only parties that want that relationship to become heavily regulated are pay TV providers, who have proposed incredibly intrusive roles for the government in retransmission consent negotiations and/or agreements, contrary to Section 325 of the Communications Act and congressional intent.[233] As discussed further below, pay TV providers make some of those proposals even in this proceeding concerning the national

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[231] FSF Comments at 2.

[232] FSF Comments at 2-3.

[233] Pay TV providers have proposed changes to retransmission consent including mandatory "interim carriage" (which is actually a temporary suspension of a broadcaster's statutory right to consent to carriage of its signal); mandatory arbitration; mandatory disclosure of the prices, terms and conditions of carriage to the Commission and/or other MVPDs; regulation of retransmission consent rates; and limitations on the types of compensation broadcasters can seek.

broadcast TV cap. Despite the pay TV industry's incessant calls for more government regulation, there is an urgent need to eliminate the cap to promote the FCC's public interest goals. The Commission should disregard the self-interested calls of pay TV for even more regulatory advantages vis-à-vis broadcasters.

B. Pay TV Proposes "Remedies" that Are Unjustified and Unlawful

Rather than simply oppose modifications to the cap, Altafiber advances a "social contract" proposal. Under this proposal, a broadcaster would be permitted to consummate a transaction that results in exceeding the national cap only if it agrees to reduce retransmission consent rates by specified percentages during the first three years of the seven-year social contract, and to keep rates from increasing faster than the Consumer Price Index for the remainder of the contract.[234] For an MVPD to qualify for these reduced rates, it would have to sign an agreement to reduce its basic tier rates to reflect the reductions in retransmission consent fees paid to broadcasters.[235] In other words, the social contract plan would require pay TV providers to actually pass savings along to consumers. Altafiber appears to be alone in supporting this approach in the Delete, Delete, Delete proceeding,[236] and NAB anticipates it will be alone here.

NAB disagrees with the rationale for Altafiber's proposal and believes that it would be unlawful under the Communications Act. Section 325 of the Act prohibits retransmission of

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[234] Altafiber Comments at 12-15. Specifically, a broadcaster would be required to reduce rates by 25% in year 1, 40% in year 2, and 50% in year 3. *Id.* at 13.

[235] *Id.* at 14-15.

[236] Letter from Lisa Chandler Cordell, Counsel to Cincinnati Bell Extended Territories, LLC and Hawaiian Telcom Services Company, Inc., to Marlene H. Dortch, FCC Secretary, MB Docket No. 17-318 and GN Docket No. 25-133 (June 26, 2025). *See also* Andrew Long, Free State Foundation, *Don't Revive "Social Contracts" to Address Video Marketplace Inefficiencies*, Perspectives from FSF Scholars, July 7, 2025, Vol. 20, No. 31 (opposing Altafiber proposal).

broadcast signals without a broadcaster's consent, and the prices, terms, and conditions of retransmission consent agreements are intended by Congress to be established through arms-length, marketplace negotiations, subject only to a requirement that both broadcasters and MVPDs negotiate in good faith. As the Commission has repeatedly acknowledged, its role with respect to retransmission consent negotiations is extremely limited. The Commission has the authority to adopt rules governing good-faith negotiations and adjudicate complaints of violations of those rules,[237] but that is the extent of its involvement in the retransmission consent negotiation process. In directing the Commission to adopt rules governing good-faith negotiations, Congress did not "contemplate an intrusive role for the Commission with regard to retransmission consent" or "grant the Commission authority to impose a complex and intrusive regulatory regime" or "intend the Commission to sit in judgment of the terms of every retransmission consent agreement executed between a broadcaster and an MVPD."[238] The FCC's limited role with respect to retransmission consent negotiations ensures that the resulting agreements reflect marketplace conditions and not government intervention, as Congress intended. A government agency requiring a broadcaster to agree to certain retransmission consent prices, regardless of whether there is an FCC ownership rule waiver involved, is an astounding governmental intrusion into the retransmission consent marketplace and is contrary to the statute and congressional intent.

That said, the Altafiber proposal is unique. NAB believes this is the first time since pay TV providers began proposing retransmission consent "reforms" that any of the industry's heavy-handed regulatory proposals would place any obligation on a pay TV provider to deliver

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[237] *See* 47 C.F.R. § 76.65.

[238] *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, 15 FCC Rcd 5445, 5451, 5455 ¶¶ 13, 23 (2000) (Good Faith Order).

anything to consumers. While Altafiber has not demonstrated a public interest harm to be cured or that the social contract proposal is lawful, it has notably broken with all its peers.

ATVA's proposals to "ameliorate" the potential harms arising from the elimination of the national cap reads like a "greatest hits" list of pay TV proposals from past rulemaking and broadcast application proceedings.[239] None of them are appropriately considered here, nor would any of them be appropriately considered in a retransmission consent proceeding, because they all would involve government-established prices, terms and/or conditions for retransmission consent in contravention of Section 325. For the same reasons explained above in connection with the Altafiber proposal, the Commission does not have the authority to adopt regulations: (1) establishing dates that retransmission consent agreements can or cannot commence or terminate; or (2) prohibiting broadcasters and pay TV providers from negotiating the placement of a broadcast signal in particular programming tiers or packages.[240] The Commission also does not presently regulate streaming video services, and the Joint Broadcasters are not aware of any authority under which the Commission could require any party to ensure that another party can provide access to its streaming video service. Nor, contrary to certain commenters' contentions,[241] is there any basis to disturb the FCC's long-standing judgment that retransmission consent negotiations that involve compensation in the form of carriage of other broadcast signals, programming streams, or

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[239] ATVA Comments at 25-27.

[240] NAB has repeatedly explained that the Commission lacks statutory authority to adopt such proposals. *See, e.g.,* Reply Comments of NAB, MB Docket No. 15-216, at 44, 49-56 (Jan. 14, 2016) (Commission lacks authority to dictate when agreements start or end); *id.* at 14-15 (FCC lacks authority to restrict negotiations regarding placement of broadcast signals; to the contrary, FCC has found that negotiating such terms is presumptively consistent with good faith negotiations).

[241] ATVA Comments at 5; Newsmax Comments at 4, 19-21; Center for Regulatory Freedom Comments at 14-15.

affiliated nonbroadcast networks (i.e., in-kind compensation) is presumptively consistent with the FCC's good faith negotiation rules.[242] Finally, there is no justification for a rule that would prohibit joint negotiations for retransmission consent among non-commonly owned stations that are not located within the same market. The Commission and Congress already have addressed this issue and have not found any need to prohibit joint negotiations other than same-market negotiations.[243]

ATVA further asserts that under the APA, the Commission is obligated to address retransmission consent issues as part of its duty to consider "relevant factors" in this proceeding.[244] But ATVA contends that retransmission consent is relevant and important here because the "evidence shows that eliminating the national cap will lead to higher consumer bills."[245] ATVA's argument therefore fails on its face because, as described in this section, ATVA (and NCTA) failed to show that eliminating the national cap would in fact raise retransmission consent rates or, more importantly, cause public interest harms.[246]

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[242] Good Faith Order, 15 FCC Rcd at 5462, 5469 (rejecting MVPD proposals to prohibit broadcasters from "offering retransmission consent in exchange for the carriage of other programming such as a cable channel," and instead finding this practice to be "presumptively legitimate").

[243] Congress has specifically legislated in this area with respect to both broadcasters and MVPDs and did not indicate any problem with commonly owned TV stations jointly negotiating retransmission consent anywhere, or non-commonly owned stations negotiating retransmission consent in different markets. *See* STELA Reauthorization Act of 2014 (STELAR), § 102, Pub. L. No. 113-200, 128 Stat. 2059 (2014) (codified at 47 U.S.C. § 338(l)) (prohibiting joint negotiations among same-market TV broadcast stations that are not commonly owned). *See also* Television Viewer Protection Act of 2019, Pub. L. No. 116-94, 133 Stat. 2534, 3198 (2019) (codified at 47 U.S.C. § 325) (directing the FCC to adopt rules specifying that joint negotiations by "buying groups" comprised of smaller MVPDs are consistent with good faith obligations).

[244] ATVA Comments at 15, 23.

[245] ATVA Comments at 15; *see also id*. at 24.

[246] As noted above, the "evidence" consists of two outdated letters with a few even more outdated, incomplete, and unclear anecdotes and a single assertion by an unnamed

One would think that if the increase in size of broadcast TV groups over the past several decades actually had caused any substantial rise in retransmission consent fees, then the self-interest of the pay TV industry would have incentivized ATVA, NCTA, and/or individual large pay TV/broadband providers to study and document the alleged fee increases. The complete absence of convincing empirical evidence must lead the FCC to conclude that such purported evidence does not exist. Thus, ATVA's claim that retransmission consent is a relevant, important factor here fails on its own terms.

In any event, ATVA's call for the FCC to consider all relevant factors in this proceeding seems more than a little hypocritical. Such relevant factors obviously include media and advertising market conditions threatening the vitality, if not the viability, of local broadcast TV stations, which ATVA and the rest of the pay TV industry studiously ignore – except, of course, when large pay TV/broadband providers such as Charter and Cox Cable contend they need greater scale to compete effectively in the modern video and ad markets.

ATVA's further insistence that the Commission consider the costs and benefits of the national TV cap[247] ultimately seems a self-defeating argument, as consumers would not benefit from broadcast TV station groups lacking national scale under the FCC's existing national TV rule. Keeping broadcasters smaller and weaker – as pay TV providers like the combined Charter/Cox Cable grow larger – likely will result in local stations receiving below-market retransmission consent fees and increased profits for the pay TV industry. But consumers would benefit only if pay TV providers pass on their cost savings to the public,

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individual at an unnamed company, along with cites to earlier DOJ statements about specific *local* TV station combinations, rather than any potential competitive effects stemming from repeal of the FCC's *ex ante* national TV rule. ATVA here relies on a number of FCC orders pertaining to specific, *non*-broadcast transactions, which are even more irrelevant to examining an asymmetric *ex ante* broadcast rule. *See* ATVA Comments at 24-25, n.88.

[247] ATVA Comments at 23.

which would simply not happen. The pay TV industry already made clear its dramatic opposition to returning fees to consumers in the FCC's now-sidelined "customer rebates for undelivered programming" proceeding.[248]

V. CONCLUSION

It is long past time for the Commission to repeal its 85-year-old *ex ante* national TV ownership rule. The revolutionary changes in the video and advertising markets make the asymmetric national TV rule not just unnecessary today, but affirmatively harmful. Pay TV interests and advocacy organizations opposing any change – or even wanting to tighten the rule – have their own anti-competitive or ideological axes to grind and a long history of opposing any liberalization of the FCC's broadcast-only ownership restrictions. Neither of these groups have presented any bases to justify the Commission clinging to its analog-era national TV rule. Again, the Joint Broadcasters urge the Commission to conclude this proceeding as quickly as possible and eliminate the national TV rule in its entirety for all television broadcasters.

Respectfully submitted,

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[248] *See* Comments of NCTA, MB Docket No. 24-20 (Mar. 8, 2024); Comments of ATVA, MB Docket No. 24-20 (Mar. 8, 2024); Comments of NTCA, MB Docket No. 24-20 (Mar. 8, 2024); Letter from Mike Nilsson, Counsel to ACA to Marlene H. Dortch, FCC, MB Docket No. 24-20, at 1 (Mar. 8, 2024); Comments of DISH Network LLC, MB Docket No. 24-20 (Mar. 8, 2024) (each opposing proposal to require pay TV providers to give subscribers rebates if programming is unavailable due to contractual disputes with broadcasters or other program suppliers).

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Attachment A

The National Association of Broadcasters (NAB) is the nonprofit trade association that advocates on behalf of free local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

ABC Owned Television Stations are leaders in local news and information, serving eight Designated Market Areas with locations in each geographic region of the country.

The ABC Television Affiliates Association, CBS Television Network Affiliates Association, FBC Television Affiliates Association, and NBC Television Affiliates are non-profit trade associations whose members consist of local television broadcast stations throughout the county, each of which is affiliated with its respective broadcast television Network. Collectively, the Affiliates Associations represent more than 700 local television stations affiliated with the four major broadcast Networks. The Affiliates Associations' member stations provide local news, life-saving weather and emergency information, sports, entertainment, and other valuable, highly desired video content to virtually every community in the country, whether large or small, urban or rural.

CBS News and Stations, a division of Paramount, a Skydance Corporation, owns and operates 27 television stations in 17 Designated Market Areas.

Entravision is one of the largest Spanish-language media companies in the United States, with nearly 100 television and radio stations across 28 markets nationwide.

E.W. Scripps Co., through its subsidiaries, owns and operates full-power local television stations throughout the country, delivering quality, objective local journalism in 42 local markets.

Fox Television Stations, LLC, owns and operates 29 full power broadcast television stations. These include stations located in 14 of the top 15 largest Designated Market Areas (DMAs), and duopolies in 11 DMAs, including the three largest DMAs (New York, Los Angeles and Chicago). Of these stations, 18 are affiliated with the FOX network.

Nexstar Media Inc. is a leading diversified media company that produces and distributes local and national news, sports programming, and entertainment content across its television and digital platforms.

Sinclair Inc. is a diversified media company and leading provider of local news and sports.

Trinity Broadcasting Network (TBN) is the largest and most widely watched religious television broadcaster in the United States, serving more than 100 million homes across the country. TBN operates 35 broadcast television stations and delivers content to over 600 cable systems.