

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

In the Matter of)
)
National Television) MB Docket No. 17-318
Multiple Ownership Rule)
)

COMMENTS OF NEWSMAX MEDIA, INC.



TheDesk.net

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Newsmax Media Inc. (“Newsmax”), pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission’s (“Commission” or “FCC”) rules (47 CFR §§ 1.415, 1.419) hereby comments in the matter of the National Television Multiple Ownership Rule.¹

I. INTRODUCTION AND SUMMARY

Newsmax Media, Inc. owns Newsmax Broadcasting LLC, its subsidiary, which is an independent video programmer consisting of its flagship 24/7 linear television channel, Newsmax, launched in 2014, carried by major pay-TV distributors, and Newsmax2, a Free Advertising Supported Television (“FAST”) channel. Newsmax is the fourth highest-rated cable news network in the United States and the fifth highest for all cable channels, with some 33 million regular viewers tuning in during Q1 of 2025. A Reuters Institute global media survey found that Newsmax was one of the top 12 news brands in the U.S.² After a recent successful Initial Public Offering, Newsmax is listed today on the New York Stock Exchange.³

¹ Public Notice, *Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding*, DA No. 25-530, MB Doc. No. 17-318 (rel. June. 18, 2025).

² Reuters Institute: Newsmax Is Top US News Brand, NEWSMAX.COM (June 20, 2024), <https://www.newsmax.com/newsfront/reuters-institute-newsmax-ratings/2024/06/20/id/1169582/>.

³ In 2023, Nielsen reported that Newsmax was the only cable news channel with ratings growth across all dayparts, and in the first quarter of 2024, Newsmax's total viewership in prime time

Newsmax, its millions of viewers, along with Americans of every political persuasion, demographic, and location would be harmed by any weakening of the current national television multiple ownership limit (“Horizontal Ownership Cap”). The Commission should – and in fact must – maintain the 39 percent Horizontal Ownership Cap. Anything less would undermine Congress’ mandate to maintain competition, localism, and a diversity of voices and viewpoints. In the decades since President Reagan’s FCC first implemented the Horizontal Ownership Cap, Congress repeatedly affirmed its bipartisan support for a national limit, always with the same goal of curtailing the ability of corporate executives in places like New York or Los Angeles to dictate what Americans in other communities across the nation viewed and who would deliver their local news. The Supreme Court, including the current conservative majority, has upheld the Commission’s authority and responsibility to preserve viewpoint diversity through ownership restrictions.

The Horizontal Ownership Cap has helped to maintain some semblance of competition and source diversity of voices, particularly with regard to local news and programming. Even under the current, permissive “UHF discount” standard, with some broadcast ownership groups serving over 50 percent or more of TV households, the cap ensures that Americans in large and small markets alike benefit from competition between local stations, and content originating from local TV studios instead of a centralized source.

grew by 137 percent and by 87 percent in total day. In March 2025, Newsmax successfully completed its Initial Public Offering under Regulation A+, raising \$75 million through the sale of 7.5 million shares at \$10 each. This public offering followed a \$225 million private placement of preferred stock, bringing the total capital raised to \$300 million. Newsmax's stock debuted on the New York Stock Exchange under the ticker symbol "NMAX" and experienced a remarkable surge, closing at \$83.51 on its first trading day, a 735 percent increase from the IPO price. This resulted in a market capitalization of approximately \$10.7 billion.

Simply put, the Horizontal Ownership Cap is good for diverse voices and that is good for all voices, including conservative ones.

Americans still trust local broadcast TV the most for local news, and the Horizontal Ownership Cap helps to maintain that dynamic. Contrary to claims that the cap hinders broadcasters' ability to thrive, it actually helps to sustain competition in local news, to the benefit of consumers, as evidenced by Tegna's recent major expansion of original news programming across over 50 markets.

Newsmax argued before the FCC, during President Trump's first term, that the proposed Sinclair/Tribune merger, which would have allowed a single entity to serve over 50 percent or more of U.S. TV households, would cripple a free and diverse press, a bedrock principle of American democracy. The same concern applies here.

Raising or eliminating the Horizontal Ownership Cap also would reduce the number of media owners, not only in the broadcast television industry, but also in non-broadcast media like cable channels. It would reduce local broadcast TV source and viewpoint diversity. If Left-leaning broadcast networks like CBS, ABC, and NBC acquired a high enough concentration of stations, networks would need fewer affiliates, the network/affiliate balance of power would be further eroded, and networks would have even less incentive to produce programming that reflects the views of local audiences, granting executives in New York and Los Angeles the ability to dictate political and cultural views to audiences in heartland communities.

Raising or eliminating the Horizontal Ownership Cap also would reduce source and viewpoint diversity in non-broadcast media. If broadcast networks or large station groups acquired more stations, they would increase their leverage over pay-TV distributors (MVPDs,

including cable, satellite, IPTV, and vMVPDs) and have the incentive and ability to favor their own non-broadcast programming services over those of their competitors.

Newsmax understands this firsthand. Based on interactions with multiple distributors, Newsmax believes that Fox Corporation, for example, attempted to undermine Newsmax's distribution on pay-TV platforms in order to promote a competing service, the Fox News Channel. Nexstar, the largest station group owner by market reach, also has its own non-broadcast network, NewsNation, a liberal-leaning and little watched service. Although NewsNation has very low ratings and Newsmax's viewership vastly surpasses its audience size, Nexstar appears to have used its broadcast stations as leverage to coerce pay-TV distributors to pay a higher license fee for NewsNation than they do for Newsmax and other networks with higher ratings. If the Commission increases the Horizontal Ownership Cap, cable networks like Fox News, NewsNation, and other broadcaster-owned programming networks likely would use their increased station leverage over distributors to increase their own channel license fees (which ultimately are paid by consumers), while seeking to reduce fees and distribution for independent programmers.

Proponents of eliminating the Horizontal Ownership Cap argue that only through consolidation can broadcasting compete with Big Tech, but regulators should take steps to increase competition among Big Tech platforms, not seek to create more monopolies, more consolidation, and less competition in another sector, broadcast TV.

Broadcast TV station owners likely have sought relaxation or elimination of the Horizontal Ownership Cap for two reasons. First, removal of the cap would open the door to more potential buyers of station groups and individual stations. More buyers likely would yield

higher station values. Second, station groups that seek to create even greater leverage (without the Horizontal Ownership Cap restrictions) likely would amortize their expenses over a larger number of stations. Politically motivated buyers especially probably want to create truly national networks. The growing size and reach of broadcast networks would embolden them to spend less on local programming as they benefit from syndication and the savings they incur by centralizing station management. Local viewers and citizens would suffer injury.

The public's grant of broadcast television licenses is also a license for broadcasters to mint money. Broadcast television stations are inherently and enormously profitable, but staggering debt loads taken on by station groups – encouraged by the Commission's past relaxation of the Horizontal Ownership Cap and other restrictions – have caused these groups financial problems. Prior relaxation of national and local ownership rules proved harmful, as station owners went on buying binges, saddling themselves with enormous debt loads. Several of the largest station groups face serious financial troubles, with debt servicing costs almost as large as total net revenues. Without these debt loads, the broadcast licenses would provide these companies with enormous profits. The Commission began by opening the barnyard door somewhat, and station groups responded by buying stations with debt, creating financially troubled firms. Now, in an effort to stave off impending financial disaster from those debt loads, broadcasters are asking the Commission to open the barnyard door completely. The results would be disastrous.

If the television broadcasting industry does not provide clear enough evidence of danger, terrestrial radio provides a cautionary tale: The Telecommunications Act of 1996 and the FCC allowed massive consolidation in that industry, only to find that today's largest radio station

owners are drowning in the debt they took on during acquisition sprees, hobbling rather than strengthening radio broadcasting. Local radio programming has been decimated.

Finally, even if the Commission mistakenly wished to raise or eliminate the Horizontal Ownership Cap, the courts likely would block it from doing so. Under the Supreme Court’s Major Questions Doctrine – particularly its *Biden v. Nebraska*⁴ decision blocking President Biden’s attempt to forgive student loans – the FCC may not circumvent Congress’ mandate. Although Congress between 1996 and 2004 directed the FCC to review the Horizontal Cap, and explicitly gave the Commission permission to change it, in 2004 Congress unequivocally set the national audience reach limit at 39 percent and removed any authority for the Commission to adjust it. The clear, specific, unequivocal, and repeated actions by Congress establishing today’s 39 percent limit reveals Congress’ intent to maintain the cap and prevent the FCC from weakening it. Moreover, the courts likely would find that the UHF discount contradicts the clear will of Congress and should be eliminated altogether.

II. RAISING OR ELIMINATING THE BROADCAST HORIZONTAL OWNERSHIP CAP WOULD UNDERMINE CONGRESS’ MANDATE TO MAINTAIN COMPETITION, LOCALISM, AND A DIVERSITY OF VOICES AND VIEWPOINTS.

A. The national audience limit was adopted to promote competition and viewpoint diversity.

The original Horizontal Ownership Cap, technically termed the national audience limit, reflected concerns that network or corporate station group executives based in New York City or Los Angeles would abuse their market power and reach to crush competing local voices,

⁴ *Biden v. Nebraska*, 600 U.S. 477, 494 (2023) (“*Nebraska*”).

particularly in small, rural, heartland communities, and dictate from coastal headquarters the news, entertainment, and other programming viewers would receive.

President Reagan’s FCC first established a national audience reach limit when it increased per-station national ownership caps and also determined it should take into account the relative size of the markets where stations were located – thus limiting the influence over broadcast content of media executives employed by the national networks whose stations were concentrated in the largest markets like New York and Los Angeles.⁵ The Reagan FCC rule “allow[ed] group owners to expand to the point where their TV stations have access to no more than 25 percent of the national audience.”⁶ The numerical cap was designed to prevent concentration of ownership in the smallest markets.⁷ The Commission determined the cap would be calculated via percentage of all Arbitron Ratings Company’s areas of dominant influence (“ADI”) television households but “because the laws of physics” dictated VHF signals reached farther than UHF signals, it counted UHF stations at 50 percent of their reach according to Arbitron.⁸

In the decades since President Reagan’s FCC first implemented the Horizontal Ownership Cap, Congress repeatedly affirmed its bipartisan support for a national limit –

⁵ Amendment of Section 73.3555 (Formerly Sections 73.35, 73.240 & 73.636) of the Commission’s Rules Relating to Multiple Ownership of AM, FM & Television Broad. Stations, 100 F.C.C.2d 74, 75–76, 87–88 (1985) (“1985 Ownership Order”). Prior to this action, the national ownership cap was the “seven station” rule, which, at the time, barred ownership by a single entity of more than seven AM, seven FM and seven TV broadcast stations, of which no more than five could be VHF stations. *Id.*

⁶ 1985 Ownership Order at 76.

⁷ *Id.* at 89.

⁸ *Id.* at 91, 93.

adopting a 35 percent limit in 1996 and a 39 percent limit in 2004.⁹ The goal every time was, and remains, promoting competition, localism, and viewpoint diversity.

B. Even in times of increasing deregulation, the Supreme Court continues to uphold the Commission’s ability to promote viewpoint diversity through ownership limits.

The Federal Communications Commission has regulated broadcast ownership pursuant to Congress’ public interest directive since the founding of the agency. Even in recent times, when regulatory action has come under increasing judicial scrutiny, the Supreme Court has not weakened the Commission’s authority to implement Congress’ mandate and promote competition, localism and diversity of viewpoint in broadcasting – for good reason. The technological need for government to license broadcasters before they may reach the public, and the concomitant gatekeeping role those broadcasters acquire as a result, means that the Commission’s ongoing obligation to promote a wide range of viewpoints and robust competition is imperative. Gatekeepers in charge of distribution will not invite economic or viewpoint competition out of the goodness of their hearts – they must be required to do so.

The Supreme Court’s recent decisions underscore the Commission’s obligation. In the 2021 decision *Prometheus v. FCC*, the Court concluded that “[u]nder the Communications Act of 1934, the Federal Communications Commission possesses broad authority to regulate broadcast media in the public interest.”¹⁰ The FCC has long justified its media ownership rules as promoting “competition, localism, and viewpoint diversity by ensuring that a small number of

⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(c)(1), 110 Stat. 56, 111; Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (“CAA”).

¹⁰ *FCC v. Prometheus Radio Project*, 592 U.S. 414, 416 (2021) (“*Prometheus*”).

entities do not dominate.”¹¹ In *Prometheus*, the Supreme Court repeatedly emphasized “competition, localism and viewpoint diversity” as the core pillars of the Communications Act’s public interest standard.¹² Over the years, the Supreme Court has repeatedly affirmed ownership limits adopted to “avoid overconcentration of broadcasting”¹³ because “diversification of mass media ownership serves the public interest by promoting diversity of program and service viewpoints, as well as by preventing undue concentration of economic power.”¹⁴ “The public interest standard necessarily invites reference to First Amendment principles and, in particular, to the First Amendment goal of achieving the widest possible dissemination of information from diverse and antagonistic sources.”¹⁵

Thus, starting with President Reagan’s FCC, through multiple bipartisan congressional votes, to the current conservative majority at the Supreme Court, the FCC not only has the authority but a clear mandate to maintain competition and viewpoint diversity through the Horizontal Ownership Cap. Just as important, the policy has worked.

C. Today’s statutory Horizontal Ownership Cap of 39 percent, which in reality exceeds 50 percent with the UHF discount, has helped to maintain competition in news reporting, information-sharing, and viewpoint diversity.

Despite a highly concentrated market in local TV broadcasting, in which a few firms already cover wide swaths of U.S. TV households, the Horizontal Ownership Cap has helped to

¹¹ *Id.* at 418.

¹² *Id.* at 416, 418, 421-27.

¹³ *U. S. v. Storer Broad. Co.*, 351 U.S. 192, 193 (1956). *See also Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir.), *modified on reh'g*, 293 F.3d 537 (D.C. Cir. 2002) (Section 202(h) “allows the Commission to retain a rule necessary to safeguard the public interest in diversity”).

¹⁴ *FCC v. Nat’l Citizens Comm. For Broad.*, 436 U.S. 775, 780 (1978).

¹⁵ *Id.* (citation modified).

maintain competition and source diversity of voices, particularly with regard to local news and programming. At a time when local journalism itself is threatened, the Commission should not risk harming one of the last bastions of local news and information.

Changes in broadcast technology, in particular the transition to digital, have meant that large broadcast station ownership groups flaunt the 39 percent cap adopted by Congress every day. In 1985, UHF channels were weaker than VHF, but today “UHF channels are equal, if not superior, to VHF channels for the transmission of digital television signals.”¹⁶ Because UHF stations are superior, many national owners have deliberately moved their stations from VHF to UHF but still benefit from the UHF discount, which remains on the Commission’s books more than a decade after it was definitively obsolete.¹⁷ Several owners exceed Congress’ 39 percent cap; many others, that would be barred from further acquisitions because they are just below Congress’ 39 percent limit, have room to grow if the FCC maintains the technologically anachronistic analog discount.¹⁸ It should be noted that the Commission eliminated the UHF

¹⁶ *Amendment of Section 73.3555(e) of the Commission’s Rules, Nat’l Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390, 3393 (2017).

¹⁷ *Amendment of Section 73.3555(e) of the Commission’s Rules, Nat’l Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd. 10213, 10228 (2016) (“UHF Repeal Order”).

¹⁸ Several national groups exceed the 39 percent cap, including Nexstar at 70 percent, Scripps at 68.5 percent and TelevisaUnivision at 44.9 percent. Tegna, Sinclair, Fox, CBS, and NBC are at 38.4%, 39%, 38.5%, 37.5%, and 38.1% respectively without the UHF discount, but are well below the cap if the discount is applied. Harry Jessell, TVN’s Top 30 Station Groups: A Volatile Year Delivered Few Changes, TVNEWSCHECK (Aug. 28, 2024),

<https://tvnewscheck.com/business/article/tvns-top-30-station-groups-a-volatile-year-delivered-few-changes/>.

discount late in the Obama Administration, but unfortunately reinstated it early in the first Trump Administration, thus the benefits were not realized.¹⁹

Even under the current, permissive standard allowing significant broadcast station consolidation, competition between stations remains strong, and locally originated broadcast TV robust, proving the efficacy of the Horizontal Ownership Cap. A recent study by the Shorenstein Center on Media, Politics, and Public Policy found that, unlike newspapers or public radio stations, most local TV stations compete directly with other stations in the same market, with only 6 percent reporting that they have no competition from any station in the evening newscast.²⁰ Similarly, the Shorenstein study found only a limited number of local stations relying on outside sources of content, such as a centralized source from a network or parent company. Sixty eight percent said that they use such external, non-local sources “not much” or “some” of the time. But the stations that reported the highest reliance on outside sources of content were owned by the largest station groups,²¹ suggesting an inverse relationship between station group ownership size and the amount of locally originated programming.

¹⁹ See *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, MB Docket No. 13-236, FCC 16-116, 31 FCC Rcd. 10213 (2016) (Sept. 7, 2016) (Obama-era FCC order eliminating the UHF discount). See also *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, MB Docket No. 13-236, FCC 17-40, 32 FCC Rcd. 3390 (2017) (Apr. 21, 2017) (Trump-era FCC order reinstating the UHF discount).

²⁰ Thomas E. Patterson, *Can They Do Good and Still Do Well? Local TV Stations and Communities’ Information Needs*, HARVARD KENNEDY SCHOOL SHORENSTEIN CENTER ON MEDIA, POLITICS, AND PUBLIC POLICY (June, 2025) (“SHORENSTEIN STUDY”) at 7, https://shorensteincenter.org/wp-content/uploads/2025/06/TV-News-Study_Patterson_June-Final.pdf.

²¹ SHORENSTEIN STUDY at 13.

The Horizontal Ownership Cap’s effectiveness in maintaining competition among, and original content from, local broadcasters remains particularly important to small and rural communities, where consumers tend to have fewer sources of local news, and broadcast TV often is the only source of local information. Three quarters of so-called “news deserts” without any local newspapers are in counties the U.S. Agriculture Department classifies as “predominantly rural.”²² In those communities, the local TV broadcaster may be the only source of local news, weather, emergency alerts, and other local content.

By maintaining competition and viewpoint diversity among local broadcasters, the Horizontal Ownership Cap helps to sustain a key source of local news coverage. With the demise of newspapers, local broadcast TV has become the local news source of choice. Americans still trust local broadcast TV more than any other outlet for local and electoral news. According to a recent Spectrum News/Morning Consult poll, nearly 50 percent cited local TV as their most important source of local news, more than any other outlet.²³ When seeking local news, most Americans turn first to mainstream local broadcast news affiliates (33%), well outpacing local radio (15%) and local newspapers or magazines (14%).²⁴ The broadcast industry describes itself as “the last bastion of local and investigative journalism in many communities.”²⁵

²² Zach Metzger, *The State of Local News The 2024 Report*, NORTHWESTERN UNIVERSITY MEDILL SCHOOL OF JOURNALISM LOCAL NEWS INITIATIVE (Oct. 23, 2024), <https://localnewsinitiative.northwestern.edu/projects/state-of-local-news/2024/report/>.

²³ Tom Butts, *Poll: More Viewers Get Their Local News from TV Than From Any Other Source*, TV TECH (Aug. 25, 2022), <https://www.tvtechnology.com/news/poll-more-viewers-get-their-local-news-from-tv-than-from-any-other-source>.

²⁴ Sarah Fiorini, *Local News Most Trusted in Keeping Americans Informed about Their Communities*, KNIGHT FOUNDATION (May 19, 2022), <https://knightfoundation.org/articles/local-news-most-trusted-in-keeping-americans-informed-about-their-communities/>.

²⁵ “Big Tech is a Threat to Local Journalism,” National Association of Broadcasters, <https://www.nab.org/bigtech/>.

On that point, Newsmax agrees. Unlike broadcast industry lobbyists, however, Newsmax maintains that the Horizontal Ownership Cap is a major contributing factor to preserving that last bastion of localism.

Contrary to claims that the cap impedes broadcasters from competing with digital platforms and serving the public interest through local news and information, the best broadcasters are investing in quality local news and other content, reaping the benefits of a growing, engaged audience. Just weeks ago, Tegna announced a major expansion of its local news operations, adding 100 hours of new daily programming across over 50 markets. Tegna’s chief content officer, Adrienne Roark, said that the massive investment reinforces Tegna’s “companywide commitment to local news” and will “further strengthen [Tegna’s] newsrooms, enhance the viewer experience, support [Tegna’s] communities” and “create new opportunities for . . . advertisers to reach audiences regardless of where they are and how they consume [Tegna’s] content.”²⁶

Local broadcasting provides millions of Americans with a critical source of local news and information. The Horizontal Ownership Cap helps to maintain that reality. Raising or eliminating it would be catastrophic.

D. The arguments raised by conservative media in successfully opposing the Sinclair/Tribune merger apply here.

The Commission wisely rejected a prior attempt to undermine the Horizontal Ownership Cap through a major broadcast transaction. Arguments raised by conservative media outlets and

²⁶ Mark K. Miller, *Tegna Announces Local News Expansion*, TV NEWSCHECK (June 16, 2025), <https://tvnewscheck.com/journalism/article/teгна-announces-major-local-news-expansion/>; Michael P. Hill, *Tegna launching streaming morning news in over 50 markets*, NCS (June 16, 2025), <https://www.newscaststudio.com/2025/06/16/teгна-streaming-morning-news/>.

others in that docket should apply here, as well. When Sinclair Broadcast Group (“Sinclair”) attempted to acquire Tribune Media Company (“Tribune”), which would have created a single broadcaster reaching over 70 percent of U.S. TV households, conservative media outlets Newsmax, One America News, and The Blaze, among others, petitioned the FCC to reject the proposed transaction.²⁷

Among other things, Newsmax argued that “a free and diverse press, a bedrock principle of American democracy, would be crippled by” allowing a single entity to own stations covering over 70 percent of U.S. TV households.²⁸ Although Newsmax and Sinclair shared a similar, conservative editorial approach, Newsmax’s management believed then, as it does now, that allowing such ownership concentration in local broadcast TV would undermine the public interest goals of maintaining competition, localism, and viewpoint diversity.

In a compelling visual illustration of how broadcast ownership concentration reduces viewpoint diversity by replacing local voices with corporate dictates, Deadspin posted a video of actual newscasters from Sinclair-owned local stations across the country reading the identical editorial script from a centralized source. Sinclair required its stations to air “must-runs,” regardless of local newsrooms’ editorial decision-making, which the Deadspin video revealed in

²⁷ Sydney Ember, *Sinclair Deal Draws Unlikely Opponent: Conservative Media*, N.Y. TIMES (Aug. 8, 2017), www.nytimes.com/2017/08/08/business/media/sinclair-bid-to-acquire-tribune-media-draws-opposition.html.

²⁸ *In the Matter of Applications of Tribune Media Company and Sinclair Broadcast Group For Consent to Transfer Control of Licenses and Authorizations*, FCC, Petition to Dismiss or Deny of Newsmax Media, at 1, MB Docket No. 17-179 (filed August 7, 2018), <https://www.fcc.gov/ecfs/document/10808306362995/1>

devastating clarity by displaying different newscasters in split-screen mode, parroting identical words from the same script.²⁹



In an irony-free moment, dozens of newscasters recite identical words, apparently provided by their corporate headquarters and required to be read verbatim, decrying social media “pushing their own personal bias and agenda” in ways that are “extremely dangerous to our democracy.”³⁰ Meanwhile, the station’s corporate owner, Sinclair, was asking the FCC to let it expand its centralized, anti-local practices across over 70 percent of the nation’s TV households, which would have undermined viewpoint diversity, localism, and competition.

The Trump FCC correctly referred the Sinclair/Tribune transaction to an administrative law judge for hearing, effectively killing the deal.³¹ Newsmax believes that underpinning the

²⁹ Sydney Ember, *Sinclair Requires TV Stations to Air Segments That Tilt to the Right*, N.Y. TIMES (May 12, 2017), www.nytimes.com/2017/05/12/business/media/sinclair-broadcast-komo-conservative-media.html.

³⁰ The video can be viewed here: https://youtu.be/_fHfgU8oMSo?feature=shared.

³¹ *Applications of Tribune Media Company and Sinclair Broadcast Group, Inc. et al.*, FCC, Hearing Designation Order, MB Docket No. 17-179, FCC 18-100 (July 18, 2018), <https://docs.fcc.gov/public/attachments/FCC-18-100A1.pdf>.

FCC's decision was a recognition that broadcast TV stations owned by the same entity will espouse similar – sometimes identical – viewpoints, and that increasing the number of stations any entity may own will further homogenize viewpoints at the local and national levels. That would be “extremely dangerous to our democracy.”

III. AMERICANS WOULD HAVE ACCESS TO FEWER DIVERSE VOICES, ESPECIALLY CONSERVATIVE AND INDEPENDENT ONES, IF THE COMMISSION RAISED OR ELIMINATED THE BROADCAST HORIZONTAL OWNERSHIP CAP.

Even in the era of streaming and social media, concentrating broadcast ownership in the hands of a few owners by raising or eliminating the Horizontal Ownership Cap will eviscerate competition, reduce the number of diverse viewpoints found at the local and national level, and undermine the public interest standard's guiding principle that the airwaves be available to the benefit of all Americans. Broadcast TV station owners have sought relaxation or elimination of the Horizontal Ownership Cap for two likely reasons.

First, removal of the cap would open the door to more potential buyers of station groups and individual stations. Politically motivated buyers especially could be motivated by the ability to create true national networks. More buyers likely will yield higher station values.

Second, station groups that seek to create even greater leverage (without the Horizontal Ownership Cap restrictions) likely would amortize their expenses over a larger number of stations. The growing size and reach of broadcast networks would embolden networks to spend less on local programming as they benefit from syndication and the savings they incur by centralizing station management. Either way, local viewers and citizens would suffer injury.

A. Increased ownership concentration in local broadcast TV would eliminate source diversity in local broadcasting and curtail viewpoint diversity.

If Left-leaning broadcast networks like CBS, ABC, and NBC acquired a high enough concentration of stations, networks would need fewer affiliates, the network/affiliate balance of power would be further eroded, and networks would have even less incentive to produce programming that reflects the views of local audiences, granting executives in New York and Los Angeles the ability to dictate political and cultural views to audiences in heartland communities. Stations under common ownership with CBS, ABC, and NBC do not cover all U.S. TV households, requiring networks to enter affiliation agreements with independently owned stations that tend to better reflect local tastes, views, and sensibilities. Historically, the affiliates provided a counterbalance to centralized network decision-making, with networks having to account for the affiliates' demands.³²

By eliminating or raising the Horizontal Ownership Cap, the Commission would allow Left-leaning broadcast networks to further disregard, or altogether ignore the programming desires of smaller, more rural – often more politically conservative – communities, and increasingly centralize programming decisions at the national network level, to the detriment of viewers.

B. Increased concentration of ownership in local broadcast TV would impact source diversity from non-broadcast sources.

A station group with a national footprint will have enormous reach and leverage over cable operators, harming consumers by crowding out independent programming sources and

³² Hank Price, *Are The Broadcast Networks Killing Their Affiliates?*, TVNEWSCHECK (May 6, 2024), <https://tvnewscheck.com/business/article/are-the-broadcast-networks-killing-their-affiliates>; Brian Stelter, *Trump's FCC pick sends stern letter to Bob Iger, blasting 'erosion in public trust'*, CNN (Dec. 24, 2024), <https://www.cnn.com/2024/12/23/media/fcc-brendan-carr-bob-iger-abc-letter>.

forcing cable operators to carry ancillary cable channels in bundles with lower viewership. If broadcast networks acquired more stations, they would increase their leverage over pay-TV distributors and have the incentive and ability to favor their own non-broadcast programming services over those of their competitors.³³

Fox Corporation, as owner of Fox Broadcasting, probably would demand that distributors wishing to carry Fox's broadcast TV stations not carry competitors to the Fox News Channel, or at least carry competitors on inferior tiers. Nexstar could make similar demands in favor of NewsNation. Other broadcast network owners could try to help their proprietary cable channels while harming competitors. Smaller or independent cable TV channels would be crushed by the leverage of these broadcast groups.

Newsmax already experiences this dynamic firsthand when negotiating distribution agreements with cable, satellite, and streaming providers. On multiple occasions, distributors have told Newsmax business executives that agreements with certain other programmers restrict the distributor's ability to offer Newsmax on the most widely available tier, or adjacent to other conservative programming services sharing the same format as Newsmax. Based on multiple statements from a range of pay-TV providers, Newsmax believes that the distribution agreements in question probably are with Fox Corporation, whose Fox News Channel competes directly with Newsmax, and would have the incentive to thwart Newsmax's distribution to as many

³³ Independent of the negative effects on competition, localism, and diversity from increased broadcast consolidation, there also likely would be price increases from elevated retransmission consent fees, which already are exceeding the rate of inflation. Tim Hanlon, *Retrans Must Be On The Table: Why Broadcast Reform Can't Ignore The Elephant In The Room*, TVREV (June 12, 2025), <https://www.tvrev.com/news/retrans-must-be-on-the-table-why-broadcast-reform-cant-ignore-the-elephant-in-the-room>.

households as possible. Allowing Fox Corporation to acquire more broadcast TV stations would increase its leverage with distributors that carry local stations, thereby bolstering its ability to restrict Newsmax from reaching as many U.S. TV households as possible and undermining competition between conservative news outlets, to the detriment of conservative viewers who otherwise benefit from robust competition among programmers in the conservative format.

Like the broadcast networks, if independent station groups acquire more stations, they also would increase their leverage over pay-TV distributors and would have the incentive and ability to favor their own non-broadcast programming services over those of their competitors. Nexstar owns and operates a little-watched,³⁴ liberal-leaning³⁵ news channel, NewsNation, that apparently receives inflated license fees because of Nexstar's broadcast TV leverage.

Although NewsNation has very low ratings, which Newsmax vastly surpasses throughout multiple dayparts,³⁶ Nexstar appears to have used its broadcast stations as leverage to coerce pay-TV distributors to pay a higher license fee for NewsNation than they do for Newsmax and other networks with higher ratings. If the Commission increases the Horizontal Ownership Cap, cable networks like Fox News, NewsNation, and other broadcaster-owned programming

³⁴ NewsNation is the 61st most popular channel on TV, with 106,000 viewers through June 30, 2025 (down 5 percent from the previous quarter). *NewsNation*, US TVDB, (period ending July 6, 2025), <https://ustvdb.com/networks/newsnation/>.

³⁵ “Since parent company Nexstar launched NewsNation in 2021 by transforming WGN America into a liberal-leaning news channel, the network has pinned its success to a prime-time lineup including former CNN host Chris Cuomo along with former MSNBC hosts Dan Abrams and Ashleigh Banfield.” *NewsNation Sees Ratings Declines After GOP Debate*, NEWSMAX (July 17, 2025), https://www.newsmax.com/newsfront/newsnation-ratings-decline/2023/12/19/id/1146431/?utm_source=chatgpt.com.

³⁶ Mark Mwachiro, *Here Are the 2nd Quarter of 2025 Cable News Ratings*, ADWEEK (July 1, 2025), <https://www.adweek.com/tvnewser/here-are-the-2nd-quarter-of-2025-cable-news-ratings/>.

networks undoubtedly will use their increased station leverage over distributors to increase their own channel license fees (which ultimately are paid by consumers), while seeking to reduce fees and distribution for independent programmers.

Just as Fox Broadcasting would have the incentive to thwart Newsmax's distribution in order to favor the Fox News Channel, Nexstar could leverage its increased bargaining position from additional station ownership to demand that distributors favor Nexstar's own, proprietary network over Newsmax, to the detriment of conservative viewers who could lose access to Newsmax.

C. The Commission should fight consolidation in Big Tech with competition, not more broadcast consolidation.

The broadcast industry has argued that local broadcasters “must have the ability to grow and compete with Big Tech platforms that operate without similar restrictions.”³⁷ Consolidation in the name of competition with Big Tech, however, is a flawed strategy. Regulators should take steps to increase competition among Big Tech platforms, not seek to create more monopolies and less competition in another sector, broadcast TV. The broadcast television market is not an open one, but rather is closed to all but a handful of licensees regulated by the federal government. The Commission's adoption of a “laissez faire” approach that allows broadcast station groups to own highly penetrated national networks or to consolidate multiple stations across markets is a dangerous one for several reasons.

³⁷ Press Release, Nat'l Ass'n of Broads., National Association of Broadcasters Launches Campaign Urging FCC to Modernize Ownership Regulations (Feb. 27, 2025), <https://www.nab.org/documents/newsroom/pressRelease.asp?id=7163>.

First, reducing competition in broadcast TV, instead of stemming the flow of advertising dollars to digital platforms, could backfire by having the opposite effect. It is axiomatic that less competition leads to less innovation or investment in product quality.³⁸ Decreasing competition in the broadcast TV market probably would lead to less compelling programming, lower ratings, and fewer ad dollars. Advertisers logically would go elsewhere to reach engaged audiences.

Uncompetitive markets encourage dominant firms to raise prices with impunity.³⁹ If local broadcasting is dominated by two or three firms, those companies are more likely to raise advertising prices, further driving ad dollars towards alternative platforms other than local broadcasting.

Second, if increased consolidation in the local broadcast TV industry were, in fact, an answer to the anticompetitive activities of Big Tech platforms, the U.S. Department of Justice (“DOJ”)⁴⁰ and State Attorneys General probably would have suggested that as a remedy, or at

³⁸ “In contrast, a reduction in competition among buyers can lead to artificially suppressed input prices or purchase volume, which in turn reduces incentives for suppliers to invest in capacity or innovation[.]” and “[t]he merged firm may have a reduced incentive to engage in disruptive innovation that would threaten the business of one of the merging firms.” *Merger Guidelines U.S. Department of Justice and Federal Trade Commission* at 26, 39 (Dec. 18, 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2023_merger_guidelines_final_12.18.2023.pdf.

³⁹ “Competition is a process of rivalry that incentivizes businesses to offer lower prices, improve wages and working conditions, enhance quality and resiliency, innovate, and expand choice, among many other benefits. Mergers that substantially lessen competition or tend to create a monopoly increase, extend, or entrench market power and deprive the public of these benefits.” *Id.*

⁴⁰ Press Release, DOJ, Department of Justice Prevails in Landmark Antitrust Case against Google, (Apr. 17, 2025), <https://www.justice.gov/opa/pr/departments-justice-prevails-landmark-antitrust-case-against-google> (DOJ “prevailed in its second monopolization case against Google. In *United States et al. v. Google*, the U.S. District Court for the Eastern District of Virginia held that Google violated antitrust law by monopolizing open-web digital advertising markets. According to the Court, Google ‘harmed Google’s publishing customers, the competitive process, and, ultimately, consumers of information on the open web.’”).

least a new policy goal, in any one of the many successful cases they brought against Alphabet and other Big Tech platforms. But Newsmax has been unable to find a single instance of any antitrust plaintiff in any such case calling for increased broadcast TV consolidation as an appropriate means of addressing Big Tech's antitrust violations. Instead, DOJ's proposed structural remedies of Google's ad business and the requirements for data-sharing and fair auctions are intended to help all publishers, including broadcasters, and advertisers by curbing Google's monopoly power.⁴¹

Finally, even if the FCC were to allow further consolidation in the local broadcast industry, there is no guarantee that broadcasters would use that increased market power to invest in local programming. In fact, NAB's current proposals to convert much of their spectrum usage to datacasting under the new ATSC 3.0 standard begs the question as to whether, even if they were allowed to consolidate, they would focus more on monetizing their spectrum to become a national wireless service providing a data pipeline, as opposed to investing in local news, weather, sports, emergency alerts, and other relevant information.

D. The consolidation of terrestrial radio provides a cautionary tale.

The current financial state of the broadcast television industry and that of the terrestrial radio industry should give the Commission pause. The largest broadcast television groups that used the relaxed UHF discount to go on station-buying binges saddled themselves with enormous debt loads. Today, several station groups face serious financial troubles. For

⁴¹ Ivan Mehta, *US DOJ wants Google to sell two of its ad products*, TECHCRUNCH (May 6, 2025), <https://techcrunch.com/2025/05/06/us-doj-wants-google-to-sell-two-of-its-ad-products/>.

example, Nexstar carries a debt load of \$6.5 billion;⁴² Sinclair, \$4.2 billion;⁴³ Tegna, \$3.09 billion;⁴⁴ and E.W. Scripps, \$2.6 billion.⁴⁵ It is important to note that without these debt loads, the broadcast licenses would provide enormous profits. For example, in 2024, Nexstar reported net income of \$722 million, but interest payments on its debt were more than half that amount, \$444 million.⁴⁶ Similarly, Sinclair's net income in 2024 was \$310 million, but its interest expense was almost that much at \$304 million.⁴⁷ These broadcasters are drowning in their own debt financing costs as a result of buying more and more stations. The Commission should recognize that station groups bear full responsibility for their financial recklessness and should not be encouraged by allowing for them to increase even more their station reach.

The Commission began by opening the barnyard door somewhat through a relaxed ownership scheme, and station groups responded by buying stations using debt, causing financial troubles. Now, in an effort to stave off impending financial disaster stemming from these debt loads, broadcasters are asking the Commission to open the barnyard door completely.

⁴² *NEXSTAR Media Group Reports Record Fourth Quarter Net Revenue Of \$1.49 Billion*, NEXSTAR MEDIA GROUP (Feb. 27, 2025), <https://www.nexstar.tv/wp-content/uploads/2025/02/NXST-4Q24-PR-final.pdf>.

⁴³ *Sinclair Reports Fourth Quarter 2024 Financial Result*, SINCLAIR, INC. (Feb. 26, 2025), <https://sbg.net/sinclair-reports-fourth-quarter-2024-financial-results/>.

⁴⁴ *TEGNA Inc. Reports Fourth Quarter and Full-Year 2024 Results and Provides First Quarter 2025 Guidance*, TEGNA INC. (Feb. 27, 2025), <https://investors.tegna.com/news-releases/news-release-details/teгна-inc-reports-fourth-quarter-and-full-year-2024-results-and>.

⁴⁵ *Scripps Reports Q4 2024 Financial Results*, THE E.W. SCRIPPS COMPANY (Mar. 11, 2025), <https://scripps.com/press-releases/scripps-reports-q4-2024-financial-results/>.

⁴⁶ Nexstar Media Group, Inc., Annual Report (Form 10-K) at F-5 (2024), <https://www.nexstar.tv/wp-content/uploads/2025/05/Nexstar-2024-Annual-Report.pdf>.

⁴⁷ Sinclair, Inc., Annual Report (Form 10-K) (2024) at 34, <https://d2ghdaxqb194v2.cloudfront.net/2732/197115.pdf>.

Against this backdrop, the post-consolidation trajectory of terrestrial broadcast radio provides a warning for the Commission. Post-consolidation, Americans now have three main terrestrial radio providers (iHeart, Cumulus, and Audacy) with all suffering financially and burdened by debt.

After the FCC relaxed radio ownership rules, station owners used debt financing to go on acquisition sprees and gain market share. Now, unable to service this debt financing, radio operators have cannibalized local programming in favor of national syndication and fewer diverse voices at the local level. As Fitch Ratings put it:

Several major radio broadcasters, such as iHeartMedia Inc., Cumulus Media, and Audacy Inc., have in recent years undergone debt restructurings and distressed debt exchanges. These measures have been an attempt to manage their financial obligations amidst declining revenues. Audacy filed for bankruptcy in January 2024 and emerged with an 80% lighter debt load; iHeartMedia completed a distressed exchange in December 2024, pushing its \$4.8 billion debt maturity to 2028–2030; Cumulus and Beasley also completed debt exchanges during 2024.⁴⁸

Cumulus has admitted that some of its “projections for those acquisitions turned out to be wrong” and that management “failed to achieve” their goals, with cash flow failing to support acquisition costs.⁴⁹ Similarly, iHeart “fell victim to simple mathematics: interest payments on its debt total about \$1.8 billion a year, yet its operating cash flow is between \$1.6 and \$1.7

⁴⁸ *Radio Broadcasters’ Distress Highlight Linear Advertising Challenges*, FITCH WIRE (Apr. 9, 2025), <https://www.fitchratings.com/research/corporate-finance/radio-broadcasters-distress-highlight-linear-advertising-challenges-09-04-2025>.

⁴⁹ *The Inside Story On How Cumulus Ended Up In Bankruptcy Court*, INSIDE RADIO (Dec. 14, 2017), https://www.insideradio.com/the-inside-story-on-how-cumulus-ended-up-in-bankruptcy-court/article_2bda44a2-e0ad-11e7-b750-b3f91046de3c.html.

billion.”⁵⁰ Many analysts agree that Audacy’s current financial problems stem from its \$2.4 billion purchase of CBS Radio in 2017, which “saddled the company with a mountain of debt.”⁵¹

TV broadcast licensees might argue for further consolidation in the name of preserving their industry – or even in the hopes of cashing out – but as the terrestrial radio marketplace shows, the public interest, especially competition, localism, and source diversity, is likely to suffer.

IV. THE COMMISSION LACKS AUTHORITY TO ALTER THE HORIZONTAL OWNERSHIP CAP AND MUST ENSURE IT IS PROPERLY IMPLEMENTED.

Despite ample evidence weighing against the relaxation or elimination of the Horizontal Ownership Cap, even if the FCC were inclined to do so, it cannot. Although Congress between 1996 and 2004 directed the FCC to review the cap, and explicitly gave the Commission permission to change it, in 2004 Congress unequivocally set the national audience reach limit at 39 percent and removed any authority for the Commission to adjust it. It is now up to the Commission to correctly and accurately implement the 39 percent cap. This means retaining the Horizontal Ownership Cap and repealing the UHF discount.

A. Congress established the 39 percent national audience reach limit.

⁵⁰ Loren Steffy, *The Long Fall of iHeart, Once the Most Powerful and Feared Player in Radio*, TEXAS MONTHLY (Feb. 2018), <https://www.texasmonthly.com/news-politics/long-fall-iheart-powerful-feared-player-radio/>.

⁵¹ *Analysts Agree: Audacy Bankruptcy Stems From Overpaying For CBS Radio*, INSIDE RADIO (Jan. 16, 2024), https://www.insideradio.com/free/analysts-agree-audacy-bankruptcy-stems-from-overpaying-for-cbs-radio/article_1c5d4228-b44a-11ee-8d23-df1ef47fe54c.html.

In response to a Commission ruling to increase the Horizontal Cap to 45 percent of television households,⁵² Congress adopted Section 629 of the Consolidated Appropriations Act of 2004 amending the Telecommunications Act of 1996 and instructing the FCC to adopt rules setting the “the national audience reach limitation for television stations to 39 percent.”⁵³ At the same time, Congress removed the Horizontal Ownership Cap from the mandatory quadrennial review.⁵⁴ Congress further established a mandatory divestiture procedure for stations exceeding the limit:

A person or entity that exceeds the 39 percent national audience reach limitation for television stations . . . through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation.⁵⁵

From this divestiture requirement, Congress also excluded “persons or entities that exceed the 39 percent national audience reach limitation through population growth.”⁵⁶ Congress was specific,

⁵² 2002 Biennial Regulatory Review, Report & Order, 18 FCC Rcd. 13620, 13847 (2003) (*2002 Biennial Order*).

⁵³ CAA, § 629(1).

⁵⁴ *Id.* § 629(3)

⁵⁵ *Id.* § 629(2).

⁵⁶ *Id.* Congress also excluded “any person or entity that exceeds the 39 percent national audience reach limitation for television stations” from using the Commission’s Section 10 forbearance authority, codified at 47 U.S.C. § 160. *Id.* § 629(2). As explained by Fox in an earlier comment addressing the question, because the forbearance authority provided in Section 10 applies, by its express terms, only to laws governing telecommunications carriers or services, not television licensees, “[t]he reference to Section 10 forbearance in the Appropriations Act represents the epitome of a ‘belt and suspenders’ approach. . . . The inclusion of Section 10 in the Appropriations Act can only reflect one thing: Congress’s desire to think of – and close off – any conceivable avenue that the FCC might consider using in an attempt to modify the Cap.” Comments of 21st Century Fox, Inc. and Fox Television Holdings, Inc. at 8, n.16, MB Docket No. 13-236, (filed Dec. 16, 2013). This may have been considered necessary because Section 202(h) explicitly references Section 11 of the Communications Act – the biennial review provision for regulations applying to providers of telecommunications service. 1996 Act, § 202(h); 47 U.S.C. § 161.

clear, and unambiguous: not only did it set the cap at 39 percent, but it provided that divestiture was the solution for a violation. Thus, Congress clearly intended to fix in law the 39 percent limit.

It is important to distinguish Congress' action in 2004 from prior actions in 1996 and 1985. In 1996, Congress established a 35 percent limit, *but continued to subject the national audience limit to the mandatory regular then-biennial media ownership review and update process*.⁵⁷ In 1985, when the Reagan FCC first implemented a national ownership limit, Congress only paused Commission implementation of its new rules until “sixty days after the Commission's reconsideration of its decision in this matter.”⁵⁸ Both of these examples contrast with the mandate reflected in the current statute. Congressional intent is crystal clear: in prior actions Congress permitted the FCC some flexibility, in 2004 it did not. Moreover, Congress acted when the FCC set a cap Congress viewed as too high.

B. Recent Supreme Court precedent establishing the Major Questions Doctrine precludes the Commission from lifting the cap without the express authorization of Congress by statute.

The Supreme Court's Major Questions Doctrine explains that agencies lack authority to adopt “basic and fundamental changes in [a] scheme” designed by Congress.⁵⁹ There could be no greater “basic and fundamental change” in a limit established by Congress than abolishing it altogether. The Supreme Court's directive is clear.

⁵⁷ 1996 Act, § 202(c), (h).

⁵⁸ Second Supplemental Appropriations Act, Pub.L. No. 98-396, § 304, 98 Stat. 1369, 1423 (1984).

⁵⁹ *Nebraska*, 600 U.S. at 494.

When the Court blocked the Biden Administration from implementing a student loan forgiveness program in *Biden v. Nebraska*, it stated explicitly that an agency’s ability to modify a rule does not permit that agency to eliminate it altogether. While in the *Nebraska* decision, the Secretary of Education had been at least granted authority to modify particular statutory provisions in the case of an emergency, in the current case no authority has been granted to the FCC at all. And the Court in *Nebraska* drew on a prior instance of the Commission illegitimately attempting to eliminate rules that Congress established—quoting Justice Scalia’s famous take-down of the FCC’s attempt in the 1990s to avoid a Congressional directive:

[the agency’s] plan has “modified” the cited provisions only in the same sense that “the French Revolution ‘modified’ the status of the French nobility”—it has abolished them and supplanted them with a new regime entirely.⁶⁰

As the Court indicated in *Nebraska*, a significant change of this kind involves “basic and consequential tradeoffs . . . that Congress would likely have intended for itself.”⁶¹ In such cases, the Court requires an agency to “point to clear congressional authorization.”⁶² In this case, Congress’ authorization to modify the Horizontal Ownership Cap has been repealed.

The application of the Major Questions Doctrine here is more clear when the context and actions of Congress are reviewed as a whole.⁶³ In 1996, Congress ended the individual station cap and raised the national audience reach limit *and* not only authorized, but directed, the Commission to review biennially the national limit under Section 202(h) of the 1996 Act.⁶⁴ Thus,

⁶⁰ *Nebraska*, 600 U.S. at 496 (quoting *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218 (1994)).

⁶¹ *Id.* at 506 (quoting *W. Va. v. EPA*, 597 U.S. 697, 730 (2022)).

⁶² *Id.*

⁶³ *Nebraska*, 600 U.S. at 508-513 (Barrett, J. concurring).

⁶⁴ 1996 Act § 202(c)(1)(A), (h).

in 2002, when the D.C. Circuit reviewed the Commission’s decision to retain the national cap, it heeded Congress’ directive, and insisted the Commission justify retention of the cap.⁶⁵ But when, in 2003, the Commission increased the limit to 45 percent, and Congress quickly acted in 2004 to lower the cap to 39 percent, *it also eliminated the directive for the Commission to consider changes* pursuant to the now-quadrennial ownership rule. Whereas in 1996, Congress set the limit *and* directed the Commission to review and justify or change the limit in the future, in 2004 Congress set the limit and eliminated any directive for change. Thus, as of 2004, Congress reverted to the ordinary state of affairs: when Congress sets a particular number by statute, that number must stand until Congress changes it.⁶⁶ The period of 1996 to 2004 was the only time when Congress explicitly gave a directive to the Commission to review Congress’ determination with respect to the national limit.⁶⁷ That time is long gone.

C. To reflect the will of Congress in establishing a statutory cap, the Commission also must eliminate the now-obsolete UHF discount.

Congress was explicit when it set the 39 percent limit. In contrast, it made no mention of how the FCC was to implement the limit – not the data source used to measure it or the UHF discount to ensure the data was properly applied. Arguments that Congress also froze the UHF discount in 2004 are without merit. Those claims would mean that the Commission should

⁶⁵ Further, while the D.C. Circuit did not agree, it gave credence to the Commission’s view that it no longer was required to consider its findings in its 1984 decision to eliminate the cap given Congress’ express directive, at the time, to reconsider it.

⁶⁶ For example, if in 1996 Congress had merely set a numerical cap with no directive for the cap to be reviewed, there would be little doubt as to Congress’ meaning. Because in 2004 Congress revised the 1996 Act’s text from “35 percent” to “39 percent,” strict adherence to Congress’ meaning requires looking at Congress’ action overall. *Nebraska*, 600 U.S. at 520 (Barrett, J., concurring).

⁶⁷ Both these actions can be distinguished from Congress’ action in 1984 when it paused the Commission’s ruling and directed it to reconsider its decision, but did not set any specific rules.

ignore Congress' directive to maintain a cap at 39 percent. This distinction is well-recognized in law. Under the Supreme Court's Major Questions Doctrine, there is a distinction between "important subjects" reserved for Congress and "the details" delegated to agencies.⁶⁸ "Congress is more likely to have focused upon, and answered, major questions, while leaving interstitial matters [for agencies] to answer themselves in the course of a statute's daily administration."⁶⁹ Just this term, the Supreme Court emphasized that deference to agencies continues to apply in highly technical contexts such as the question about the UHF discount here: "Black-letter administrative law instructs that when an agency makes . . . predictive or scientific judgments . . . a reviewing court must be at its 'most deferential.'"⁷⁰

The Commission must fill in the technical details correctly to implement Congress' will. The Commission engaged in just that technical judgment when it originally adopted the UHF discount. It adopted the discount because, physically and technically, a station categorized by the Arbitron ADI (and later the Nielsen DMA) as reaching, for example, 7 percent of the nation's households *in fact* only reached approximately 3.5 percent of those households. The discount adjusted available proprietary market data based on the technical limitations of some stations to produce an accurate measure of a station owners' reach. It would defy common sense now for the Commission to pretend that all stations are not equal and therefore continue to adjust Nielsen market data to make that data incorrect. Just as, over time, the Commission has replaced one market definition with another when an older tool "produc[ed] unrealistic and inconsistent

⁶⁸ *Nebraska*, 600 U.S. at 515 (quoting *Wayman v. Southard*, 10 Wheat. 1, 6 L.Ed. 253 (1825)) (Barrett, J., concurring).

⁶⁹ *Id.* (quoting S. Breyer, *Judicial Review of Questions of Law and Policy*, 38 Admin. L. Rev. 363, 370 (1986)).

⁷⁰ *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 145 S. Ct. 1497, 1512 (2025).

results,”⁷¹ so too it must properly update its rules to reflect technological realities.⁷² Congress adopted a 39 percent national audience reach limit. It is up to the Commission to correctly implement it.

The Commission is well aware of the problem caused by the UHF discount after the digital TV transition. As it explained when it repealed the discount in 2016 (only for it to be irrationally reinstated in 2017), “the discount impedes the objectives of the national audience reach cap by effectively expanding the 39 percent cap even beyond the level that Congress determined was too high when it enacted the CCA.”⁷³ It detailed the consequences of inaction. Between 2009 and 2016, “over 200 stations, or approximately 15 percent of the total number of commercial television stations, switched spectrum bands in favor of UHF as a result of the DTV transition.”⁷⁴ This massive change meant many owners artificially lowered their reach via the no longer accurate rule.⁷⁵

Fox, by virtue of switching five stations from VHF to UHF after the DTV transition, converted its national audience reach under the rule from 37.22 percent to 27.75 percent while

⁷¹ *2002 Biennial Order* at 13722. In 2002, the Commission replaced a contour-overlap method of defining radio markets with the Arbitron Metro Survey Area measure. *Id.* at 13724-31 (2003) (“after the [radio] ownership limits were substantially raised in the 1996 Act . . . the scope of the market distorting effects of that system became manifest. In light of this experience, it would be irresponsible for us to leave uncorrected our market definition and counting methodology.”)

⁷² The Commission explicitly rejected arguments in the radio context that Congress’ adoption of particular local radio market limits meant that the Commission could not redefine the markets using updated and more accurate criteria. *Id.* at 13722-23.

⁷³ *UHF Repeal Order* at 10228.

⁷⁴ *Id.* at 10227-28.

⁷⁵ *Id.* at 10229.

“own[ing]the same number of stations in the same markets reaching the same audiences.”⁷⁶ Subsequently, Fox acquired more stations.⁷⁷ This is not what Congress intended.

Further, while some parties have, in the past, relied upon legislative history indicating that the UHF discount should stand because some members of Congress intentionally protected Fox and CBS—at the time the two largest network owners—by adopting a cap just over their holdings at the time,⁷⁸ such concerns are not valid today because those licensees would fall under the 39 percent limit even if the UHF discount were repealed. Not to mention that such reliance on the individual statements is at odds with current standards of judicial interpretation.⁷⁹

Moreover, broadcasters have been on notice that the discount may disappear multiple times: the FCC explicitly so stated when reconsidering the discount in 1996;⁸⁰ again when it decided to phase out the discount in 2002;⁸¹ and again when the discount was actually repealed

⁷⁶ *Id.* at 10229-30.

⁷⁷ Rachel Abrams, *Fox Steps Up its Pursuit of Station Acquisitions in NFL Markets*, VARIETY (Aug. 16, 2013), <https://variety.com/2013/tv/news/fox-steps-up-its-pursuit-of-station-acquisitions-in-nfl-markets-1200579687/>; Cynthia Littleton, *Fox Acquires San Francisco Area TV Stations in Swap with Cox*, VARIETY (Jun. 24, 2014), <https://variety.com/2014/tv/news/fox-acquires-san-francisco-tv-stations-in-swap-with-cox-1201245613/>.

⁷⁸ *UHF Repeal Order* at n.74 (citing comments of Sinclair and Fox); Stephen Labaton, *Senate Votes To Restore Media Limits*, N.Y. TIMES (June 23, 2004), <https://www.nytimes.com/2004/06/23/business/senate-votes-to-restore-media-limits.html> (CBS and Fox just under 39 percent limit).

⁷⁹ *E.g.*, *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring).

⁸⁰ Implementation of Section 202(c)(1) and 202(e) of the Telecommunications Act of 1996, 11 FCC Rcd. 12374, 12375 (1996) (cautioning that broadcasters below the current limit by virtue of the UHF discount should expect to come into compliance if the discount is repealed).

⁸¹ *2002 Biennial Review Order* at 13847 (we will “sunset the application of the UHF discount for the stations owned by the top four broadcast networks . . . as the digital transition is completed on a market by market basis”).

outright in 2016.⁸² The national limit should be implemented correctly, and quickly, lest the Commission permit the continued violation of law.

V. CONCLUSION

All Americans, regardless of political views, demographics, or location, would suffer from less competition, localism, and diversity of local broadcast sources and viewpoints if the Commission were to raise or eliminate the Horizontal Ownership Cap. For both policy and legal reasons, the Commission should maintain the 39 percent limit and eliminate the obsolete UHF discount.

Respectfully submitted,

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⁸² *UHF Repeal Order*.