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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 17-318; FCC 26-53; FR ID 376834

National Television Multiple Ownership Rule

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) repeals the national television multiple ownership rule (national cap), which prohibits a commercial television licensee from having a cognizable interest in television stations that have an aggregate national audience reach above 39%. The Commission finds, given seismic changes in the modern media marketplace, that the rule's repeal will help empower local broadcast television stations to operate in the public interest and to better serve the needs and interests of their local communities. The Commission will review on a case-by-case basis proposed transactions that would have been prohibited under the national cap to determine whether a proposed transaction would serve the Commission's media ownership goals of localism, competition, and viewpoint diversity.

DATES: The repeal of 47 CFR 73.3555(e) is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, please contact Chad Guo of the Media Bureau, Industry Analysis Division, Chad.Guo@fcc.gov, (202) 418-0652.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, in MB Docket No. 17-318, FCC 26-53, adopted on August 6, 2026, and released on October 1, 2026. The complete text of this document is available electronically via the search function on the FCC's website at https://docs.fcc.gov/public/attachments/FCC-26-53A1.pdf.

SYNOPSIS

INTRODUCTION

1. The Commission has been working to empower local broadcast television stations to operate in the public interest, and the agency has been doing so mindful of the modern media marketplace. This includes taking steps that can help ensure broadcasters continue serving the needs of their local communities in today's communications environment. The Commission takes another step in that direction here by updating its approach to the agency's national television multiple ownership rule for the first time in over 20 years. See 47 CFR 73.3555(e).

2. Dating back to its creation, the Commission has taken actions to regulate the ownership structure of the communications industry that it regulates. Early on, the Commission focused in many cases on blanket prohibitions and *ex ante* regulations. For instance, the Commission once had a blanket prohibition that prevented any one entity from owning both a daily print newspaper and a full-power broadcast station if the station's service contour encompassed the newspaper's community of publication. That prohibition operated to prevent the Commission from even considering whether to allow common ownership regardless of whether the facts pertinent to any particular combination would promote the public interest or not. In 2017, the Commission decided to modify its approach—ultimately allowing for case-by-case reviews of broadcast license transfers to newspaper owners.

3. Likewise, the Commission once had a blanket prohibition generally limiting commercial radio ownership on a nationwide basis to no more than 20 AM stations and no more than 20 FM stations. In 1996, Congress directed the Commission to eliminate this national restriction on radio station ownership. With the elimination of this national *ex ante* restriction, the Commission now reviews applications for radio license transfers and assignments on a case-by-case basis, consistent with applicable standards of the local radio ownership rule. The agency's experience with this regulatory approach has been positive.

4. With successive orders and statutes, the Commission and Congress have been in a decades-long review of the national television multiple ownership cap, but over the years one principle has remained clear—the Commission has always retained authority to modify the rule governing the national cap. Statutory directives, including those in the Consolidated Appropriations Act of 2004 (CAA), instructed the Commission only to "modify its rules." And the power to modify its rules includes the power to later change them. This principle is highlighted in *Fox Television Stations, Inc. v. FCC* (*Fox I*), where the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) stated that "the choice of 35%"—the then-congressionally specified national audience reach limit—"rather than any other number determined only the starting point from which the Commission was to assess the need for further change."

5. Today, the Commission exercises its authority to modify the rule once again to meet current market realities. In its current formulation, the national cap generally has operated as a blanket prohibition on transactions that would result in the merged entity achieving a national audience reach greater than 39% of television households in the United States. As applied, the rule generally has presumed that it would not be in the public interest to allow a particular deal in excess of this bright line limit. Particularly in light of changes in the media marketplace since the Commission implemented the current *ex ante* restriction, the agency acts today to update its approach.

6. As we explain, the Commission shifts today from a blanket prohibition to a case-by-case approach that will give the Commission the flexibility to approve deals that are in the public interest while continuing to deny any transaction that fails to serve the public interest. Under a case-by-case approach, the Commission's interests in localism, viewpoint diversity, and competition (to the extent they are implicated) can be fully analyzed and vindicated in the context of a specific transaction. There may be transactions that would have exceeded the limits of the 39% national cap that do not promote the public interest and that will be denied. On the

other hand, there may be transactions that would have exceeded the 39% national cap that do promote the public interest and could gain Commission approval. We find that shifting from a relatively inflexible, *ex ante* regulation to an individualized, case-by-case assessment will help ensure that the Commission carries out its statutory mandates in an appropriate manner without having to show special circumstances that would justify a waiver of a rule that no longer serves the public interest.

7. Given this finding, we repeal the Commission's national television multiple ownership rule. We conclude that replacing that regulation with a case-by-case approach to applications for television license transfers and assignments is the best way to promote the Commission's media ownership goals of localism, viewpoint diversity, and competition. Therefore, any proposed transactions that would have been barred under a strict application of the current rule will be subject to the Commission's regular review process to determine whether approval would serve the public interest, consistent with the local television multiple ownership rule.

8. It is fully within the Commission's statutory authority to repeal the rule. The Commission retains authority to change the national cap if the public interest requires. While Congress has at times directed us to change our rules, it has never withdrawn our authority under the Communication Act's public interest standard to regulate or change ownership limits. For the reasons below, we conclude that the public interest requires us to eliminate the national television multiple ownership rule in favor of a case-by-case approach.

BACKGROUND

9. The Commission's rules prohibit a commercial television licensee from having a cognizable interest in television stations that have an aggregate national audience reach above 39%, or up to a maximum of 78% using the UHF discount, which attributes to a UHF television station only 50% of the television households in the station's Nielsen Designated Market Area (DMA). As an original matter, the Communications Act of 1934 (Communications Act) itself

does not set any limit on broadcast ownership; rather, the Commission created the cap in 1941 as a rule under the statute's public interest standard. Since it was promulgated originally, the limit on national television ownership has become less restrictive as television licensees have required greater flexibility to respond to the marketplace changes confronting the broadcast industry. During the earliest days of television, the Commission's first, and most restrictive, ownership limits prohibited an entity from owning, operating, or controlling more than three television stations nationwide. The Commission stated that it would be inconsistent with the public interest, convenience, and necessity to allow a greater concentration of television ownership. Three years later, it relaxed the limit to five television stations. In 1954, under its rulemaking authority, the Commission concluded that the limit should be raised further to seven television stations, provided that at least two of the seven stations were UHF stations. In finding that the increase was warranted in order to promote the development of the UHF band, the Commission explained that its diversification policy was not the only relevant consideration in setting television ownership limits.

10. In 1984, again utilizing its rulemaking authority, the Commission reexamined its television and radio ownership limits in light of the increase in the number of broadcast stations and the expanding reach of cable service. Citing, among other things, the tremendous increase in the number of media outlets, the Commission concluded that the ownership limits could be repealed without harming either viewpoint diversity or competition. The Commission stated that new evidence showed that, in fact, group ownership can boost viewpoint diversity. Nonetheless, to avoid a disruptive restructuring of the broadcast industry that an immediate repeal might cause, the Commission adopted a transitional approach that included raising the television ownership limit from seven stations to twelve stations, which was intended to sunset after six years.

11. In 1985, on reconsideration of its decision to raise the limit to twelve stations, the Commission affirmed its earlier conclusion that eliminating the seven station limit would not

have contravened the Commission's viewpoint diversity and competition goals. Nevertheless, the Commission decided that an even more cautious approach was needed to minimize the potentially disruptive effects of permitting additional concentration. First, the Commission retained the 12 station numerical limit to guard against a rapid restructuring of small markets that might ensue from eliminating the numerical limit. Additionally, it layered onto the rule an audience reach limit of 25% of the nation's television households to prevent a group owner from substantially increasing its audience base by focusing its expansion efforts on the most populous markets. However, to reflect the fact that, in the analog television broadcasting era, UHF signals reached a smaller audience in comparison with VHF signals, the Commission adopted a 50% UHF discount, whereby UHF stations are attributed with only half of the television households in their DMAs for purposes of determining compliance with the national audience reach cap. Consistent with its decision to proceed more cautiously, the Commission eliminated the sunset provision.

12. In the 1996 Act, Congress directed the Commission to amend its rules to increase the national audience reach cap from 25% to 35% and to eliminate restrictions on the number of television stations an entity may own nationwide. The Commission revised its rules accordingly, and, in doing so, it retained the 50% UHF discount, which the 1996 Act had not addressed. Pursuant to Congress's directive in the 1996 Act to review the media ownership rules biennially, the Commission examined the national cap in 1998, and considered revising it, notwithstanding Congress's instruction to the Commission in the 1996 Act to set the cap at a specific level in the Commission's rules. Upon completion of its review, the Commission opted for a wait-and-see approach and retained the 35% limit.

13. The D.C. Circuit remanded that decision in 2002, finding that the Commission had failed to demonstrate that retaining the 35% cap advanced localism, diversity, or competition. Perhaps even more significant, the court also rejected the argument that the 1996 Act required the Commission to draw the line at 35%. The court reasoned instead that

Congress's instruction to the Commission to set the cap at 35% in its rules did not require deference because "the choice of 35% rather than any other number determined only the starting point from which the Commission was to assess the need for further change." Upon rehearing, the court again rejected the Commission's argument that the agency should defer to Congress, explaining that if Congress wished to take away the Commission's power to alter the cap, "it need only have enshrined the 35% cap in the statute itself."

14. In its *2002 Biennial Review Order*, the Commission again reviewed the national television multiple ownership rule and found that, while a national ownership cap was no longer needed to protect diversity or competition, a cap remained necessary to promote localism given the nature of station ownership in the television industry. The Commission observed that, by limiting the national audience reach that a broadcast network could achieve through the ownership of local television stations, the national cap limits how many stations the network itself can own and operate for the purpose of distributing its programming. By contrast, in those markets not covered by a network-owned station, the network's programming is aired by local television stations that are affiliated with the network but that are owned and operated by another entity. The owner of the network and the owner of a station affiliated with the network periodically negotiate the terms and conditions of their affiliation agreement, including the affiliate's rights and responsibilities regarding the airing of the network's programming. In the *2002 Biennial Review Order*, the Commission reasoned that, by preserving a balance of negotiating power between networks and its affiliates, a national cap enables affiliates to maintain their bargaining power to select programming responsive to the interests of their local communities. The Commission decided, however, to raise the cap from 35% to 45% to promote free, over-the-air programming by allowing networks to achieve greater economies of scale by purchasing more stations in order to compete more effectively with cable and satellite operators, while at the same time ensuring that a network could not reach a larger national audience than its affiliates could reach collectively.

15. Following the adoption of the *2002 Biennial Review Order*, and while an appeal of that Commission decision was pending, Congress in 2004 partially rolled back the Commission's cap increase by including a provision in the CAA directing the Commission to modify its rules to set the national cap at 39% of national television households. The CAA also amended section 202(h) of the 1996 Act to require the Commission to review its media ownership rules quadrennially rather than biennially. In doing so, however, Congress excluded consideration of "any rules relating to the 39 percent national audience reach limitation" from the quadrennial review requirement. Prior to the enactment of the CAA, several parties had appealed the Commission's *2002 Biennial Review Order* to the Third Circuit. In June 2004, the Third Circuit found that the challenges to the Commission's actions with respect to the national audience reach cap and the UHF discount were moot as a result of the CAA provisions. The court further stated that Congress's decision to remove "any rules relating to the 39 percent national audience reach limitation" from mandatory periodic review under section 202(h) would include removing the UHF discount from that review, given that any change made with respect to the discount would effectively change the national cap. Moreover, the court clarified that, although the UHF discount would be insulated from the specific 202(h) review process going forward, the court did not intend its decision to "foreclose the Commission's consideration of its regulation defining the UHF discount in a rulemaking outside the context of Section 202(h)" and that the Commission remained free to "decide, in the first instance, the scope of its authority to modify or eliminate the UHF discount outside the context of 202(h)."

16. In August 2016, as part of a proceeding unaffiliated with the Commission's quadrennial review under section 202(h), the Commission eliminated the UHF discount, finding that UHF stations were no longer technically inferior to VHF stations following the digital television transition and that the competitive disparity between UHF and VHF stations had disappeared. In doing so, the Commission concluded that it had the authority to revise not only the UHF discount but also the national cap. The Commission characterized the CAA as simply

directing the Commission to revise its rules while eliminating the requirement for periodic review. The Commission found that no statute barred "the Commission from revisiting the cap or the UHF discount contained therein in a rulemaking proceeding so long as such a review is conducted separately from a quadrennial review of the broadcast ownership rules pursuant to Section 202(h) of the 1996 Act." Moreover, the Commission concluded that it retained authority under the Communications Act, and had an affirmative obligation over time, to revisit and, where appropriate, revise or eliminate its rules, which could include "any aspect of the national audience reach cap." Eliminating the UHF discount effectively tightened the national cap by reducing the maximum allowable audience reach of an owner of UHF stations from 78% to 39%. After networks owning and/or affiliated with UHF stations asked the Commission to reconsider its decision, the Commission decided in April 2017 to reinstate the UHF discount. The Commission concluded that because the discount is used to determine licensees' compliance with the national cap, the two are inextricably linked and the discount cannot be eliminated without also considering whether the cap remains in the public interest. The Commission's reinstatement of the discount was challenged in the D.C. Circuit, but the court found that the petitioners lacked standing and dismissed the lawsuit in an unpublished decision in 2018. There have been no further modifications to the rule, and so both the 39% national audience reach cap and the 50% UHF discount remain in effect.

17. In reinstating the UHF discount, the Commission committed to undertake a comprehensive rulemaking proceeding to determine whether to modify or eliminate the national ownership limit, including the UHF discount. Accordingly, the Commission adopted a Notice of Proposed Rulemaking (*NPRM*) in 2017 to initiate that proceeding to seek comment on whether the Commission is authorized to make changes to the cap and/or the UHF discount. The *NPRM* also asked whether the current 39% cap should be modified or eliminated and, if a cap is retained, how to calculate compliance, including whether to modify or eliminate the UHF discount. Among other things, the *NPRM* also sought comment on whether the cap continues to

promote localism given the current media marketplace and on whether it has other potential benefits, or costs, that the Commission should consider. Specifically, the *NPRM* asked whether changes in the marketplace have affected the network/affiliate relationship in ways that warrant revision of the Commission's previous assumptions underlying the rule's justifications. In response, a number of parties, including broadcasters, MVPDs, and public interest organizations, filed comments on March 19, 2018, and reply comments on April 18, 2018. Multiple ex parte filings addressing the rule have been submitted in the years since then.

18. Although the public has had ample opportunity to comment on the issues raised in the *NPRM*, the Media Bureau issued a Public Notice (*Refresh Public Notice*) on June 18, 2025, that invited interested parties to refresh the record given the passage of time since the *NPRM*'s adoption. The *Refresh Public Notice* sought comment on: (1) materials filed since the comment period for the *NPRM* ended in April 2018; (2) pertinent new or additional information regarding the television and video programming marketplace; (3) relevant trends within the television and video programming industry or in related markets, including whether and how the national cap has affected broadcast television's market position in relation to other video distributors, such as online video providers; and (4) other legal or economic developments that the Commission should consider. Comments were due on August 4, 2025, and reply comments were due on August 22, 2025.

19. In comments responsive to the *Refresh Public Notice*, broadcasters urge the Commission to eliminate the national television multiple ownership rule in its entirety, which they view as an obsolete and artificial constraint on their ability to compete in a vastly changed media marketplace. Supporters of the rule, including public interest organizations and MVPDs, assert that the Commission lacks statutory authority to modify or eliminate the rule. They also argue that, among other things, the rule is necessary to promote localism and to prevent higher retransmission consent fees that would lead to higher MVPD subscription prices.

DISCUSSION

20. We find that a bright line, *ex ante* limitation, as opposed to a transaction-specific review, is not necessary in today's media marketplace. A rigid cap is no longer needed to serve the "public interest, convenience, and necessity," which is the review standard used in our evaluation of individual applications and licenses, because, as discussed below, the Commission can review proposed transactions on a case-by-case basis to assess whether approval would promote the Commission's media ownership goals of diversity, competition, and localism. As mentioned above, the Commission determined in 2003 that a national cap was not necessary to promote either diversity or competition, and we find that there is even more support today for those conclusions given the availability and accessibility of a myriad of sources of video programming, including cable networks, online services, and social media platforms. The reason for the Commission's continued imposition of a limit in 2003 was to promote localism by maintaining the balance of power between the networks and their affiliates. At that time, limiting the percentage of households that networks could reach through their owned and operated stations ensured networks' reliance on affiliated television stations for the distribution of network programming. However, now networks can reach viewers by placing their programming on streaming platforms. After reviewing the extensive record in this proceeding, we find that a bright line rule is no longer necessary to serve the public interest because we can review cases on an individual basis.

21. The rule's repeal will not lead to automatic approval of transactions currently barred under the national cap because the Commission will review any proposed transaction that the national cap would have barred. In addition, it will have no effect on the public interest obligations of broadcast licensees. Instead, removal of the cap will serve the public interest because it will allow the Commission to analyze all proposed transactions on the basis of their individual merits, taking into account all pertinent factors, instead of automatically excluding transactions that do not satisfy a singular metric that may or may not be relevant to the

circumstances of a particular case. National audience reach is not necessarily a meaningful measure of a station group's relative negotiating leverage, market power, financial strength, or public interest record. Thus, a blunt tool like the national cap may be precluding station acquisitions that would be in the public interest, without providing the Commission the opportunity, outside of a waiver process, to take into consideration factors favoring approval of a transaction. Conversely, station acquisitions that would result in a national audience reach below the cap are not given automatic approval on that basis. Rather, the Commission is required to review such transactions to ensure that they serve the public interest, as it always has.

22. In light of changing market conditions, it is no longer valid to presume that virtually any transaction that breaches the cap would disserve the public interest. Removing the cap will allow the Commission to consider additional proposed transactions instead of those currently brought by applicants because they happen to comply with an outdated cap. Eliminating the cap also will be a more efficient and sensible approach than retaining the cap and granting waivers for transactions that serve the public interest, like the recent merger between Nexstar Media Inc. (Nexstar) and TEGNA Inc. (TEGNA). For the reasons discussed below, we conclude that a blanket rule that automatically prohibits television mergers exceeding an inflexible numerical bar absent a waiver no longer makes sense in today's complex media marketplace, given the numerous forces affecting the broadcast industry.

23. Therefore, we repeal the national television multiple ownership rule. Given that the UHF discount already allows television licensees to reach a potential 78% of the nation's households, we believe that repeal will provide needed relief to station owners without constituting a radical departure from the current ceiling. As discussed below, to the extent that market forces do not ameliorate or constrain any resulting public interest harms that some commenters in this proceeding predict, such as an imbalance in the network/affiliate relationship, a decrease in local programming, an increase in retransmission consent fees, or a loss of journalists and other communications workers, the Commission can consider addressing those

concerns directly in more targeted ways, including as part of the Commission's transaction review process, rather than relying on an outdated rule that is no longer serving, and may be undermining, its intended purpose.

24. Furthermore, we conclude that the Commission has the statutory authority to modify or eliminate the national television multiple ownership rule. The best reading of the CAA is that Congress did not prohibit the Commission from reviewing or further modifying the rule. Under this authority, we now review the rule and conclude that it should be replaced with a case-by-case review.

A. The National Television Multiple Ownership Rule is Not Necessary

1. The rule is not necessary to promote viewpoint diversity or competition

25. For more than 40 years, the Commission's position has been that a national ownership limit on television licensees is not necessary to promote competition or viewpoint diversity, most notably because the national scale of a broadcaster has no impact on the number of viewpoints or the concentration of competitors in the local television markets it serves. In 1984, the Commission reached that conclusion after observing the "explosive growth and change" that had led to an abundance of outlets in the mass media market, including the fact that the number of television stations had increased to 1,169; the number of radio stations had reached almost 9,500; cable passed 64% of the nation's television households; satellite service was expected to launch soon; and over 8.3 million video cassette recorders were in American homes. Moreover, the Commission concluded that national broadcast ownership limits are not pertinent to preserving viewpoint diversity and competition because the relevant market to consider for promoting those goals is local. The Commission reasoned that the viewpoint diversity to which an individual is exposed is not affected by whether those viewpoints also are disseminated in other local broadcast markets. The Commission also determined that "the fact that local competitors may share common ownership with stations in other markets is

unimportant in terms of competitive harm." In addition, the Commission concluded that "[g]roup owners may be able to devote more resources to newsgathering and other activities which improve the quality of programming presented." Nevertheless, the Commission retained a modified national cap on a transitional basis to minimize potential disruptive effects to the broadcast industry. A year later, the Commission affirmed its position that repeal of the rule would not contravene its policy goals of promoting diversity and preventing undue concentration.

26. In 2003, the Commission again found that the national cap was not necessary to promote its diversity and competition goals. It affirmed its 1984 conclusion that the market for viewpoint diversity is local, not national, and that, regardless, "the proliferation of media outlets nationwide" rendered the cap unnecessary even if the national market were the relevant area to consider. The Commission added that the cap also was not necessary to promote program diversity, which it concluded that the marketplace can and should address. The Commission expanded its competition analysis from its 1984 review of the national television advertising market to include a review of the national program acquisition market. An in-depth analysis of both these markets confirmed the Commission's earlier conclusion that a national cap is not necessary to promote competition. The Commission's description of the U.S. media marketplace at the time was based on data showing that in 2000 there were more than 12,615 radio stations; 1,616 television stations; 68.5 million cable subscribers; approximately 14.8 million direct broadcast satellite systems (DBS) subscribers; and 281 nationally-distributed non-broadcast networks. Approximately 42.5 million U.S. households subscribed to an Internet access provider, and the Internet offered roughly 30 million websites. Thus, the total number of voices and competitors in the country had increased substantially since the Commission's 1984 observation that the media marketplace had undergone explosive growth.

27. We find no reason to depart from the Commission's earlier conclusions that a national cap is not needed to promote diversity or competition. Indeed, those findings are even

more incontrovertible today, and we disagree with the commenters that claim otherwise. First, we affirm our previous view that it is the local market that is relevant for assessing those policy goals with respect to broadcast television. The national cap is not a constraint on local ownership because it is not focused on audience reach in any given local market but rather is concerned with how many stations a broadcaster owns on the national level. Therefore, eliminating the national cap will not permit any more or less consolidation within a local market and so will not affect the number of voices in that local market or the number of local stations competing in that local market. Allowing a station owner to purchase an existing station in another local market that it does not already serve will not harm viewpoint diversity because one viewpoint in the market will be exchanged for another, and the overall number of viewpoints in that market will not be reduced. Similarly, concentration within a local market will not be affected by the substitution of a station owner that is new to the local market for a station owner that had been serving the market, and in some instances, the new owner may inject new ideas or more vigorous competition into the market. In addition, while a broadcaster's acquisition of a second station in a local market could reduce the number of independent voices or independent competitors, repeal of the national cap has no bearing on the likelihood of such an outcome because, for purposes of the rule, a broadcaster's audience reach in that local market is the same regardless of the number of stations it owns in the market given that the television households in that market are counted only once and are not multiplied by the number of the broadcaster's stations in that market.

28. Second, the proliferation in recent years of video programming providers available on the Internet and through streaming services only reinforces the Commission's 1984 and 2003 diversity and competition findings. We agree with some commenters that "[i]f a national TV rule was not necessary to preserve viewpoint diversity or competition before the expansion of cable TV channels; the launch of satellite TV and radio; the development and exponential growth of the [I]nternet, myriad online content providers, and social media . . . , then

that rule is not necessary now." As compared with 1984 and 2003, recent data show that there are 15,686 radio stations; 1,777 television stations; 35.3 million cable subscribers; 13.7 million DBS subscribers; 5.1 million telephone company video subscribers; at least 193 nationally-distributed non-broadcast networks; and roughly 2.3 million U.S. podcast shows. Approximately 121 million U.S. households subscribe to an Internet access provider, and the Internet offers approximately 200 million active websites, with 252,000 new websites created daily. Although traditional MVPD subscribership has been in decline since 2012, when it reached 101.6 million subscribers, 83% of U.S. adults now access video programming through streaming services. Subscribership is robust for online video distributors (OVDs), which distribute video programming to consumers over the Internet and include services such as Netflix, Amazon Prime Video, Disney+, and Paramount+, among many others. One report finds that 1,189 free, ad-supported streaming television (FAST) channels are available over the Internet. As the Media Bureau observed in the *Nexstar-TEGNA Order*, "today, broadcasters are competing in a much larger, broader, and competitive environment" with digital advertisers and various technology platforms, including streaming services and podcasters. A national cap on broadcasters to protect viewpoint diversity and competition makes no sense in a media marketplace with so many ways for video content to reach consumers today. Indeed, allowing broadcasters to achieve greater scale in such a media environment is unlikely to have an adverse impact on viewpoint diversity or competition.

29. In any event, any relevant concerns about viewpoint diversity or competition can be raised and, if appropriate, adjudicated by the Commission in the context of its review of any broadcast transaction.

2. The rule is not necessary to promote localism

30. Notwithstanding its conclusion that a national cap is not necessary to promote its diversity and competition goals, the Commission decided to retain a cap in 2003 to promote its localism goal. We now find that the *ex ante* 39% cap is no longer necessary to serve this one

remaining purpose. Rather, concerns regarding localism can be addressed by the Commission in the context of specific transactions.

31. As the Commission has explained before, to maximize their national audience, the Big Four networks (i.e., ABC, CBS, FOX, and NBC) traditionally have acquired their own local broadcast stations (typically in the largest television markets) and entered into affiliation agreements with station owners throughout the rest of the country. Through this affiliation model, the Big Four networks benefit by obtaining wide-scale delivery of their programming, and affiliates benefit by obtaining access to network programming. By contrast, many local affiliates historically have aired local programming, including local news, in time slots not occupied by national network programming. Television viewers benefit from localism to the extent that their affiliated stations have the latitude and resources to produce and air local programming, as well as the incentive and ability to preempt national network programming in favor of local news or other programming that is potentially of greater value or importance to their local audiences and better serves local needs and interests. This network/affiliate model has long sought to balance two competing interests: that of broadcast networks, which are economically motivated to ensure that their programming appeals to a nationwide audience and is carried broadly by affiliates; and that of local affiliates, which are economically motivated to attract viewers and advertising dollars by tailoring their programming to the tastes of their local audiences and by inducing networks to air programming that is responsive to their communities' needs and interests.

32. The central factor in the Commission's 2003 decision to retain the national cap was its consideration of the ability of affiliated television stations to promote localism by: (1) influencing through collective negotiation the programming that networks provide and (2) preempting network programming in favor of programming that appeals more to the needs and interests of their local communities. The Commission acknowledged that it had not taken this factor into account in its determination in 1984 that the rule should sunset after a transition

period. It noted that in 1984, the Commission had looked, however, at whether group station owners provided less or lower quality local news and public affairs programming than single station owners and had found no evidence that such was the case. In fact, the Commission found the opposite to be true. Similarly, the Commission concluded in 2003 that the national cap is not necessary to promote a higher quality or quantity of local news programming.

33. Nevertheless, after analyzing preemption rates, the Commission in 2003 found that affiliated stations act on their economic incentive to serve their local audiences by preempting network programming at greater rates than network-owned stations do, which is not surprising given networks' interest in the widest distribution of their programming in order to maximize their advertising and syndication revenues. The Commission pointed to data showing that affiliated stations preempted an average of 9.5 hours of prime time programming in 2001, as compared to an average of 6.8 hours preempted that year by network-owned stations. The Commission listed numerous specific examples of affiliates protecting local viewing interests by raising concerns with networks about certain programs and/or by preempting those programs. The Commission concluded that affiliates' ability to affect program selection is a benefit to viewers and that eliminating the cap would shift the balance of power toward the networks in a way that would disserve the Commission's localism policy. The Commission noted its finding in the *1998 Biennial Review Order* that "affiliates 'play a valuable counterbalancing role' to network programming decisions by exercising their independent programming discretion regarding what programs best serve the needs and interests of their local communities." The Commission concluded that preventing a network from achieving a greater national audience reach than its affiliates have collectively serves the Commission's localism goal by keeping in check the network's power over its affiliates.

34. However, in today's media marketplace, the Commission determines that restricting the national audience reach of station owners through an *ex ante* 39% cap is no longer the best way for the agency to maintain the balance of power between networks and their

affiliated stations. Rather, the Commission can examine the dynamics between networks and affiliates in the context of specific transactions. In making this change, we note that networks do not depend on affiliates for programming distribution to the same extent as they did in the past. As described in the *Nexstar-TEGNA Order*, "[w]e have entered a new streaming age." Now networks can reach viewers directly by placing their programming on their associated streaming platforms, such as Peacock, Disney+, Paramount+, and FOX One. The streaming services owned by the parent companies of the Big Four networks reach tens of millions of viewers. Thus, there is less incentive for networks to acquire local stations as a means of controlling the distribution of their programming such that an *ex ante* 39% cap is no longer the best approach.

35. Notably, the national cap currently affords the networks plenty of headroom to acquire more local television stations, and yet all four of the major networks remain well below the 39% limit. With the UHF discount, the Big Four network owners currently reach through their owned stations the following percentages of the national television audience: ABC owns stations reaching 20.7% of the national audience; CBS owns stations reaching 21.8% of the national audience; FOX owns stations reaching 24.2% of the national audience; and NBC owns stations reaching 19.4% of the national audience. Moreover, all Big Four networks are owned by large conglomerates engaged in multiple enterprises and therefore derive substantial revenue from other lines of business besides their network-owned stations. Indeed, the total number of stations owned by the Big Four networks has decreased since the *2002 Biennial Review Order*. For these reasons, we are not concerned that repealing the cap will lead to a higher concentration of network station ownership and further erode the network/affiliate balance of power. Regardless, the networks comprise only a small subset of potential station buyers, and any such concerns about their ownership concentration, where identified as the product of a specific transaction, can be considered as part of the Commission's transaction review process. Given that the networks' power over their affiliates has become less contingent upon station ownership, the bright line 39% national cap is not the best way for the agency to limit networks' negotiating

leverage with affiliated stations. Further indication that the 39% national cap is not serving its purpose is the fact that the affiliates no longer seek a two-tiered cap as they did in 2018, when they proposed that network-owned stations be subject to a 39% cap with no UHF discount but that the rule be relaxed for non-network-owned stations. It is telling that the affiliates in their 2025 comments do not object to the rule being repealed for network-owned stations despite their claim of increasing network power.

36. This is not to say that there are no relevant differences between affiliates owning more television stations compared to networks owning more television stations. The Commission continues to have concerns regarding the balance of power between these two types of station owners. But any differences between affiliate or network television station ownership can be taken into account in the context of a specific transaction.

37. Not only is the national cap no longer necessary to maintain the balance of power in the network/affiliate relationship, but neither has it been effective in doing so. The market capitalizations of the Big Four networks are multiples of those of station groups owning affiliated stations. The affiliates point out that the networks, despite previously paying their affiliates for distributing their programming, now demand reverse compensation fees from the stations in exchange for their affiliation. These fees, which typically are tied to the retransmission consent payments stations receive from MVPDs, now total approximately one-half of the retransmission consent fee revenues that a local station receives on average. And by some accounts, certain networks are now charging fixed reverse compensation fees that are in excess of the station's retransmission consent revenues. In addition, the affiliates contend that networks control not only the negotiations with online video providers for the right to stream a station's local signal but also that they demand a share of the negotiated licensing revenues of the station's online streaming rights.

38. The affiliates further claim that networks exert their negotiating power by imposing unreasonable terms and conditions in affiliation agreements, such as limitations on

preemption rights. The ability to preempt network programming remains an important means through which local stations can reflect the tastes and needs of the communities they serve. When the Commission last reviewed the national cap as part of the *2002 Biennial Review Order*, affiliates, at that time, described how increased network leverage had led, over time, to networks' rising resistance to affiliate preemptions and to affiliates' declining use of preemptions. In the current proceeding, affiliates maintain that preemption allowances "in network affiliation agreements, where they exist, remain increasingly crabbed and financial penalties for unauthorized preemptions high, and loss of affiliation remains the ultimate penalty." As evidence, they submit numerous examples of preemption provisions that the CBS, FOX, and NBC networks have imposed in their affiliation agreements. Nonetheless, they state that "[e]ven in the face of these restrictions and possibly severe penalties, affiliates do still preempt network programming" given that "[a]ffiliates have a countervailing and independent duty, as broadcast licensees, to serve the public interest," which they claim to fulfill "by making independent programming decisions to serve their individual local communities—by producing their own local news, sports, weather, and public affairs programming and by making ultimate decisions about which programs, including network programs, best serve their local audiences." They describe various occasions when affiliated stations have preempted network programming, including to provide local coverage of the shooting at Marjory Stoneman Douglas High School, Hurricane Irma, tornado warnings, local parades, local telethons, and sporting events of local interest. They posit that affiliated stations would preempt network programming more often "if the network grip were not so tight."

39. The national cap has not prevented this growing imbalance in the network/affiliate relationship, and eliminating the cap will not worsen it given not only networks' decreasing incentive to acquire local television stations as a means of controlling the distribution of their programming, but importantly and more fundamentally the Commission's

determination here that any such issues can be addressed and mitigated as appropriate in the context of any particular transaction.

40. Furthermore, if warranted, network power over affiliates likely could be curbed more effectively through more direct mechanisms than a blanket rule like the national cap. For example, § 73.658 of the Commission's rules affords affiliates various protections in their negotiations with networks, including with respect to program preemption, territorial exclusivity, and station rates for the sale of broadcast time. Among its options, the Commission could enforce these existing rules more rigorously, consider adopting new rules that might be warranted, or ensure that affiliate concerns are addressed when reviewing proposed station acquisitions. Indeed, a closer look at the network/affiliate relationship is already underway at the Commission in order to gather information regarding what, if any, more targeted measures should be taken to ensure affiliated stations have the leverage they need to meet their public interest obligations.

41. The networks' ability to migrate their programming to streaming platforms not only has lessened their incentive to purchase their own local television stations, but it also has weakened affiliates' bargaining power by reducing networks' reliance on affiliated stations for programming distribution. Despite this shift, affiliated stations remain an important distribution channel for network programming, and station groups therefore could boost their bargaining strength by increasing their ownership of affiliated stations. The more stations affiliated with a particular network that a station group owns, the more leverage it has with that network in negotiations regarding reverse compensation fees, preemption rights, access to network programming, and so forth. Additional leverage would help preserve affiliated stations' ability to influence network programming through collective negotiation and to preempt network programming in favor of programming that better serves the local community—the bases for which the Commission retained the national cap in 2003. As one station group owner explains, "[f]or broadcast affiliate owners to have a stronger hand in negotiations with their networks,

those affiliate owners need to be able to achieve greater scale, putting them on more even footing with their networks, which now have their own non-broadcast national distribution channels." By limiting national audience reach, the national cap constrains a station group's ability to purchase more affiliated stations as a way to maintain its leverage vis-à-vis networks' increasing bargaining power. According to that group owner, "[w]ithout the ability to obtain greater scale, owners of local network affiliates remain at a massive disadvantage in negotiating with networks, threatening the ability of local broadcasters to survive and deliver essential local news and other locally-focused programming." Thus, we find that the national cap has become an ineffectual tool for promoting localism because, rather than preserving a balance of power, it may be exacerbating an imbalance of power. For these reasons, we find that it is no longer the case that eliminating the cap would "shift the balance of power with respect to programming decisions toward the national broadcast networks in a way that would disserve our localism policy." In fact, allowing station groups to achieve greater scale may promote our localism goal depending on the facts of any particular case.

42. For the reasons discussed above, we conclude that the national television multiple ownership rule is no longer serving its intended purpose to promote localism; nor is it necessary to promote the Commission's other media policy goals of viewpoint diversity and competition. On this basis, we therefore find that the rule is not serving the public interest, convenience, or necessity, and we repeal § 73.3555(e) of the Commission's rules.

B. Case-by-Case Review is a Better Way to Promote the Commission's Goals

43. As discussed above, the Commission must review all applications for television license transfers and assignments to evaluate whether approval would serve the public interest. Elimination of the rule does not eliminate the Commission's obligation to weigh the potential benefits and harms specific to a proposed transaction. Rather, it ensures that proposed transactions that otherwise would have been presumed not to be in the public interest under the national cap are reviewed on their individual merits. On the one hand, opponents of the national

cap argue that, as a general matter, further consolidation will produce public interest benefits, namely furtherance of the Commission's localism goal and advancement of innovative technologies, such as ATSC 3.0. On the other hand, proponents of the national cap warn that further consolidation will result in public interest harms, such as a decrease in localism, an increase in retransmission consent fees, and a loss of journalists and other communications workers. We respond to commenters' arguments below. We note, however, that to the extent that commenters forecast harms as a result of the rule's repeal, those harms would occur, if at all, as a result of specific transactions. This action to repeal the rule will neither create harms nor affect our ability to assess and address any particular concerns about the potential effect of a proposed transaction.

44. Moreover, our decision to eliminate an outdated and overly restrictive bright line limit, in favor of a more flexible approach, is consistent with the approach the Commission has taken with respect to other ownership restrictions, including in other spectrum bands and services. It is undisputed, and abundantly evident in the record of this proceeding, that the communications industry (broadcast television included) has undergone seismic changes over the course of several decades. Seeing this transformation on the horizon, Congress, in the 1996 Telecommunications Act, set out to "promote competition and reduce regulation." Consistent with those objectives, and in recognition of dramatic changes in the marketplace, the Commission's rules have evolved over time such that many *ex ante* restrictions have given way to case-by-case review. For instance, the 1996 Telecommunications Act led to the removal of restrictions on the nationwide ownership of broadcast radio stations and the cross-ownership of cable systems and broadcast television stations. Similarly, the Commission no longer restricts MVPD ownership via horizontal or vertical restrictions. More recently, the Commission also eliminated restrictions on the cross-ownership of newspapers and broadcast stations as well as cross-ownership of radio and television stations.

45. In addition to its actions with respect to media ownership limits, the direction the Commission has taken over the past twenty plus years in the mobile wireless sector also proves instructive. In that context, the Commission once maintained spectrum aggregation limits that strictly limited the total megahertz of spectrum across certain spectrum bands that a licensee could hold in a geographic area. In 2001, the Commission decided to eliminate this so-called spectrum cap, with the final sunset of the cap occurring in 2003. The Commission found, at the time, that with the evolution of competition in the market, the rule was no longer necessary in the public interest to serve its intended purpose and it was, therefore, "no longer appropriate to impose overbroad, *a priori* limits on spectrum aggregation that may prevent transactions that are in the public interest." In the absence of a rigid spectrum cap, the Commission, for more than two decades, has employed a case-by-case approach, guided by the use of a "spectrum screen" that has evolved over time, through both transaction and rulemaking decisions, to keep pace with developments in the wireless industry.

46. In keeping with that approach, the end of a strict cap on national broadcast television ownership by no means represents the end of Commission oversight regarding the transfer of ownership of broadcast television stations. Rather, the overall shift away from rigid limits, and toward a more nuanced approach (which our current action also reflects) has proven nimble and provided the Commission with much needed flexibility in a rapidly changing environment, allowing it to consider, and reach determinations regarding, which transactions would, or would not, serve the public interest. Under this case-by-case approach, and consistent with the Commission's statutory public interest review, it has long been true—and it will remain so—that some transactions receive approval, while others do not. Ultimately, approval of any given transaction will continue to depend on the Commission's analysis of the transaction's potential benefits and harms and the likelihood that any potential harms can be mitigated by the imposition of merger conditions. In the discussion below, we address arguments that a case-by-case approach allows for more subjective decision-making than bright line rules do. We provide

some initial guidance regarding the kind of information that would inform our review of any non-local effects of a television merger, particularly with respect to allegations of potential harm from such effects. We anticipate that such transactions processed under a case-by-case approach will help to refine and further develop these guideposts and criteria.

1. Potential transaction-specific benefits

a. Increase in local programming

47. As suggested above, instead of promoting localism, the national cap may be undermining it by preventing the Commission from approving specific transactions that promote localism (e.g., transactions that would improve the ability of local television stations to access additional capital and advertising revenue needed to invest in local programming). Repealing the rule will provide the Commission the opportunity to analyze whether a particular transaction would result in increased investment in local news coverage and other programming of local interest.

48. There is considerable debate in the record over whether the national cap prevents station groups from competing effectively with national and global technology and media conglomerates, which some commenters refer to as Big Tech and Big Media, for the revenues that local broadcasters need to serve their communities. The broadcast industry argues that station groups need economies of scale in order to compete for viewers and advertisers with Big Tech and Big Media, which enjoy unrestricted reach. Several commenters cast the threat to the broadcast industry as existential. They argue that "[t]he remedy is unshackling local broadcasters by eliminating the national ownership cap, which will allow broadcasters to achieve greater scale and synergies and challenge Big Tech and Big Media gatekeepers."

49. Proponents of retaining the national cap are not persuaded. They assert that station groups are not as vulnerable as they claim, as evidenced by their statements to investors touting their company's profit performance and favorable business outlook. For example, they quote Nexstar's Chief Executive Officer stating that "[Nexstar's] record-breaking top line

financial performance . . . [and] record-breaking distribution revenue further validates the power and sustainability of [its] highly profitable business model." They provide financial data purporting to show that Nexstar, Sinclair, Scripps, Gray, and TEGNA generally experienced healthy growth from 2016 to 2024 in terms of operating revenue, advertising revenue, and political advertising revenue.

50. Proponents of retaining the national cap further argue that comparing local broadcast licensees, which have unique public interest obligations and regulatory protections, to Big Tech and Big Media is an apples to oranges comparison because Big Tech and Big Media do not provide local news and other locally produced content. One commenter, for example, contends that "[w]hile there have indeed been market and technological changes, broadcasters misrepresent the reality of how these changes have affected broadcasting's profitability and local broadcasting's continued unique role relative to streaming services and Big Tech." These commenters argue that, even if they were direct competitors, eliminating the national cap would not let station groups achieve equal footing with massive conglomerates such as Google, Apple, Amazon, Netflix, DIRECTV, Verizon, Comcast, Disney, Paramount, and Fox.

51. It is not necessary for us to resolve this debate in order to recognize that the broadcast industry as a whole has been experiencing declines in both viewership and advertising revenue for decades. A recent Nielsen study reported that viewership of streaming services has surpassed that of broadcast and cable combined. Other data show that "the ratings of the top-rated scripted program on broadcast TV has fallen 72.1 percent since 2004 . . . ; by 78.3 percent since passage of the 1996 Telecommunications Act; and by 86.4 percent since the mid-1980s." BIA data show that total advertising revenue (over-the-air plus digital) for television stations fell 42.9% from 2000 to 2024 on an inflation-adjusted basis. In addition, local broadcasters now control only 28.7% of the local advertising-supported viewing market, while 42.4% of that market goes to streaming services. As the Media Bureau noted in the *Nexstar-TEGNA Order*,

both streaming services and cable providers offer "targeted and DMA-wide advertising options" that are "real and competitive substitutes in any market for local spot advertising."

52. Station groups argue that expansion through the elimination of the national cap will improve their ability to provide programming that promotes the Commission's localism goal. Broadcasters describe the high cost of gathering and producing local news content. They also decry the rising expense of securing distribution rights to live sports programming of interest to their local communities given increasing migration of live sports programming to non-broadcast channels and streaming platforms. They claim that allowing station groups to reach more viewers will enable them to attract additional advertising and investment capital needed to improve local service. Broadcasters argue that the national cap creates "a vicious circle" by restricting broadcasters' audiences and advertising revenues, which hinders their ability to produce and/or acquire quality programming and to obtain investment capital, which in turn further impairs their ability to attract viewers and advertising dollars, and thus their ability to invest in local journalism.

53. We share station groups' concern that, with the increase in network bargaining power over their affiliates that has resulted from the rise of online video distribution and other secular changes in the media landscape, the returns on local programming investments by affiliates have been reduced due to the networks now capturing a larger share of the profits from those investments. With the rising leverage of the networks over their affiliates, the returns on local programming investments, and therefore the total dollars invested in local programming, would be reduced primarily for three reasons. First, as networks extract an increasing share of the retransmission consent fees that MVPDs pay to carry the local network affiliate, the returns on local programming investments decline because the affiliate retains a lower share of the returns on such investments. Second, networks negotiating the online distribution rights and retaining a share of these revenues similarly would directly reduce the return on local programming investments. Third, network-imposed limitations on preemption directly limit the

amount of local programming that an affiliate can produce and air. Furthermore, the imbalance of power between networks and affiliates that now exists is exacerbated by our artificial cap on station ownership because it does not allow station owners to sufficiently consolidate and restore their bargaining position vis-à-vis the networks.

54. We believe that eliminating the national cap will serve to allow affiliates to restore their leverage in negotiations with networks, which will promote the public interest by providing affiliates with the ability to use their greater returns to invest in local programming. To the extent that the national cap is preventing station groups from increasing investment in local news and other content of local interest, we agree with broadcasters that the cap is not only unnecessary to promote our localism goal but that, in fact, it likely is undermining it. That possibility, although not a basis for our decision to repeal the rule, lends support to our conclusion that the rule is no longer serving the public interest. We will evaluate proposed transactions on a case-by-case basis to determine, among other things, whether approval would result in a higher quality and quantity of local programming on the applicants' television stations.

55. Several broadcasters claim that expanding their audience reach across other local markets already has enabled them to produce a higher quality and quantity of local content. One commenter provides data showing that during a period of consolidation between November 2011 and November 2023 when the number of different television station groups fell from 140 to 62, the number of local news telecasts increased by 41.7% and the hours of local news increased by 49.7%. According to one station group owner, when it acquired the licenses in 2021 of television stations KUPX in the Salt Lake City market and KMCC in the Las Vegas market, neither station aired any local news. It states that, under its ownership, KUPX now airs 25 hours per week of local news and KMCC now airs 21.5 hours per week of local news. Among other examples it provides, it touts its addition of 15.5 hours per week of local news to KCDO's schedule after it purchased the station in 2020 and combined it with station KMGH in the

Denver, Colorado market. Further, it credits its ability to leverage the resources obtained through its increased scale for its addition of hundreds of hours of local sports to various stations it owns and for the acquisition of its broadcast rights to a number of women's sporting events and games.

56. Likewise, another group owner claims that "[its] own experience demonstrates that the efficiencies and resources available to larger station groups lead to expanded news and other local coverage." It states that between its 2019 acquisition of Tribune Media Company (Tribune) and 2024, its stations increased their total local news coverage by more than 28,000 hours and won hundreds of journalism awards annually. It further states that, during that period, its stations added a total of more than 9,000 hours of local lifestyle programming and almost 800 hours of local political programming. It contends that its reach and the resources made possible by scale enabled it to host 74 political debates or forums leading up to the 2024 election. In addition, it describes how resource sharing among its stations allows it to provide continuing weather and safety information to communities affected by hurricanes and other natural disasters.

57. These examples demonstrate that allowing station groups to grow and expand their audience reach can promote the Commission's localism goal. This point is particularly salient in the case of a station that is without the resources to produce local news or is likely to go dark without some form of relief. As some broadcasters argue, "[t]o 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."

58. In reviewing proposed transactions, we will consider all arguments supporting or opposing a finding that approval of the transaction would promote localism. Thus, rather than presume that any deal that exceeds the cap would not be in the public interest, by repealing the

rule, we will consider and potentially approve specific transactions based on their individual merit.

b. Increase in innovation

59. Another potential benefit of allowing broadcasters to achieve greater scale via transactions approved through the Commission's case-by-case approach could be their improved ability to invest in innovative technologies and services, such as ATSC 3.0, to the benefit of consumers. That is, the rule's repeal will mean that the Commission will evaluate each proposed transaction on its individual merit, including whether grant would enable the merged entity to devote additional resources to the deployment of ATSC 3.0, among other innovations, without first needing to show that special circumstances warrant a waiver. In the *2002 Biennial Review Order*, the Commission posited that the national cap encouraged innovation in the television industry because different station groups were likely to develop different types of services and offerings, which the Commission concluded would be particularly beneficial in facilitating the impending transition to digital television. With the rollout of ATSC 3.0, the television industry is again on the cusp of a technological transition. However, given the changes to the media marketplace in the more than 20 years since the Commission's conclusion that the national cap would promote innovation in the transition to digital television, we now find that the national cap may be hindering, rather than promoting, investment in innovative developments by limiting broadcasters' ability to expand their operations and achieve economies of scale in the deployment of new technologies. With respect to innovation, once again, a principal advantage of removing an *ex ante* barrier in the national cap is that the Commission will consider transactions on their individual merit, rather than presume that deals in excess of the bright line limit would not be in the public interest even if they otherwise would promote innovation.

2. Potential transaction-specific harms

a. Decrease in local programming

60. Numerous commenters contest the argument that further consolidation among station groups will promote localism. They argue that consolidation leads to a homogenization of news content, fewer resources devoted to local journalism, cuts to local newsroom staffs, and corporate takeover of editorial decision-making. They assert that empirical research shows that "the larger broadcast conglomerates *do not* invest freed resources into local content and coverage." They posit that economies of scale and scope are not achieved unless local news and local programming are replaced with centrally-produced programming. Similarly, they point to a study finding a prevalence of duplicated news content when stations are under common ownership or control, which the study's authors call "a direct and unambiguous form of the achievement of economies of scale." Several commenters criticize Sinclair's use of "must-run" news segments, where local news anchors across Sinclair's stations are required to read from the same script or to air a news story that was produced at Sinclair's national headquarters. One commenter predicts that "[i]nstead of competing for the approval of viewers by investing in news and other local programming, broadcasting conglomerates would likely take any relaxation of the national ownership cap as encouragement to compete for scale alone—pursuing mergers that swallow up the last semblance of diverse voices in the broadcasting marketplace, and pocketing the savings for shareholders rather than spending them on viewers."

61. In addition, commenters submitted a 2018 study by Gregory J. Martin and Josh McCrain, political scientists then with Emory University, that compared stations acquired by Sinclair from Bonten Media Group Holdings to other stations operating in the same markets. The study found that Sinclair's station acquisitions led to "substantial increases in coverage of national politics at the expense of local politics." However, another study in 2024 by these same authors and Nicola Mastrorocco and Arianna Ornaghi widened the analysis of local news coverage to include stations acquired by Nexstar and Gray, as well as Sinclair. Consistent with their earlier research, they found that news coverage of local events and local politics dropped by about 10% on the Sinclair stations. However, their data showed an increase in local news

coverage by about that same amount on the stations acquired by Nexstar. The data showed no real change on the stations acquired by Gray. Therefore, the study shows that the effect of consolidation on local news coverage varies by merger, with some mergers leading to decreases in local coverage, some leading to increases, and others having no effect. Furthermore, viewers in local markets have an interest in national and regional political issues, and many of the larger broadcast groups are able to invest in such reporting that otherwise would be unavailable in the market or provided solely by national news networks.

62. We acknowledge that there are arguments on both sides of the question regarding the effects of consolidation on investment in locally oriented programming. However, given that repealing the rule could help restore the balance of bargaining power in the network/affiliate relationship, which ultimately should have a salutary effect on station revenues, we believe that the better course is to remove the national cap and replace it with a case-by-case approach. We reiterate that removal of the cap will not itself lead to any direct or inevitable harm given the Commission's obligation to review all proposed transactions. Moreover, review of applications for transfers and assignments, license renewal applications, and complaints filed against a station offer the Commission a more targeted means of ensuring that local stations are meeting their public interest obligations, based on the record in a particular proceeding, rather than a rigid bar proscribing certain transactions that may be in the public interest.

63. We believe that, regardless, the need for Commission action likely will be mitigated by market forces. Numerous commenters maintain that television local news remains one of the most relied upon and trusted sources of news among consumers. They further argue that local news, live sports, weather and traffic reports, and emergency information are the types of offerings that differentiate local broadcasters from other video programming providers. As expressed by one commenter, "relaxation of the National Cap will not change the enduring incentive of broadcasters to produce quality local content, because quality local service is simply sound business." Another commenter adds that "[l]ocal programming and local community

service are key to allowing television broadcasters to differentiate themselves in the sea of voices that have invaded the contemporary video programming marketplace." We therefore reject the suggestion that retention of the national cap is justified given TEGNA's plan to expand its local news operations despite being subject to the cap. If anything, the claim regarding TEGNA supports the argument that removing the cap will not reduce broadcasters' incentive to invest in local news coverage, such as by expanding news staffs, adding news anchors, and devoting more time to local news stories. To the extent that stations are incentivized to invest in local programming as a means of differentiation, the market will serve as a check against station owners reducing investment in local journalism and other local content. Nevertheless, in reviewing a proposed transaction, we will take into consideration any and all concerns that market forces would be insufficient to negate the transaction's potential harms.

64. In light of our new approach replacing the national cap with case-by-case review, we provide initial guidance on our anticipated approach to case-by-case review of the potential transaction-specific harms premised on national reach identified in this Order should they be alleged in a particular transaction in the future. In doing so, we do not seek to comprehensively identify every consideration that could be relevant in the future, but we simply highlight certain implications particularly relevant in light of our analysis in this Order.

65. With respect to concerns about decreases in local programming, and local news in particular, alleged to result from the post-transaction national reach of a broadcast group, a threshold consideration will be the transaction-specific nature of any alleged harms. The record reveals the financial challenges posed by producing high-quality local news and the fact that not all local television stations broadcast local news. Thus, we will expect oppositions to a transaction based on local news concerns to draw any comparisons to the likely marketplace *status quo* and likely trajectory absent the transaction, rather than some hypothetical ideal marketplace not grounded in practical realities.

66. As to the merits of any alleged transaction-specific concern about local news, given the record evidence that local programming, including local news, is a competitive advantage for local broadcasters, we will expect oppositions to a transaction based on local news concerns to explain why that incentive is unlikely to exist or why the broadcaster is unlikely to act on that incentive in a given transaction. In conducting such an analysis, historical experience involving the parties at issue is likely to be relevant. This includes the practical experience of viewers in communities where the potential acquiror expanded into new markets in the past. Such history is not in itself dispositive insofar as that history is distinguishable or where such issues are mooted by commitments by the merging parties. But giving due consideration to the practical experience of viewers is a critical way to ensuring our case-by-case approach truly best protects the public interest in the markets at issue, consistent with our expectations.

b. Increase in retransmission consent fees

67. Any concerns regarding the effect a particular transaction may have on retransmission consent negotiations can be addressed within the context of the Commission's review of that transaction. Therefore, we disagree with those commenters that argue that the Commission should retain a national ownership cap to preserve a balance of power between broadcasters and MVPDs, including small MVPDs, in retransmission consent negotiations. We note, at the outset, that the national cap—a structural ownership rule that applies nationwide—historically has not been intended as a vehicle for addressing concerns about leverage in retransmission consent negotiations. Instead, retransmission consent negotiations are governed by a specific set of behavioral rules, including a good faith negotiation standard that applies to both broadcasters and MVPDs.

68. Moreover, the Commission previously has found that, in general, the public is well served when marketplace mechanisms can be left to govern such negotiations as much as possible. Over the years, Congress and the Commission have reviewed, and in some cases modified (or declined to modify), the retransmission consent rules as warranted in light of

evolving marketplace behavior (e.g., prohibiting joint negotiations for two stations in a given geographic market where the two stations are not commonly owned). We note that, in addition to advocacy in this proceeding, parties are free to seek further clarification or modification of the Commission's retransmission consent rules, including the good faith standard, to address areas where they have specific concerns. Given that the Commission has separate rules that directly govern the retransmission consent process—something the national cap has never been intended to do—general issues related to retransmission consent are best addressed in a rulemaking proceeding focused on those rules.

69. It should also be noted that the Commission has not previously identified or defined a non-local (e.g., national or regional) market for retransmission consent. Instead, the Commission has focused on the individual local markets in which the licensing of broadcast television stations occurs. Indeed, if the national cap is removed, the Commission must still review all applications for the transfer of control and assignment of licenses and authorizations to ensure that the public interest would be served by approving the applications. We recognize that retransmission consent issues associated with national consolidation may continue to come up in the context of the Commission's individualized broadcast television transaction review. Commenters in those transaction proceedings will continue to be able to raise transaction-specific issues in the context of a specific combination of broadcast assets and a defined set of facts. Given the state of the video marketplace today, we believe that approach is far more suitable than clinging to a bright line limit that no longer serves its intended purpose and was never intended to address retransmission consent issues.

70. Despite these rules and safeguards currently in place, some commenters argue that the national cap should remain because there is a correlation between station group size and increased retransmission consent fees and that allowing station groups to grow in size would harm MVPD subscribers who will be forced to pay higher bills due to higher programming costs. They contend that increasing or abolishing the 39% national cap would increase the bargaining

leverage for a station group by allowing it to threaten blacking out programming across a greater percentage of an MVPD's footprint, thereby enabling the station group to extract a higher retransmission consent fee from the MVPD. These commenters argue that retransmission fees paid by MVPDs have grown exponentially in recent years and that broadcasters will use this increased bargaining leverage to continue raising retransmission consent fees, resulting in more contentious negotiations that will, in turn, lead to more programming blackouts and higher prices for MVPD subscribers. One commenter points out that "[r]etransmission consent revenue increased by 31% from 2019 to 2023 ($11.5 billion to $15.1 billion) and more than *135%* when compared to 2015 levels ($6.4 billion)—despite MVPDs' decline in subscribership." By contrast, broadcast commenters claim the fees are set by the market, they are appropriately priced for the programming's value, they are more affordable than cable programming, and they are slowing in growth. Moreover, the record shows that increases in retransmission consent fees charged by network-affiliated local stations to MVPDs have coincided with increasing reverse compensation fees charged by the networks to their affiliates based on network bargaining power. As commenters note, these payments to national networks are resources that do not go toward additional local news coverage or other local programming. Outside of retransmission consent fees themselves, some commenters also warn against the influence a large station group may have in retransmission consent negotiations, which they claim may enable such groups to induce MVPDs to carry additional programming or to dictate an MVPD's carriage terms in a way that disfavors a competing independent programmer.

71. With regard to concerns about station group leverage in retransmission consent negotiations, two studies introduced into the record reach conflicting conclusions regarding the relationship between station group size and increased retransmission consent fees. DIRECTV introduced a statistical study performed by Dr. Allan Shampine. The study examines the relationship between station group size and retransmission consent fees and concludes that larger station group owners charge higher retransmission consent fees to DIRECTV than smaller

station group owners. The study purports to replicate a 2017 study by DISH that was introduced in the docket of the Sinclair-Tribune proceeding (MB Docket No. 17-179). The 2017 study was submitted by DISH in that docket to support allegations that the specific, proposed combination of Sinclair and Tribune would lead to higher retransmission consent fees for the combined company's stations. In his study, Dr. Shampine reviewed DIRECTV's confidential monthly retransmission consent data from January 2023 to December 2024 and found that retransmission consent fees for stations affiliated with the Big Four broadcast networks were higher for affiliates owned by larger groups with the impact of size on fees being "very economically significant."

72. In response, NAB submitted its own analysis from Dr. Jay Ezrielev that refutes DIRECTV's submission and contends that the analysis does not demonstrate a causal relationship between station group size and retransmission consent fees. Dr. Ezrielev argues that Dr. Shampine's analysis does not take into account key variables, such as DMA size and the greater per-household costs of serving small versus large markets. Dr. Ezrielev also asserts that Dr. Shampine's analysis is overly skewed toward small station groups with which DIRECTV can negotiate a below market rate for retransmission consent and does not properly take into account DIRECTV's natural loss of market power when negotiating with a larger station group. NAB further contends that even if DIRECTV pays more to larger broadcast groups than to smaller groups for retransmission consent, that fact does not establish that the rates are anticompetitive or overpriced.

73. Given the conflicting evidence in the record regarding whether, and the extent to which, permitting some level of greater audience reach would affect retransmission consent fees in all, or even most, cases, we do not believe the record justifies retaining a bright line prohibition on all acquisitions that would exceed 39%. To start, even if there may be some evidence that purports to show a correlation between station group size and retransmission consent fees, we do not believe it is reasonable to conclude that larger group owner reach automatically results in retransmission consent fee increases across all broadcasters, such that a

39% cap remains necessary to limit broadcaster leverage. For instance, not all broadcasters obtain, or even seek, retransmission consent compensation in exchange for carriage. In lieu of retransmission consent compensation, broadcast stations are permitted to choose mandatory carriage of their signal (also known as "must carry"). As a result, when viewed through the lens of retransmission consent, the rule is likely overbroad because it restricts the growth of all station groups regardless of whether, or the extent to which, they actually seek or intend to seek retransmission consent fees for their stations. With respect to price increases that MVPDs allege would be passed through to consumers, or other direct harms (e.g., increased signal blackouts) that MVPDs allege would follow from broadcasters increasing their audience reach, we note that, ultimately, it is MVPDs that set the prices for their subscribers and that the video marketplace today offers consumers various alternatives beyond a traditional MVPD subscription to access broadcast programming.

74. Moreover, if size equates to influence on pricing, the maxim may hold true on the MVPD side of the negotiation as well, where MVPDs are not bound by bright line limits on their geographic reach. That is, larger MVPDs, many of which have broad geographic reach, may have the ability to drive down prices for retransmission consent. Indeed, gaining scale in order to reduce the amount spent on video programming was a key aspect of several mergers involving MVPDs. Additionally, while smaller MVPDs, in general, may likely pay more for programming than larger MVPDs, they are also permitted by law to designate a qualified MVPD buying group to negotiate on their behalf in retransmission consent negotiations with large station groups to help level the playing field.

75. Furthermore, the Commission, consistent with the direction of Congress, has not found it to be a failure of good faith bargaining where a broadcaster, regardless of its size, enters into different terms and conditions, including different price terms, with MVPDs so long as the different terms and conditions are based on competitive marketplace conditions. The Commission also has not found that increasing a station's national reach leads to a public interest

harm in retransmission consent negotiations. Similarly, the Commission has held that an increase in compensation, by itself, is not necessarily a public interest harm, and rather, the Commission found that such harm exists where an increase is not the product of "competitive marketplace considerations." In addition, to the extent greater audience reach permits some stations to increase their retransmission consent fees, additional revenue could serve to strengthen the viability of the station and contribute greater resources to the mission of serving its local community. For the foregoing reasons, we find that concerns about retransmission consent negotiations raised in the record of this proceeding are insufficient to justify retaining a broad structural limit on station ownership that no longer serves its intended purpose. Finally, as noted previously, all station acquisitions will be subject to the Commission's transaction review process, where the Commission will have the opportunity to evaluate any alleged transaction-specific harms and to make a determination as to whether the proposed transaction serves the public interest.

76. Consistent with the analysis above, we provide certain guidance about our anticipated approach to allegations of retransmission consent-related harms premised on an increase in broadcaster negotiating leverage due to increased national reach. A threshold consideration will be the transaction-specific nature of any alleged harms, particularly because the Commission historically has not identified a non-local market for retransmission consent. Oppositions to a transaction premised on cost increases in future retransmission negotiations arising from increased national reach could seek to justify a non-local market definition or would need to support another theory why the increased national reach at issue in a given transaction would cause the alleged harms.

77. Further, the Communications Act circumscribes the Commission's authority with respect to retransmission consent. As a result, we will expect allegations of transaction-specific retransmission consent harms to explain why the alleged concerns should be cognizable in the Commission's review.

78. In the case of alleged harms in future retransmission consent negotiations premised on expanded national reach, we further will expect oppositions to identify why the relative negotiating leverage of the broadcast group would be contrary to the public interest. As discussed above, many MVPDs are themselves large, and small MVPDs have the statutory right to designate a qualified buying group to negotiate on their behalf when dealing with large station groups. For example, evidence or arguments alleging concerns about future retransmission consent negotiations should address whether a broadcast group's increased national reach leads to a material net change in the stakes for the two sides and, if so, whether the change unfairly advantages the broadcasters in negotiations or simply enables the broadcast group to begin to approach comparable negotiating leverage to the MVPD. We recognize that this could turn on a number of specific factors or considerations and we do not seek to catalog them all here.

79. Finally, the ultimate question in our public interest review remains the overall effect on the viewing public. We recognize that this commonly has been the intended focus of retransmission consent-related arguments raised in transactions in the past, but we take this opportunity to confirm our approach in that regard.

c. Loss of journalists and other communications workers

80. Some commenters argue that eliminating the national cap will harm workers in the broadcast industry. They contend that removing the national cap would allow for greater consolidation in the broadcast industry and that consolidation historically has caused harm to journalists and newsroom staffs when newly consolidated stations centralize their operations in an attempt to increase scale and revenue. They argue that the harms caused by consolidation include lowered employee wages and reduced benefits, a decrease in the total number of jobs, and weakened job security. In addition, they contend that further consolidation will follow this trend and lead to less journalism being produced, which in turn would undermine and harm the Commission's public interest goal of localism. For the reasons below, we find that these labor-related concerns do not justify preserving a bright line limit on station ownership.

81. While commenters raise a valid concern that industry consolidation could result in employment reductions, we also recognize that questions about the viability of broadcast stations include risks to the long-term employment of its workers. As a result, we find that allowing broadcasters to increase their scale could improve long-term employment prospects for workers, particularly in instances where a financially stronger company acquires a station. In addition, we note that the synergies to be gained by transactions currently subject to the national cap are different from the synergies that would be gained from combining ownership of stations within a local market. As we have noted, removing the national cap does nothing to permit greater consolidation within a local market and therefore does not carry the same risk of elimination of overlapping or redundant operations that would result from the acquisition of an additional station in the market. Rather, repealing the national cap could allow a station group to expand its reach to a new market where it is currently not present, and the acquired station, under new ownership, would continue to compete with the other stations in the market for audience share, advertising revenue, and broadcast employees.

82. Regardless, elimination of the national cap rule would not foreclose the Commission's consideration of such issues in a case-by-case public interest review of individual acquisitions. Therefore, although labor issues historically have been handled and enforced by federal agencies other than the Commission, commenters still will be able to raise transaction-specific labor issues that may be involved in a particular matter.

83. When seeking to raise such concerns, we will expect oppositions to be premised on a proper baseline to ensure the alleged employment-related harms are transaction-specific. In particular, financial challenges in the broadcast television industry make it important to compare alleged post-merger harms against the pre-transaction *status quo* and trajectory that actually was likely absent the transaction. We also will expect oppositions to explain why the alleged transaction-specific labor issues are cognizable by the Commission under its public interest authority under the Communications Act. Finally, we once again will be focused on the ultimate

effects on viewers through the broadcasters' continued ability to operate consistent with their public interest duties under the Communications Act and Commission rules.

C. The Commission Has Authority to Repeal the Rule

84. Congress has authorized the Commission to adopt, modify, or eliminate broadcast ownership rules, including the national cap, under sections 154(i) and 303(r) of the Communications Act. 47 U.S.C. 154(i). The Commission promulgated and modified broadcast ownership limits pursuant to this authority throughout the decades following the Act's passage in 1934. The Commission adopted a national cap after determining such a rule was necessary to serve the public interest. As with any Commission rule, the agency has the authority and obligation to reexamine the national cap rule in response to changing circumstances and to modify or repeal it if it no longer serves the public interest. Indeed, the Commission has modified its limits on the number of television stations an entity can own several times, raising the limit each time to account for developments in the television industry.

85. Although Congress also has reset the level of the national cap as the video marketplace evolved, Congress has uniformly done so by directing the Commission to modify its rules rather than by enacting a fixed cap into law. In the 1996 Act, Congress instructed the Commission to set its previously modified national cap at a specific numerical percentage. See 1996 Act section 202(c)(1)(b). Specifically, section 202(c)(1)(b) of the 1996 Act directed the Commission to "*modify its rules* . . . by increasing the national audience reach limitation for television stations to 35 percent." Section 202 similarly instructed the Commission to "modify" or "revise" other media ownership rules and directed the Commission to "review its rules adopted pursuant to this section and all of its ownership rules" on a periodic basis. See 1996 Act section 202(b)(1), (c)(2), (e), (h). The use of the term "modify" indicates that Congress was prescribing a point to which the Commission would set the national cap, using the Commission's preexisting authority to modify the national cap, and from which the Commission periodically would reexamine the prescribed figures, again under its preexisting authority.

86. Section 202(h) of the 1996 Act could not have been the sole statutory authority granted to the Commission for reviewing the media ownership rules because the Commission, having modified the national cap on multiple occasions prior to 1996, plainly had authority to promulgate or review its media ownership rules prior to adoption of the 1996 Act. An argument that the 1996 Act takes away the Commission's plenary authority over television ownership ignores the fact that Congress chose to have the Commission revise its rules rather than enact statutory provisions and that the 1996 Act directs the Commission to conduct a rulemaking proceeding on local television ownership limits. 1996 Act § 202(c). Therefore, the 1996 Act cannot be read credibly as having rescinded the Commission's rulemaking authority over television ownership.

87. Notably, there are other instances where Congress provided the specific figures the Commission was to use in modifying its rules but similarly declined to enact those limits in statute. For instance, § 202(b) of the 1996 Act specified the precise market size tiers and numerical limits that the Commission was to use in its revisions for the local radio ownership rule. Section 202(e) of the 1996 Act also specified the numerical limits and definition for networks that the Commission was to use in its revisions for the dual network rule. In each of those cases, even though Congress provided the specific language and figures to be used in the rule revisions, the Commission retained authority to modify or eliminate the rule in question, and at Congress's direction, has periodically reviewed those rules ever since. Furthermore, as described above, the Commission promulgated and revised the national television ownership limits many times before the adoption of the 1996 Act, exercising its authority under sections 154(i) and 303(r) of the Communications Act to promulgate and review its media ownership rules. The 1996 Act did not change that. It simply directed the Commission to make revisions under the Commission's preexisting rulemaking authority and review them periodically.

88. In this regard, we find particularly significant the D.C. Circuit's rulings in the *Fox* litigation, which remanded the Commission's 1998 decision to defer any revision of the national

cap when the agency examined it two years after the 1996 Act's instruction to increase the cap from 25% to 35%. 1996 Act § 202(c)(1). In doing so, the court rejected the Commission's argument that by setting the line at 35%, Congress had thereby removed the Commission's power to revisit that line should the public interest require. *Fox I*, 280 F.3d at 1042-43. The court explained that the Commission's decision to leave Congress's initial number untouched was improper: "the choice of 35% rather than any other number determined only the starting point from which the Commission was to assess the need for further change." On rehearing, the court again rejected the Commission's argument that Congress set an unchangeable limit, explaining that had Congress wished to take away the Commission's ability to alter the cap, "it need only have enshrined the 35% cap in the statute itself," which it had not done. *Fox II*, 293 F.3d 540.

89. Eight years after the 1996 Act and two years after the *Fox* rulings, Congress again set the national cap at a specific numerical percentage in the CAA. Critically, Congress chose to use the same language as in the 1996 Act. The CAA amends section 202(c)(1)(B) to instruct the Commission to "modify its rules . . . by increasing the national audience reach limitation for television stations to 39 percent." CAA section 629(1), 118 Stat. at 99 (amending 1996 Act section 202(c)(1)(B) "by striking '35 percent' and inserting '39 percent'"). In accordance with that instruction, the Commission amended its rules to revise the national cap to 39%—the level at which it stands today. Echoing the 1996 Act, Congress included no language in the CAA taking away the Commission's rulemaking authority with regard to the cap, even though Congress, as made clear by the D.C. Circuit, easily could have "enshrined" the 39% level "in the statute itself." Nonetheless, there is no language in the CAA requiring the Commission to maintain the national cap at 39% indefinitely or for any period of time. That omission is especially significant because Congress was acting against the backdrop of the ruling in *Fox I* and in direct response to the Commission's attempt to increase the national cap in the *2002 Biennial Review Order*, both of which read the language used in the 1996 Act—which Congress

incorporated into the CAA—to preserve the Commission's authority to further revise or eliminate the national cap in the future. By using the same formulation as the 1996 Act, Congress did not suggest that it was eliminating the agency's authority to amend its national cap rule. Some commenters suggest that Congress need not retract rulemaking authority from agencies in express statutory language. Even if that were so, the circumstances here (namely of the Commission having so recently concluded it retains authority in the wake of Congress legislating on the matter and the court decision affirming the Commission's conclusion) make it very unlikely that Congress would refrain from making some express statement. As the Supreme Court has explained, "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change." *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580 (1978)); *accord, e.g.*, *Hall v. United States*, 566 U.S. 506, 516 (2012). Notably, as pointed out in the *Nexstar-TEGNA Order*, the same Congress that enacted the CAA considered alternative bills that would have enacted a fixed statutory cap as part of the Communications Act, displacing the rules created and maintained by the Commission, but it declined to enact those proposals.

90. The fact that express prohibitory language can be found elsewhere in the Communications Act further illustrates that Congress could have included such language in the CAA, but chose not to do so. The Radio Broadcasting Preservation Act of 2000, which also contains an express removal of the Commission's authority, similarly contrasts with the CAA and the 1996 Act. Along with directing the Commission to modify its low-power FM radio rules, Congress included language that the Commission "may not . . . eliminate or reduce" its prescribed rule modifications except "as expressly authorized by an Act of Congress enacted after the date of the enactment of this Act." Radio Broadcasting Preservation Act of 2002 § 632(a)(2). Language rescinding the Commission's ability to modify or eliminate the national cap is not present anywhere in the CAA or the 1996 Act. As another example, Congress codified an

existing Commission broadcast ownership rule via section 613 of the Cable Communications Policy Act of 1984. See Cable Communications Policy Act of 1984, Pub. L. 98-549, 98 Stat. 2779, section 613 (1984). By enshrining that rule into statutory law, Congress ensured that the Commission could not modify or eliminate it. Tellingly, Congress did no such thing with respect to the national cap.

91. For all these reasons, we believe that the Commission's interpretation of its statutory authority to modify or repeal the national audience reach cap is the best reading of the CAA and the 1996 Act. As the Supreme Court has held, "a legislature says in a statute what it means and means in a statute what it says there." See *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). Statutory language then must be interpreted to "mean[] what it says and no more." See *United States v. M.H. Pulaski Co.*, 243 U.S. 97, 107 (1917). Nor can a statute be interpreted beyond its text based "on the view that . . . Congress 'must have intended' something broader" than it enacted. *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 794 (2014). In short, the plain text of the 1996 Act and the CAA shows that the Commission has authority to modify or eliminate the national cap.

92. Furthermore, the Supreme Court has indicated that agency interpretations "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 394 (2024) (citing *U.S. v. American Trucking Ass'ns.*, 310 U.S. 534, 549 (1940)). Our interpretation here meets these conditions. First, the Commission's interpretation was issued contemporaneously with the relevant statutes. After the 1996 Act was enacted, the Commission considered changing the national audience reach cap under the interpretation that, in directing the Commission to set the national cap at a specific level, the 1996 Act did not curtail the Commission's authority to revise the cap further if deemed necessary in the public interest.

93. Second, the Commission has consistently maintained that it retains authority to repeal or revise both the national cap and the UHF discount since then. In 2013, the Commission, with bipartisan support, tentatively concluded that the CAA did not preclude it from revisiting the national cap or the UHF discount in a proceeding separate from the quadrennial review proceeding. In 2016, the Commission, again with bipartisan support, concluded that it had authority to revise the national cap, including the UHF discount, and characterized the CAA as simply directing the Commission to revise the cap while eliminating the need for periodic review.

94. After undertaking a comprehensive review of the relevant statutory and regulatory provisions, we find no reason to depart from the Commission's longstanding bipartisan position that the Commission retains authority to modify or eliminate the rule establishing the national cap upon a determination that the rule no longer serves the public interest, convenience, and necessity. To properly examine the issue, the *NPRM* in this proceeding sought further comment on whether the Commission has authority to modify or eliminate the national cap and the UHF discount used for measuring compliance with the cap. The *Refresh Public Notice* also sought comment on whether any legal developments have affected the Commission's past conclusions about its authority to implement changes to the national cap and the UHF discount. We conclude that the Commission continues to have the authority to modify or repeal the national cap based on the record of this proceeding and prior determinations.

95. Some commenters argue that the Commission lacks authority to modify the national audience reach because the CAA excluded the cap from the quadrennial review mandated by section 202(h) of the 1996 Act. We are unpersuaded. Section 202(h) requires the Commission to "review . . . all of its ownership rules quadrennially" to "determine whether any of such rules are necessary in the public interest as the result of competition," and to "repeal or modify any regulation it determines to be no longer in the public interest." The CAA added language stating that the periodic review mandated by section 202(h) "does not apply to any

rules relating to" the national audience reach cap. CAA section 629(3), 118 Stat. at 100. Consistent with the Commission's position, here the CAA expressly refers to any provisions relating to the national cap as "rules." Section 629(3) of the CAA is also notable because, had Congress established the 39% cap as a statute, there would have been no need for a separate provision exempting the national cap from quadrennial review because the Commission would have no authority—under section 202(h) or otherwise—to review a cap enshrined in statute. The express exclusion of the national cap from the quadrennial review thus reinforces our conclusion that the 39% national cap is a rule and that the Commission retains authority to review it outside of the quadrennial cycle mandated by 202(h). As the Third Circuit recognized in *Prometheus I*, the language of section 629(3) of the CAA does not purport to forbid the Commission from accounting for changing market conditions by reexamining rules relating to the national cap *outside of* the quadrennial review process; it simply separates the Commission's decisions to review the national cap from the statutorily mandated review of other media ownership rules that are to occur every four years. *Prometheus I*, 373 F.3d at 397. Nor can the CAA be read to implement an implied repeal of the Commission's general authority to modify its rules, including the national cap rule, since no such intent is "clear and manifest" in the text and the law as written is not "irreconcilable" with that authority.

96. Furthermore, Congress's decision to remove the requirement that the national cap be subject to statutorily mandated periodic review can be read to serve other purposes that make more sense than implicitly removing the cap from Commission review altogether. Congress's elimination of a rigid review cycle for the national cap effectively gave the Commission additional flexibility and time to evaluate the national television market and determine whether modifying or repealing the cap would serve the public interest. Had Congress not removed the national cap from section 202(h)'s periodic review mandate, the Commission would have been tasked as part of the 2006 quadrennial review with revisiting that particular rule a mere two years after Congress had directed the Commission to change it to 39%. Congress's decision to remove

the national cap—set at 39% in 2004—from further review in 2006 thus can be seen, at least in part, as informed by practical considerations that the fixed periodic timetable likely would not have given the Commission sufficient time to assess the marketplace and consider possible changes to the new rule.

97. Other commenters argue that the Commission's interpretation would lead to an absurd result if the Commission could have waived the cap or changed the cap back immediately afterwards from what Congress had just set. But under general administrative law principles, the Commission would have had to have shown that the public interest would have been served by such an immediate waiver or revision of the rule. Administrative procedure constraints would also have required the Commission to seek public comment on whether the existing cap continues to serve the public interest before revising it. As a practical matter, some period of time would have had to elapse to provide an opportunity for debate on the advisability of any possible rule change. In all events, whether the Commission could have justified a change to the national cap shortly after Congress prescribed the figure in 2004, over two decades have elapsed since then, and such concerns can hardly apply to the Commission's decision here to revisit the cap now.

98. The CAA's exclusion of the national cap from the Commission's forbearance authority under section 10 of the Communications Act does not preclude the Commission from altering the cap itself. See CAA section 629(2), 118 Stat. at 100. For one thing, as the Commission has noted, "the meaning of this provision is unclear given that forbearance authority does not apply to the regulation of broadcasters under Title III of the Communications Act." Whatever the import of the provision, as the Media Bureau explained in the *Nexstar-TEGNA Order*, the Commission's ability to forbear from enforcement of its rules is distinct from its power to alter or eliminate those rules.

99. The CAA also provides that any person or entity that exceeds the 39% national cap through a transaction "shall have not more than 2 years after exceeding such limitation to

come into compliance." CAA § 629(2), 118 Stat. at 99. This provision simply sets a specific time period for coming into compliance with the rule as it exists. It is not reasonably read to restrict the Commission's discretion to alter the cap. Indeed, the Commission routinely provides grace periods for acquiring parties to come into compliance with existing ownership rules via divestiture when granting applications for assignments or transfers of television station licenses. The provision also states that "[t]his divestiture requirement shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth." This clarifying language merely restates Commission policy adopted when the national cap based on audience reach was first adopted in 1985 and cannot be read as indicating that population growth was the only congressionally-approved method of avoiding divestiture after exceeding the national cap. We note that this sentence does not include the reference, "in paragraph (1)(B)," which some might claim suggests the number is to be unchangeable statutory language. However, given the other references in the CAA to section (c)(1)(B), the second sentence is best understood as also referring to that section (which only directs the Commission to use its rulemaking authority) rather than creating a freestanding statutory cap. Furthermore, as noted earlier, the CAA refers to provisions relating to the national cap as "rules." CAA § 629(3), 118 Stat. at 100.

100. Finally, we see no independent significance to the CAA's various other references to "the 39 percent national audience reach limitation for television stations in [section 202(c)](1)(B)." CAA section 629(2), (3), 118 Stat. at 99-100 (amending 1996 Act section 202(c), (h), 110 Stat. at 111-12). This language simply reflects that, at the time Congress enacted the CAA, it had directed the Commission in section 202(c)(1)(B) to revise its rules to reset the national cap to that particular level. While they refer to the then-existing cap, they do not freeze the cap at a particular level indefinitely. The references to the 39% number are to its placement "in paragraph (1)(B)," which is the provision of the 1996 Act that directed the

Commission to set the cap through its rulemaking authority, which necessarily preserves Commission discretion to adjust its rules as warranted by the public interest.

101. We acknowledge that there are some statements by Members of Congress while the CAA was under consideration, as well as other contemporaneous accounts expressing a belief that the statute would preclude the Commission from making further changes to the national cap. But these statements are belied by the terms of the legislation that was adopted. As the Supreme Court has reiterated, "[L]egislative history is not the law. It is the business of Congress to sum up its own debates in its legislation, and once it enacts a statute we do not inquire what the legislature meant; we ask only what the statute means." *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 523 (2018). In similar circumstances, the D.C. Circuit in *Fox I* refused to find a statement "by the ranking minority Member of the relevant subcommittee of the House" that the 1996 Act's specification of a 35% cap "should settle the issue for many years to come" to dispose of the statute's meaning. *Fox I*, 280 F.3d at 1043.

102. A few commenters assert that the Commission is prevented from repealing the national cap by the Major Questions Doctrine. But that doctrine applies to instances in which an agency claims "extravagant statutory power over the national economy" in the absence of clear authority from Congress. See *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014). The Commission has held the power to modify or repeal broadcast ownership rules since the Communications Act was passed. It is not regulating outside its area of expertise or invoking expansive power from a narrow statute. And, as we have discussed, nothing in the CAA repeals the Commission's authority to review its rules, even where the "starting point" has been set by Congress. *Fox I*, 280 F.3d at 1043.

103. In sum, the best reading of the statute supports the Commission's longstanding position that the Commission retains authority to modify or eliminate the national television audience reach rule upon determining that the rule no longer serves the public interest, and for the reasons we have explained, we have determined that here. We therefore exercise our

authority to modify our rules by repealing the national audience reach limitation for television stations in favor of a case-by-case analysis of specific transactions. This, in our judgment, far better serves the public interest in light of the significant changes to the position of television broadcasters in the modern media marketplace.

PROCEDURAL MATTERS

104. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 601 et seq., as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), Pub. L. 104-121, 110 Stat. 847 (1996); 5 U.S.C. 605(b). Accordingly, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) concerning the possible impact of the rule and policy changes contained in this Report and Order on small entities. The FRFA is set forth below.

105. *Paperwork Reduction Act*. This Report and Order does not contain proposed new or revised information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501- 3520). In addition, this Report and Order therefore does not contain any new or modified "information burden for small business concerns with fewer than 25 employees" pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, 44 U.S.C. 3506(c)(4).

106. *Congressional Review Act*. The Office of Information and Regulatory Affairs of the Office of Management and Budget has found that this rule is major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report & Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

FINAL REGULATORY FLEXIBILITY ACT ANALYSIS

107. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Federal Communications Commission (Commission) incorporated an Initial Regulatory

Flexibility Analysis (IRFA) in *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking (*NPRM*), released on December 18, 2017. The Media Bureau sought further written public comment in *Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding*, Public Notice (*Refresh Public Notice*), including comment on the IFRA. The comments received are addressed below. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA and it (or summaries thereof) will be published in the *Federal Register*.

A. Need for, and Objectives of, the Rules

108. In December 2017, the Commission adopted an *NPRM* to seek comment on whether to retain, modify, or eliminate its rule limiting entities from owning or controlling broadcast television stations that, in the aggregate, reach more than 39% of the television audience households in the United States. The *NPRM* also sought comment on a component of the rule, which provides a 50% discount to UHF stations for purposes of calculating compliance with the 39% audience reach cap, often referred to as the "UHF discount." In June 2025, the Media Bureau issued the *Refresh Public Notice* seeking to refresh the record in this proceeding. In light of the request to refresh the record, the *Refresh Public Notice* invited comment on any potential effect of proposals on small entities and the IRFA. In the *Report & Order*, we repeal the national television multiple ownership rule, an important step towards modernizing our regulation of the media marketplace.

109. We find that the record demonstrates that eliminating the national television multiple ownership rule serves the public interest, as it is no longer necessary to promote competition, viewpoint diversity, and localism. The Commission has found since 2003 that the rule is not needed to promote competition and viewpoint diversity, which is only more true today in the modern, diverse media marketplace that includes the proliferation of online video streaming options for viewers. On localism, we agree that increased scale will open opportunities for broadcasters to attract additional capital and advertising revenue needed to

produce local programming and to improve service to their local communities. We find that a case-by-case review of applications for the transfer and assignment of television licenses is a better way to ensure that the Commission's media ownership goals are being met. Accordingly, we eliminate the national television multiple ownership rule.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

110. While no commenter directly responded to the IRFA in this proceeding, one commenter references the RFA process. That commenter contends that the Commission's regulatory flexibility analysis under the RFA is insufficient because, in seeking to refresh the record, the Commission "fails to provide any meaningful analysis of how potential changes to the nationwide audience reach cap or UHF discount might affect small broadcast entities." The commenter further states that "[t]o address this deficiency, the FCC should conduct a comprehensive RFA analysis before proceeding with any modifications to the national audience reach cap or UHF discount." The arguments raised by the commenter fail to acknowledge that the 2017 *NPRM* in this proceeding included the requisite IRFA and that the *Refresh Public Notice* sought further comment on that IRFA. The Commission has reviewed the record in its entirety and has evaluated the impact of this final action on small broadcast entities, and now publishes this FRFA, consistent with the requirements of the RFA.

C. Response to Comments by the Chief Counsel for the Small Business Administration Office of Advocacy

111. Pursuant to the Small Business Jobs Act of 2010, which amended the RFA, the Commission is required to respond to any comments filed by the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy, and also provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding. The SBA Office of

Advocacy did file comments in another Commission proceeding (GN Docket No. 25-133) that discuss the national television multiple ownership rule, 47 CFR 73.3555(e).

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

112. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the adopted rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. The SBA establishes small business size standards that agencies are required to use when promulgating regulations relating to small businesses; agencies may establish alternative size standards for use in such programs, but must consult and obtain approval from SBA before doing so.

113. Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe three broad groups of small entities that could be directly affected by our actions. In general, a small business is an independent business having fewer than 500 employees. These types of small businesses represent 99.9% of all businesses in the United States, which translates to 34.75 million businesses. Next, "small organizations" are not-for-profit enterprises that are independently owned and operated and are not dominant in their field. While we do not have data regarding the number of non-profits that meet that criteria, over 99% of nonprofits have fewer than 500 employees. Finally, "small governmental jurisdictions" are defined as cities, counties, towns, townships, villages, school districts, or special districts with populations of less than fifty thousand. Based on the 2022 U.S. Census of Governments

data, we estimate that at least 48,724 out of 90,835 local government jurisdictions have a population of less than 50,000.

114. The rule changes adopted in the *Report and Order* will apply to small entities in the industries identified in the chart below by their six-digit North American Industry Classification System (NAICS) codes and corresponding SBA size standard. Based on currently available U.S. Census data regarding the estimated number of small firms in each identified industry, we conclude that the adopted rules will impact a substantial number of small entities. Where available, we also provide additional information regarding the number of potentially affected entities in the identified industries below.

Table 1. 2022 U.S. Census Bureau Data by NAICS Code

Regulated Industry (Footnotes specify potentially affected entities within a regulated industry where applicable)	**NAICS Code**	**SBA Size Standard**	**Total Firms**	**Total Small Firms**	**% Small Firms**
Television Broadcasting Stations	516120	$47 million	413	316	76.51%

Table 2. Broadcast Entity Data

Broadcast Station Owners (as of August 8, 2025)	**SBA Size Standard ($47 Million)**		
Affected Entity	**# Commercial Licensed**	**Small Firms**	**% Small Entities**
Television Stations	171	142	83.04

E. Description of Economic Impact and Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

115. The RFA directs agencies to describe the economic impact of adopted rules on small entities, as well as projected reporting, recordkeeping and other compliance requirements, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

116. In this *Report and Order*, we repeal the national television multiple ownership rule. Accordingly, small and other entities that want to purchase or control broadcast television stations that, in the aggregate, reach more than 39% of the television audience households in the United States will no longer need to make a showing or otherwise calculate and demonstrate compliance with the rule. We find that there are no reporting, recordkeeping, or other compliance requirements for small entities. After reviewing the record in this proceeding, we received no concerns about these types of burdens on small entities. In addition, as the *Report and Order* explains, eliminating the national cap will not permit any more or less consolidation within a local market and so will not reduce the number of voices in the market or increase the concentration among stations for small broadcasters in a given market.

F. Discussion of Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

117. The RFA requires an agency to provide, "a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

118. The rule change, eliminating the national television multiple ownership rule, is deregulatory in nature and does not impose or increase regulatory burdens on small entities. In the *Report & Order*, the Commission finds that a case-by-case approach to applications for television license transfers and assignments is the best way to promote the Commission's media ownership goals of localism, competition and viewpoint diversity. Notably, in response to the latest request for comment in the *Refresh Public Notice*, broadcast commenters were unified in their advocacy for complete elimination of the rule. As the *Report & Order* explains, elimination of the rule would not result in a loss of viewpoint diversity or competition in the local markets in which broadcast stations operate. Further, the *Report & Order* finds that

eliminating the national cap does not permit any more or less consolidation within a local market and therefore has no effect on the number of voices in the market. Similarly, the *Report & Order* finds that competition within a local market will not be harmed by the substitution of one station owner for another, and preservation of the rule is not needed to promote localism.

119. Some commenters believe an alternative approach of maintaining the national ownership cap will encourage competition and local programming. By contrast, the *Report & Order* makes clear that eliminating the rule will enable broadcasters to gain additional scale, which will allow broadcasters to generate additional revenues that can be used to provide broadcast service to the local community. Creating this flexibility for broadcasters is important, as the *Report & Order* details the loss of viewership and revenue that the industry has endured since the time when the Commission last reviewed the need for this rule. The *Report & Order* further finds that scale will give local broadcast affiliates additional leverage vis-à-vis the national networks with which they negotiate for affiliation, thereby improving the ability of broadcast affiliates to resist network demands with respect to compensation and programming decisions. We considered alternative arguments that eliminating the national ownership cap would give broadcasters leverage over multichannel video programming distributors (MVPDs) in retransmission consent negotiations; however, any retransmission consent concerns may be addressed in the context of a specific transaction or in a separate rulemaking proceeding. The *Report & Order* also explains that, for individual stations that are financially struggling, repealing the national cap would give those stations additional options by permitting station groups with healthier balance sheets to expand into new markets, acquire those stations, and provide communities with more robust locally-oriented programming.

G. Report to Congress

120. The Commission will send a copy of the *Report & Order*, including this Final Regulatory Flexibility Analysis, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Report & Order*, including this Final

Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA and will publish a copy of the *Report & Order*, and this Final Regulatory Flexibility Analysis (or summaries thereof) in the *Federal Register*.

ORDERING CLAUSES

121. Accordingly, IT IS ORDERED that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303(r), 307, 309, and 310, the Report and Order IS ADOPTED effective 60 days after the date of publication in the *Federal Register*.

122. IT IS FURTHER ORDERED that, pursuant to the authority contained in Sections 1, 2(a), 4(i), 303(r), 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303(r), 307, 309, and 310, Part 73 of the Commission's rules IS AMENDED as set forth below, effective 60 days after the date of publication in the *Federal Register*.

123. IT IS FURTHER ORDERED that the Commission's Office of the Secretary SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for the Small Business Administration (SBA) Office of Advocacy.

124. IT IS FURTHER ORDERED that the Office of the Managing Director, Performance Program Management, SHALL SEND a copy of this Report and Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

125. IT IS FURTHER ORDERED that, should no petitions for reconsideration or petitions for judicial review be timely filed, MB Docket No. 17-318 SHALL BE TERMINATED and its docket CLOSED.

List of Subjects in 47 CFR Part 73

Television

Federal Communications Commission.

Marlene Dortch
Secretary, Office of the Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 155, 301, 303, 307, 309, 310, 334, 336, 339.

§ 73.3555 [Amended]

2. Amend § 73.3555 by removing and reserving paragraph (e).

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