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November 24, 2025

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

Re: *Amendment Section 73.3555(e) of the National Television Multiple Ownership Rule*, MB Docket No. 17-318

Dear Ms. Dortch:

The American Television Alliance ("ATVA") files this letter to address three issues raised in Reply Comments filed by the "Joint Broadcasters" in support of a proposal to eliminate the national broadcast multiple ownership rule, or "national cap."[1]

1. Legal authority. The Joint Broadcasters' legal position seems to boil down to this: Because the D.C. Circuit held in 2002 in *Fox v. FCC*[2] that the Commission could change the then-35 percent national cap, the Commission can also change the 39 percent cap enacted by Congress two years later, in 2004. But *Fox* does not control here. *Fox* held that the Commission could change the cap then *because Congress had provided specific authority to do so through periodic review under Section 202(h)* of the Consolidated Appropriations Act ("CAA").[3]

Congress proceeded differently in adopting the 39 percent cap. Responding to *Fox*, Congress both fixed the cap at 39 percent and, at the same time, explicitly removed its new cap from the Commission's periodic review under 202(h). As a result, what controls here is the established rule of administrative law set forth in ATVA's Reply[4]: When Congress directs agency action—whether through codification in a statute or through a direction to change a rule—the agency cannot undo that action unless Congress has authorized it to do so, as was the case

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1 *See* Reply Comments of the National Association of Broadcasters, et al., MB Docket No. 17-318 (filed Aug. 22, 2025) ("Joint Reply").

2 *Fox Television Stations, Inc. v. FCC*, 293 F.3d 537 (D.C. Cir. 2002).

3 *See* Consolidated Appropriations Act, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99–100 (2004) ("CAA").

4 *See* Reply Comments of the American Television Alliance at 4–7, MB Docket No. 17-318 (filed Aug. 22, 2025) ("ATVA Reply").

in *Fox*. The Supreme Court's recent decision in *Loper Bright Enters. v. Raimondo*[5] makes this point unmistakably clear: "Under *Loper Bright*, express authority is the name of the game: congressional silence is no longer an invitation for regulatory discretion. Absent clear statutory authorization, courts cannot presume Congress intended" a delegation of authority to the agency.[6] Here, Congress simply did not leave the Commission *any* authority over the national cap when Congress itself chose to establish the cap at 39 percent in the CAA and eliminate periodic review.

2. Retransmission consent. The Joint Broadcasters argue that ATVA has not shown that consolidation will lead to higher subscriber rates. We have, however, shown that national consolidation will lead to higher retransmission consent rates—and DIRECTV recently submitted new economic evidence on this point. We provide additional discussion below on the "textbook economics" showing that firms pass through at least a portion of upstream price increases to their customers.

3. Broadcaster contradictions. The Joint Broadcasters' Reply reveals not only that they disagree with ATVA but also that they disagree with themselves. We say this not merely to point out contradictions but because the contradictions detract from the evidentiary weight the Commission can give to broadcaster advocacy. For example:[7]

Topic	Broadcasters Say –	Broadcasters Also Say –
Legal Issues	It is obvious that the FCC has broad authority to raise the national cap because Congress failed to "enshrine" it in the statute[8] . . .	. . . except it was also obvious that the Commission did not have any authority to change the cap when broadcasters thought the FCC might *lower* it.[9]

[5] *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

[6] *Duffus v. MaineHealth*, No. 2:24-cv-00268-SDN, 2025 U.S. Dist. LEXIS 133060, at *25 (D. Me. July 14, 2025).

[7] This chart summarizes the broadcasters' conflicting positions on the record, with citations of where their statements expressing those positions were made. Part III, *infra*, argues at greater length that the Commission should hesitate to rely on the broadcasters' self-contradictory statements. Appendix A contains an expanded version of this chart directly quoting the broadcasters' conflicting statements.

[8] *See* Joint Reply at 7 *et seq.*

[9] Comments of Sinclair Broadcast Group, Inc. at 6, MB Docket No. 13-236 (filed Dec. 16, 2013) ("Sinclair 2013 Comments"); Comments of ION Media Networks, Inc. at 12, MB Docket No. 13-236 (filed Dec. 16, 2013) ("ION Media 2013 Comments"); Comments of 21st Century Fox, Inc. and Fox Television Holdings, Inc. at 2, MB Docket No. 13-236 (filed Dec. 16, 2013) ("Fox 2013 Comments").

Topic	Broadcasters Say –	Broadcasters Also Say –
Retransmission Consent	ATVA and NCTA have failed to show that retransmission consent rates will go up as a result of broadcaster mergers[10] . . .	. . . but broadcaster mergers will "raise revenues" because of higher retransmission consent fees,[11] and broadcasters will realize higher "distribution revenue" when most subscribers come up for renewal later this year.[12]
State of the Broadcasting Market	(To the Commission) market conditions are threatening the very "viability" of broadcasters[13] . . .	. . . (To Wall Street) broadcasters are doing great and had a particularly successful year in 2024.[14]
Localism and Local News	Failing to end the national cap will eliminate localism and local news forever[15] . . .	. . . but broadcasters use locally oriented content and local news to distinguish themselves from other outlets available to consumers,[16] newsroom employment is up,[17] and broadcasters are doing a great job *increasing* local programming under the current rules.[18]
	National consolidation is somehow the key for broadcasters to be able to provide better *local* news[19] . . .	. . . but broadcasters plan to instead offer *distant* news across multiple stations if they are allowed to further consolidate.[20]
Competition with Online Providers	Broadcasters need massive national consolidation to compete with online providers[21] . . .	. . . but broadcasters are already competing effectively with online providers in a host of ways.[22]

[10] Joint Reply at 76.

[11] *See Acquisition of TEGNA Inc. – August 2025*, Nexstar Media Group, Inc. (Aug. 2025) ("Nexstar-TEGNA Acquisition Deck"), https://www.nexstar.tv/wp-content/uploads/2025/08/August-2025-TEGNA-Acquisition-Deck.pdf.

[12] *See id.*

[13] Joint Reply at 77.

[14] *See Earnings Call Transcript: Nexstar's Q4 2024 Results Spark Stock Surge*, Investing.com (Feb. 27, 2025) ("*Nexstar Earnings Call*"), https://www.investing.com/news/transcripts/earnings-call-transcript-nexstars-q4-2024-results-spark-stock-surge-93CH-3897152.

[15] *See* Comments of Sinclair, Inc. at 2, MB Docket No. 17-318 (filed Aug. 4, 2025) ("Sinclair 2025 Comments").

[16] *See* Joint Reply at 33–35.

[17] *See id.* at 63.

[18] *See id.* at 32.

[19] *See id.*

[20] *See id.* at 40–41.

[21] *See id.* at 35.

[22] *See id.* at 55–59.

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There is, however, one important point on which ATVA and the Joint Broadcasters agree. As the Joint Broadcasters state, whatever the Commission does in connection with the national cap will "not cause [it] to forfeit its ability to closely review proposed transfers and assignments of broadcast TV licenses as part of its duty under Section 310(d) of the Communications Act of 1934."[23] ATVA agrees that the Commission has a duty to ensure that such transfers are in the public interest regardless of the level at which the national cap is set.

I. The Commission Lacks Authority to Modify the National Cap Set by Congress.

The Joint Broadcasters' current position that the Commission has authority to modify the national cap is one of multiple areas where they contradict themselves. Sinclair previously maintained, for example—when it was concerned that the Commission might *lower* the 39 percent cap—that "[t]he CAA . . . stripped the FCC of its authority to modify the 39% cap by explicitly carving out the ownership cap from the FCC's statutorily-mandated review process."[24] Fox argued even more aggressively that the CAA "unequivocally converted the cap into a statutory limitation of 39%."[25]

The broadcasters' prior arguments are correct: The fundamental question here is whether Congress intended to fix the national cap at 39 percent unless and until Congress itself made further changes or instead intended to delegate authority to the Commission to revise the cap at will. In *Loper Bright*, the Supreme Court identified several categories of cases that involve an agency being authorized to exercise a degree of discretion. "For example, some statutes 'expressly delegate[]' to an agency the authority to give meaning to a particular statutory term."[26] "Others empower an agency to prescribe rules to fill up the details of a statutory scheme . . . or to regulate subject to the limits imposed by a term or phrase that leaves agencies with flexibility."[27] But here, in contrast, there is "no indication" in the CAA that Congress, in setting the national cap to 39 percent, intended to provide the Commission *any* authority to change that determination.[28]

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[23] *Id.* at 5.

[24] Sinclair 2013 Comments at 6.

[25] Fox 2013 Comments at 2.

[26] *Loper Bright*, 603 U.S. at 394–95 (quoting *Batterton v. Francis*, 432 U.S. 416, 425 (1977)).

[27] *Id.* at 395 (citation modified).

[28] *See Stinnett v. Navy Fed. Credit Union*, No. 2:24-cv-8964, 2025 U.S. Dist. LEXIS 83667, at *11 (C. D. Cal. Jan 28, 2025).

As ATVA argued in its Reply Comments, the fact that Congress has delegated *general* rulemaking authority to an agency likewise does not permit it to replace congressionally mandated rules with the agency's own preferred policy.[29] When Congress sets a rule—either by amending the statute or by directing the agency to adopt a rule—the agency is bound.[30] Otherwise, agencies could routinely reverse Congress's decisions, eviscerating its constitutional authority to set policy.[31] The Joint Broadcasters argue that the D.C. Circuit's decision in *Fox v. FCC* somehow reverses that general rule here—Congress must "enshrine" its clearly expressed policy directives *in a separate statute* to overcome the agency's general rulemaking authority. Again, this is flatly inconsistent with *Loper Bright*: In assessing the legality of agency action, it is now unambiguously the courts' responsibility to determine whether the "best reading of a statute is that it delegates discretionary authority to an agency."[32] Here, there is simply no significant chance that a court would find that the CAA delegated discretionary authority to the Commission over the national cap—or that Congress's decision to fix the national cap in the CAA was just a placeholder until the FCC reached a different conclusion. The Joint Broadcasters' contrary position merely invites the Commission to embark on litigation in which it cannot prevail.

The Joint Broadcaster's position, moreover, represents a fundamental misunderstanding of *Fox* itself. The question in *Fox* was whether Congress intended Section 202(h)'s preexisting requirement that "*the Commission* . . . determine whether its ownership rules . . . are necessary in the public interest" to continue to apply to the then-35 percent cap after Congress adopted that cap.[33] The court found that Congress *did* intend for Section 202(h) to continue to apply because there was no indication at that time that Congress wanted to distinguish the ownership cap from "any other broadcast ownership rule subject to biennial reconsideration."[34] In other words, the court found that Congress's clear delegation of authority to the agency over *all* ownership rules in Section 202(h) continued to apply to the cap because Congress had not said otherwise.[35]

The *Fox* court did point out that one way Congress could have said otherwise would have been to "enshrine[]" the 35 percent in a separate statute itself, thereby insulating the cap from periodic review.[36] But that is plainly not the *only* way that Congress could protect its cap from

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29 *See* ATVA Reply at 3–9.

30 *Id.*

31 *Id.* at 9.

32 *Loper Bright*, 603 U.S. at 395.

33 *Fox*, 293 F.3d at 540 (quoting *Fox Television Stations v. FCC*, 280 F.3d 1027, 1043 (D.C. Cir. 2002)).

34 *Id.*

35 *Id.*

36 *Id.*

periodic review—Congress could also come out and expressly *say* that Section 202(h) does not apply. And that is what it did here.

The D.C. Circuit's decision in *Fox* is thus entirely consistent with *Loper Bright's* reemphasis of this fundamental principle of administrative law: An agency has only that authority expressly delegated by Congress. In *Fox*, Congress had adopted a particular cap against the existing backdrop of a statute, Section 202(h), that provided the Commission express authority over the cap. In adopting the CAA, Congress therefore directly addressed the issue identified by *Fox*; Congress stated that Section 202(h) no longer applies to the national cap. And as we explained in our Reply, now that Congress made clear that the authority provided by Section 202(h) no longer applies to the cap, the Joint Broadcasters cannot lawfully pit the Commission's "separate, general rulemaking authority" against Congress's choice of a precise cap.[37] In other words, by *removing* the national cap from the application of Section 202(h), Congress ensured that its newly chosen cap in the CAA would, in fact, be "enshrined" in the law—just like any other congressional mandate that agencies' lack the power to override.

The Joint Broadcasters also fail to explain why Congress, as a practical matter, would have wanted to say that "the Commission is not *required* to review the national audience reach cap quadrennially" but "is *allowed* to review that rule at any point in time."[38] Plainly it would not, and it did not—in the real world, there is simply no conceivable reason why Congress would have wanted the Commission to be able to reject Congress's chosen cap the day after its adoption, but only if it were not done as part of the Commission's periodic review of its ownership rules.

II. The Record Shows that Further Consolidation Will Harm Consumers by Raising Retransmission Consent Fees and Consumer Prices, and the Broadcasters' Statements in Other Contexts Confirm that Showing.

The Joint Broadcasters are wrong in arguing that the record does not establish that broadcaster consolidation leads to higher retransmission consent fees. Of course, many transactions *automatically* lead to higher fees through the operation of "after-acquired station" clauses. Indeed, the Media Bureau designated the recent *Standard General-TEGNA* transaction for hearing, in part, to determine whether retransmission consent "rate increases would be the result of the unique structure of the Transactions in which the various assignments and/or transfers of control are closed sequentially in order to take advantage of after-acquired station clauses and maximize retransmission revenue."[39]

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[37] *See* ATVA Reply at 4–7 (quoting *Air All. Houston v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018)).

[38] Joint Reply at 12.

[39] *Consent to Transfer Control of Certain Subsidiaries of TEGNA Inc. to SGCI Holdings III LLC*, Hearing Designation Order, 38 FCC Rcd. 1282, 1287 ¶ 16 (2023).

ATVA, for its part, has submitted extensive evidence over the years, cited in this proceeding, establishing that national consolidation leads to higher retransmission rates both "automatically" and in *future* negotiations. Indeed, since the reply comment round in this proceeding, the two largest of the broadcasters on the Joint Reply seek to merge with the explicit goal of achieving "contractual revenue synergies"—a euphemism for higher retransmission consent fees.[40]

This is not the first time Nexstar has made such statements. When it proposed to acquire Tribune in 2019, Nexstar claimed that it would realize "more than $160 million in synergies and efficiencies within the first year of closing the Transaction."[41] Much of this came simply from "[a]pplying Nexstar rates to Tribune subscriber counts"—meaning that, the day after the transaction was consummated, consumers paid as much as $75 million more for the exact same programming.[42] Another portion of the claimed $160 million in synergies and efficiencies was to come from "increased revenue Nexstar derives as a result of delivering more value to MVPDs."[43] That is, Nexstar intended to charge more for retransmission consent, purportedly to deliver "more value" to MVPDs by permitting them to negotiate with a larger broadcaster.

The Joint Broadcasters nonetheless claim here that ATVA relies on purportedly outdated and unsworn affidavits submitted by multiple MVPDs in 2019.[44] The Joint Broadcasters further suggest that if ATVA genuinely believed that retransmission rates increase as a result of consolidation, we would have submitted fresh economic evidence on this point, rather than relying on a 2017 study by DISH Network.[45] Of course, the broadcasters themselves have the data necessary to conduct such studies and have failed to do so. Even setting this aside, however, these criticisms lack merit.

DIRECTV recently engaged Dr. Allan Shampine of Compass Lexecon to "analyze whether th[e] result" of Professor Ordover's 2017 study for DISH "continues to hold today with respect to retransmission fees charged to DIRECTV"—i.e., whether "retransmission fees charged to [DIRECTV] by stations affiliated with ABC, CBS, NBC, and FOX (the 'Big 4') [are] higher

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40 Nexstar-TEGNA Acquisition Deck at 8.

41 Application for Transfer of Control, *Comprehensive Exhibit* at 13, LMS File No. BTC-20190107ADI (filed Jan. 7, 2019) ("Nexstar-Tribune Comprehensive Exhibit").

42 Nexstar Media Group, Inc., *Acquisition of Tribune Media Company*, at 10 (Dec. 3, 2018), https://www.nexstar.tv/wp-content/uploads/2018/12/Nexstar-Tribune-Investor-Presentation-FINAL- 12-3-18.pdf.

43 Nexstar-Tribune Comprehensive Exhibit at 12–13.

44 Joint Reply at 68.

45 *Id.* at 68–69 & n.221.

for larger station group owners than for smaller station group owners."[46] Dr. Shampine found that Professor Ordover's findings do, indeed, hold true today. Specifically, Dr. Shampine concluded both that "for stations affiliated with the Big 4, the level of the monthly retransmission fee per subscriber charged to DIRECTV is, in fact, higher for larger station groups," and that "[t]he same is true for non-Big 4 stations, although that is not the focus of this analysis."[47]

The Joint Broadcasters appear to argue that even if retransmission fees are lower in the absence of consolidation—which, again, they plainly are—"consumers would benefit only if pay TV providers pass on their cost savings to the public, which would simply not happen."[48] Once again, the Joint Broadcasters are wrong. In fact, ample academic work and real-world experience show that consumers benefit from lower retransmission consent rates and correspondingly suffer economically from higher fees. "Textbook economic theory" predicts that MVPDs pass through at least some changes in marginal costs regardless of market structure.[49] Indeed, economic theory suggests even a monopolist will pass through a significant share of any reduction in its marginal cost in the form of lower prices. This is because any firm's profit margin increases when its marginal cost goes down, creating an incentive to sell more

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[46] Declaration of Allan Shampine, PhD, at 2 *attached to* Letter from Michael Nilsson, Counsel to DIRECTV, LLC, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-318 at Ex. A (filed Sept. 19, 2025).

[47] *Id.*

[48] Joint Reply at 77–78.

[49] Dr. Michael L. Katz, *An Economic Assessment of AT&T's Proposed Acquisition of DIRECTV*, ¶ 118 (June 11, 2014), *attached to* AT&T, Inc. and DIRECTV, Description of Transaction, Public Interest Showing, and Related Demonstrations, MB Docket No. 14-90 (filed June 11, 2014); *see also, e.g.*, Dennis Carlton & Jeffrey Perloff, *Modern Industrial Organization*, 571 (4th ed. 2004) (explaining that even a monopolist will pass-through changes in marginal costs, but that one cannot draw general conclusions about pass-through rates except for perfect competition); Adriaan Ten Kate & Gunnar Niels, *To What Extent are Cost Savings Passed on to Consumers? An Oligopoly Approach*, 20 EUR. J.L. AND ECON. 323, 323–324 (2005) ("As to the possibility of passing on benefits from cost savings to consumers one may wonder why a profit-maximizing firm would share such benefits? Particularly when the firm is a monopolist or has substantial market power, there does not seem to be any need for it. Why would it not simply keep all the benefits for itself? The answer is that, in most circumstances, a cost saving firm that keeps price at the pre-savings level does not maximize its profits. By lowering price, and thus passing on some of the benefits to its customers, the firm usually does not sacrifice profits but enhances them. This is because a price reduction usually leads to an extension of the consumer base from which additional profits can be extracted and these additional profits may more than compensate the loss of profits from the existing consumers. Hence, profit-maximizing firms can reasonably be expected to pass on at least part of their cost savings to consumers.").

units of the product. Of course, MVPDs are far from monopolists. One would therefore expect consumers to benefit substantially from lower retransmission consent fees.

Real-world experience bears out these expectations. ATVA has submitted evidence on the pass-through of higher retransmission consent fees in the form of consumer bills and statements from ATVA member company executives.[50] The Joint Broadcasters, by contrast, have provided no concrete evidence suggesting the opposite. Substantial evidence on the record thus supports ATVA's position.

III. The Commission Should Not Rely on the Joint Broadcasters' Conflicting Statements Regarding the State of the Broadcasting Marketplace.

The Joint Broadcasters have unabashedly provided evidence on *both* sides as to many of the key questions here. We provided a short summary in the introduction to this letter and set forth further details in Appendix A. These self-contradictions make it especially difficult for the Commission to find that broadcasters have presented "substantial evidence" in favor of repealing the national cap. Basic principles of administrative law require the agency to "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made" regardless of the nature of the proceeding.[51] Accordingly, in review of informal rulemakings where the question is whether the agency action at issue was arbitrary or capricious, "the substantial evidence test and the arbitrary or capricious test are one and the same" as applied to issues of record support for the agency's factual determinations.[52]

Appellate courts have also emphasized that in applying the substantial evidence test, "[t]he substantiality of evidence must take into account whatever in the record fairly detracts from its weight."[53] The courts have, moreover, confirmed that self-contradiction is among the factors—among other indications of unreliability like exaggeration, inherent improbability, and omission—that will "detract from the weight of the evidence" upon which an agency relies for its decision.[54]

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[50] *See* Further Comments of the American Television Alliance at Exs. B–E, MB Docket No.18-349 (filed Sept. 2, 2021).

[51] *See U.S. Telecom Ass'n v. FCC*, 227 F.3d 450, 461 (D.C. Cir. 2000) (quoting *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

[52] *Butte Cnty. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010) (quoting *Ass'n of Data Processing Serv. Orgs., Inc. v. Bd. of Governors of Fed. Rsrv. Sys*., 745 F.2d 677, 683 (D.C. Cir. 1984)).

[53] *Id.* (quoting *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951)).

[54] *Dixon v. Dept. of Transp., FAA*, 8 F.3d 798, 804 (Fed. Cir. 1993) (In applying the substantiality of the evidence test, the court must "bear in mind that '[e]xaggeration, inherent improbability, self-contradiction, omissions in a purportedly complete account, imprecision, and errors detract from the weight [of] . . . the evidence upon which an administrative board

Here, broadcasters take multiple positions on many of the key issues; yet this does not mean that both sides of the argument are supported by sufficient evidence:

- ***Market conditions.*** Broadcasters claim both that "market conditions" threaten the very "viability of local broadcast TV stations," and that broadcasters are doing very well. But they provide no evidence that broadcasting will disappear, while there is quite a bit of evidence that broadcasters are thriving.[55] Against this backdrop, the Commission cannot reasonably find "substantial evidence" that further consolidation is necessary to preserve broadcasters' "viability."

- ***Consolidation and local news.*** Broadcasters claim both that the current rules "impair[] local TV stations' provision of their most important public service—offering news" and other local programming[56]—and that broadcasters are providing unprecedented amounts of local news under those same rules.[57] Again, while the broadcasters argue both sides—and in part *because* they argue both sides—there is no "substantial evidence" here that further consolidation is necessary to preserve local news.

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bases its decision'" (quoting *Spurlock v. Dept. of Justice*, 894 F.2d 1328, 1330 (Fed. Cir. 1990))).

[55] Nexstar reported that the fourth quarter of 2024 was a "strong finish to another successful year" in which the company delivered the highest total net revenue in the "company's twenty-eight year history," and "announced the twelfth consecutive annual increase in the quarterly cash dividend . . . placing Nexstar in the ninety-fourth percentile of all S&P 400 companies." *See Nexstar Earnings Call*. Similarly, Sinclair's President and CEO recently stated: "We are pleased to close out a strong 2024 and we have entered 2025 on a high note," and "[t]his performance underscores the continued dominance of broadcast TV as the leading platform for advertisers to reach broad audiences." *See Sinclair Reports Fourth Quarter 2024 Financial Results*, Sinclair Broadcast Group, Inc. (Feb. 26, 2025) ("Sinclair Q4 Financial Results"), https://sbgi.net/sinclair-reports-fourth-quarter-2024-financial-results/.

[56] Joint Reply at 31.

[57] Nexstar alone has "increased local news coverage by more than 28,000 hours annually earning hundreds of journalism awards." *Id.* at 32. Indeed, the evidence in the record shows that "television stations originating local news increased the amount of local news aired by 54 percent from 2003 (when the cap was 35 percent) to 2016. Currently, stations that provide news air an average of 6.5 hours of local news each weekday, 2.4 hours on Saturday, and 2.5 hours on Sunday, for an average total of 37.4 hours of local news per week. That represents a 76.4 percent increase in the amount of local news aired from 2003 . . . ." *Id.* at 42. Broadcasters currently "distinguish themselves from the unprecedented number of competing outlets readily available to consumers" by providing "locally-oriented content," thereby "attracting audiences and advertising revenues," a space in which broadcast TV remains "dominan[t]," as noted above. *Id.* at 33, 64.

IV. The Commission Has a Duty to Ensure that Broadcast License Transfers Are in the Public Interest Regardless of the Level of the National Cap.

While ATVA plainly disagrees with the Joint Broadcasters in many respects, the parties do agree on one important point with broad implications beyond the bounds of this proceeding. Specifically, pursuant to Section 310(d) of the Act,[58] the Commission has an unwavering duty to determine whether any proposed license transfer will serve the public interest, convenience, and necessity before permitting the transfer. To make that determination, the Commission "employs a balancing process, weighing any potential public interest benefits of the proposed transaction against any potential public interest harms."[59] Applicants bear an affirmative burden to demonstrate that the proposed transaction meets this standard.[60]

In their Reply, the Joint Broadcasters agree. They correctly state that whatever the Commission does in connection with the national cap will "not cause [it] to forfeit its ability to closely review proposed transfers and assignments of broadcast TV licenses as part of its duty under Section 310(d) of the Communications Act of 1934."[61] Both sides here thus agree that the Commission has an ongoing duty to ensure that proposed license transfers are in the public interest regardless of the level at which the national cap is set.

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[58] 47 U.S.C. § 310(d). Section 310(d) of the Act requires the Commission to consider an application for transfer of a Title III license under the same standard as if the proposed transferee were applying for the license directly under Section 308 of the Act, 47 U.S.C. § 308. *See, e.g.*, *Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd. 9131, 9134 ¶ 2 (2015) ("*AT&T/DIRECTV Order*"); *Applications of Level 3 Commc'ns, Inc. and CenturyLink, Inc. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 32 FCC Rcd. 9581, 9585 ¶ 8 (2017); *Application of Verizon Commc'ns Inc. and Straight Path Commc'ns, Inc. for Consent to Transfer Control of Loc. Multipoint Distrib. Serv., 39 GHz, Common Carrier Point-to-Point Microwave, and 3650-3700 MHz Serv. Licenses*, Memorandum Opinion and Order, 33 FCC Rcd. 188, 189–90 ¶ 5 & n.11 (2018).

[59] *Consent to Transfer Control and Assign Licenses to Nexstar Media Group, Inc. and Associated Divestiture License Assignments*, Memorandum Opinion and Order, 32 FCC Rcd. 183, 191–92 ¶ 19 (2017).

[60] *E.g.*, *AT&T/DIRECTV Order* ¶ 18 ("The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction, on balance, serves the public interest.").

[61] Joint Reply at 5.

Respectfully submitted,

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Marlene H. Dortch
November 24, 2025

APPENDIX A – Broadcasters' Conflicting Statements

RETRANSMISSION CONSENT

ATVA and NCTA have failed to show that retransmission consent rates will go up as a result of broadcaster consolidation. "ATVA (and NCTA) failed to show that eliminating the national cap would in fact raise retransmission consent rates." Joint Reply at 76.	**But mergers will raise broadcaster revenues because of higher retransmission fees.** "Nexstar-TEGNA merger will result in 'contractual revenue synergies"—a euphemism for "higher retransmission consent fees." Nexstar-TEGNA Acquisition Deck.
Retransmission fees are not increasing. "[T]otal MVPD retransmission consent fees are no longer on the rise." Joint Reply at 76.	**Yes, they are.** "Later this year, we have approximately 60% of our subscriber base up for renewal, which we expect to benefit distribution revenue beginning in the first quarter of [2026]." (This is, of course, another euphemism for "*per subscriber* retransmission rates are going up.") *Nexstar Earnings Call*.

LEGAL AUTHORITY

It is obvious that the FCC has broad authority to raise the cap. "A proper interpretation of statutory text supports the FCC's long-held conclusion it possesses authority to revise or repeal the national TV rule." Joint Reply at 7 *et seq.*	**But the FCC *lacked* authority to lower the cap.** "[U]nder principles of statutory construction, the CAA taken as a whole strongly indicates that the FCC has no authority to modify or eliminate . . . the 39% Cap." Sinclair 2013 Comments at 6; *see* ION Media 2013 Comments at 12; Fox 2013 Comments at 2.

BROADCASTERS' FINANCIAL POSITION

Market conditions are threatening the very "viability" of broadcasters. "The *most recent* financial reports of top broadcast television station groups show significant declines. Broadcast station owners experienced these losses while MVPDs and Big Tech saw increased revenue." Joint Reply at 46 n.138.	**No, they aren't.** **Nexstar.** "Our fourth quarter financial results mark a strong finish to another successful year for Nexstar in which we delivered $5,400,000,000 in total net revenue, the highest in our company's twenty eight year history. . . . In January, we announced the twelfth consecutive annual increase in the quarterly cash dividend." *Nexstar Earnings Call*. **Sinclair.** Chris Ripley, Sinclair's President and CEO, stated, "We are pleased to close out a strong 2024 and we have entered 2025 on a high note. Our consolidated Adjusted EBITDA for the fourth quarter exceeded our guidance range, along with various other key financial metrics. This performance underscores the continued dominance of broadcast TV as the leading platform for advertisers to reach broad audiences." Sinclair Q4 Financial Results.
Advertising revenue is down. "There has been a substantial secular decline in broadcast TV stations' real advertising revenues over two decades." Joint Reply at 45.	**Not if you include political advertising.** "Our record fourth quarter and full year top line performance were driven by strong election year political advertising, highlighting the effectiveness of local television broadcasting and our presence in nearly 85% of the contested election markets across the country." *Nexstar Earnings Call*.

CONSOLIDATION IS THE *ONLY* WAY TO SAVE LOCAL NEWS – OR IS IT?

Broadcasters won't be able to provide local news without deregulation and consolidation. "[The national TV rule now] significantly impairs local TV stations' provision of their most important public service – offering news, emergency information, and valued entertainment and sports programming in local communities across the country, free to all viewers." Joint Reply 31.	**Broadcasters are already doing a great job at improving local programming under the current rules.** "Nexstar . . . observ[es] that over the course of the five years following its acquisition of Tribune, it increased local news coverage by more than 28,000 hours annually, earning hundreds of journalism awards." Joint Reply at 32. **More Local News.** "Currently, stations that provide news air an average of 6.5 hours of local news each weekday, 2.4 hours on

Nexstar declares that, without consolidation, broadcasting will "*cease to exist*, taking jobs with them, causing negative economic consequences for local communities, and signaling the end of trusted local journalism." Comments of Nexstar Media Inc. at 2, MB Docket No. 17-318 (filed Aug. 4, 2025) (emphasis added).

Sinclair maintains that, without eliminating the national cap, other platforms "may eventually crowd local broadcasters out of the ecosystem entirely ending localism and local news for good." Sinclair 2025 Comments at 2.

"By preventing broadcasters from achieving scale, the rule impedes their ability to acquire and produce quality programming of all types and to earn the advertising revenues needed to support locally oriented programming offered at no cost to the public." Joint Reply at 32.

Saturday, and 2.5 hours on Sunday, for an average total of 37.4 hours of local news per week. That represents a 76.4 percent increase in the amount of local news aired from 2003, showing that scale encourages, not discourages, local news production." Joint Reply at 42.

Increased Newsroom Employment. "RTDNA recently reported that newsroom employment is actually up. In 2024, RTDNA reported that local TV news employment rose one percent, following a 5.1 percent increase in the previous year. Local TV news salaries also generally have increased more than inflation according to recent RTDNA surveys." Joint Reply at 63.

CONSOLIDATION IS THE *ONLY* WAY TO COMPETE WITH ONLINE PROVIDERS

Broadcasters need national consolidation to compete with online providers.

"[T]he asymmetric national TV rule only harms competition in the video and ad markets by artificially limiting broadcasters' ability to even potentially attract viewers nationwide and offer larger audiences to advertisers, thereby hobbling their competitiveness against the vast array of pay TV, streaming services, and social media and tech platforms." Joint Reply at 55.

➡ **No, they don't.**

"[I]t is a fallacy to think that broadcast TV stations cannot better compete with larger, better capitalized players because they don't possess a comparable market cap to these digital media competitors." Joint Reply at 59.

"Indeed, stations *already have* employees focused on digital media; *are investing* to make their content better focused on competing with social media and other digital platforms; *are leveraging* third-party digital platforms to better understand their audiences and bring audiences back onto their platforms; and are reworking their visual and audio presence to appeal to viewers on over-the-air and digital platforms." Joint Reply at 60.