Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

COMMENTS OF FREE PRESS

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EXECUTIVE SUMMARY

The law is clear: Congress fixed the maximum reach of broadcast television license holders at 39 percent of TV households nationwide, and it specifically removed this national cap from the Commission's congressionally-mandated quadrennial review of all other broadcast ownership policies. But despite this clarity, the new Commission is requesting a refresh of the record in an eight-year-old proceeding, in which any changing external market conditions are simply not germane to the law, and in which any fair analysis of the television broadcasters' own economic data shows them in no need of the relief they seek.

But as Chairman Carr's tenure so far demonstrates, his Commission is not going to let little things like the law, settled precedent, or even the First Amendment get in the way of its partisan and ideological aims. Chief among these is following the Trump administration's dictate to use the Commission's licensing authority to exert total control over the media. Media consolidation and deal approvals are now explicitly a way for President Trump to further consolidate his dictatorial power, through explicit loyalty tests and pledges to use the public airwaves as a propaganda tool against the American public. Chairman Carr has made it known that every FCC-licensed firm's continued existence will now be contingent upon that company's editorial and internal personnel decisions aligning with the White House's wishes.

As the saying goes, "all politics is local," and though media markets are changing, local broadcast TV news stations (and their websites) remain the dominant source that Americans use to inform themselves about electoral politics. This is why this proceeding—one whose very initiation ignores the congressionally-set national cap—threatens democracy and freedom. Chairman Carr is placing a "for-sale" sign on the public's airwaves, and inviting media companies to monopolize the local news markets as long as they agree to pay the price of political fealty to Donald Trump and the MAGA movement.

Though the law that binds the Commission in this proceeding does not turn on contemporaneous policy arguments, in these comments we demonstrate how the national cap remains good policy today. It continues to promote competition, localism, and diversity. This greater competition and diversity of sources remains critical, in part because local TV news broadcasts continue to have a disproportionate impact on public opinion and voting behavior.

Promoting the public interest, as the Communications Act requires, and fostering a vibrant marketplace of ideas at the local level requires a jurisprudence standard beyond antitrust analyses alone. Public airwaves remain a scarce resource, and those privileged enough to hold a broadcast TV license have an outsized impact on many facets of life including voting and democracy itself. The national cap and policies that limit how much local broadcast media one owner can control are therefore necessary to promote the public interest, and help the Commission to strike a balance between private profits and democracy's needs.

Nothing about the march of media technology into the internet and streaming era has diminished the importance of local broadcasting. And the national cap is an important <u>structural</u> tool that mitigates large ownership groups' market incentives to abandon localism. This is not mere conjecture. There is ample evidence demonstrating the harms to localism that follow consolidation. Most notably, <u>despite rising revenues, the number of broadcast TV stations</u>

producing original local news declined since 1996. Furthermore, other research demonstrates how national consolidation diminishes competition, localism, and viewpoint diversity. A recent study shows that large national chains achieve their post-consolidation synergies by replacing original local news with duplicated and out-of-market programming. A separate recent survey of local TV newsroom managers further demonstrates how consolidation undermines the public interest, depletes journalism and working journalists, and creates a race to the bottom.

Though the continued application of the national cap is not tied to television licensees' balance sheets, their own evidence and statements show that broadcast television companies are in great financial health. The push for national consolidation has nothing to do with enriching viewers' lives—only shareholders' wallets. Despite the Commission and the broadcast industry lamenting the existence of "Big Tech," all available evidence—including comments from broadcasters themselves—shows that local TV firms are not in the same relevant product market as online companies like Google, Meta, and Amazon.

Nor are local TV broadcasters in the same relevant product market as online video distributors like Netflix. None of those tech firms produce local news. Eliminating the national cap will only serve to harm localism, and will do nothing to mediate the myriad issues created by the various large tech firms' behavior and practices. While viewership of linear television on the whole is in decline, this trend is not observed equally among all linear television sectors. Online television continues to take a larger share of viewing time, but virtually all at the expense of time previously spent watching linear cable networks. Indeed, broadcast companies representatives have repeatedly told investment analysts in the past year how resilient their live sports and local news programming are in the face of changing viewing patterns.

And the broadcasters' central premise—that national consolidation is in the public interest because it begets more local news—is completely unfounded. The local broadcast TV industry's revenues have risen far faster than the rate of general inflation during the internet era. But unlike the local newspaper sector, employment in local TV newsrooms did not grow with the owners' increasing fortunes. RTDNA published data indicating that TV newsroom employment has been essentially flat since the industry rebounded from the Great Recession, at approximately 28,000 jobs both in 2012 and in 2024, as their revenues grew much faster.

The fact is that while under the national ownership cap, broadcast TV firms have in many cases outperformed the broader market and other advertising-supported companies on metrics like return on capital, profit margins, and stock price. This historical financial performance shows that the national cap is not a barrier to continued financial prosperity. That is especially true looking ahead, as local TV companies have many new revenue-generating opportunities to pursue outside of national consolidation. Broadcast TV executives have told Wall Street analysts and their own investors to expect continued healthy local advertising and retransmission consent payment growth thanks to strong viewer demand for live sports and local news. And broadcasters expect the new ATSC 3.0 transmission technology to further enhance their bottom line.

In sum, the Commission has no authority to increase or eliminate the national cap. Doing so would be a disaster for localism.

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I. Introduction

On June 18, 2025,[1] the Federal Communications Commission requested updates to the record in a proceeding it did not have any legal basis to conduct in the first place. The law is unambiguous: Congress fixed the maximum reach of broadcast television license holders at 39 percent of TV households nationwide, and it specifically removed this policy from the Commission's congressionally-mandated quadrennial review of all other broadcast ownership policies.[2]

But as Chairman Carr's tenure so far demonstrates, his Commission is not going to let little things like the law, settled precedent, or even the First Amendment get in the way of the Trump administration's plan to use the Commission's licensing authority as a tool to exert total control over the media.[3] Media consolidation and deal approvals are now explicitly a way for President Trump to further consolidate his dictatorial power, through explicit loyalty tests and pledges to use the public airwaves for propaganda against the American public.[4]

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

[2] *See infra* Section II (complete discussion of the legal history of the national cap); *see also* Dana A. Scherer, "Federal Communications Commission (FCC) Media Ownership Rules," Congressional Research Service, R45338 (June 1, 2021) ("[In 2004] Congress enacts the 2004 Consolidated Appropriations Act, 2004 (P.L. 108-199), which directs the FCC to increase its national TV ownership cap to 39% of national audience, thereby preempting FCC's rule that would have raised the cap to 45%. The act also directs the FCC to review its media ownership rules every four years (instead of every two years), exempting rules related to the ownership cap from the review. [In 2003 the] U.S. Court of Appeals, 3rd Circuit, finds that new law makes challenges to the FCC's UHF discount moot. Court finds that barring congressional intervention, the FCC may decide the scope of its authority to modify or eliminate the UHF discount outside the context of its quadrennial media ownership review."). As we detail in Section II, *infra*, the Third Circuit delineated the Commission's authority to consider the UHF discount policy outside of the Quadrennial Review, but not the percentage itself.

[3] *See* Comments of Free Press at 33–35, MB Docket No. 25-73 (filed Mar. 7, 2025).

[4] *See, e.g.*, Office of Commissioner Anna M. Gomez, *Commissioner Gomez on Unprecedented FCC Approval of Paramount Transaction*, FCC (July 24, 2025) ("In an

This proceeding is a farce. Chairman Carr long ago made up his mind to dismantle what's left of the Commission's ownership rules, and made it abundantly clear both before the Media Bureau issued this *Notice*[5] and before the November 2024 election in his political campaigning benefitting then-candidate Trump.[6]

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unprecedented move, this once-independent FCC used its vast power to pressure Paramount to broker a private legal settlement and further erode press freedom. Once again, this agency is undermining legitimate efforts to combat discrimination and expand opportunity by overstepping its authority and intervening in employment matters reserved for other government entities with proper jurisdiction on these issues. Even more alarming, it is now imposing never-before-seen controls over newsroom decisions and editorial judgment, in direct violation of the First Amendment and the law. . . . The Paramount payout and this reckless approval have emboldened those who believe the government can—and should—abuse its power to extract financial and ideological concessions, demand favored treatment, and secure positive media coverage. It is a dark chapter in a long and growing record of abuse that threatens press freedom in this country.").

[5] *See, e.g.*, George Winslow, "FCC's Carr Calls Station Ownership Caps 'Arcane' and 'Artificial,'" *TV News Check* (May 7, 2025) (quoting Carr in an interview stating, "we have these arcane, artificial limits on how many TV stations any one company can own. But of course, that doesn't apply to big tech. So you have, you know, relatively small TV station groups that are competing with Google and Facebook and others in the advertising part. So I want to ultimately empower those local stations and, frankly, constrain some of the power of those national programmers."). As we discuss below, the notion that local TV chains compete in the same economic product market as online search and social media firms is both wrong as a matter of basic economics, and also unmoored from the Communications Act's public interest policy framework applied to firms that are given government-sanctioned monopoly control over this portion of the public airwaves.

[6] *See, e.g.*, Joshua Benton, "What would Project 2025 do for (or to) journalism? From defunding NPR and PBS to kicking reporters out of the White House, it's an array of conservative priorities and Trumpian retreads," *Nieman Lab* (Sept. 25, 2024).

Large broadcast TV firms are already moving ahead with deals,[7] knowing this Commission will grant waivers of its remaining ownership rules,[8] which—because of the roadblock to autocracy known as legal due process—cannot be immediately dismantled,[9] even as

[7] Though the Commission's local multiple ownership rule still nominally prohibits top-four co-ownerships, TV station groups are banking on waivers and ploughing ahead with the formation of new duopolies. *See, e.g.*, Michael Johnson, Justin Nielson & Mike Reynolds, "Gray Media and Scripps TV station swaps could be a precursor to more dealmaking," *S&P Glob. Market Intel.* (July 11, 2025) ("In a deal that could set the stage for similar transactions, Gray Media Inc. and The E.W. Scripps Co. intend to swap stations in five small and mid-sized markets. The moves will bolster the companies' strategic positions in these markets and create duopolies at a time when the broadcast industry is pushing for relaxation or changes to decades-old rules that have limited ownership and reach. . . With this pending transaction, Scripps President and CEO Adan Smyson has indicated that deal approval will likely occur through a waiver.").

[8] *See* Comments of Perry A. Sook, Founder, Chairman & CEO, Nexstar Media Group, Inc., Nexstar Q1 2025 Investor Call (May 8, 2025) (Sook Q1 2025 Comments) ("Obviously, any action that Congress would take would put whatever those rule changes were out of reach of judicial review, which would be nice as well. But I also think that the Chairman has indicated his willingness to consider waivers during either the pendency of rule-making or waivers just in general. So I think you'll see all of those levers be pushed as time goes on this year, and I do think you'll see M&A activity come into focus as the year goes on."). Sook was then asked, "are you comfortable sort of putting pen to paper and beginning to transact when the process is at that phase, but maybe does still face some challenges in the courts?"—to which he answered, "as it relates to your question, would we be willing to put pen to paper during the pendency of an NPRM, I think, again, depends on the circumstances and having a willing counterparty that was willing to do so as well. But I think you've seen this company take risk, acceptable risk, calculated risk for an opportunity. So I don't think you'd see any change in our behavior as we move through this year and the deregulation of our industry." *Id.*

[9] *See, e.g.*, Johnson *et al.*, *supra* note 7; Comments of Christopher S. Ripley, President & CEO, Sinclair, Inc., Q1 2025 Investor Call (May 7, 2025) ("That said, in terms of M&A in the meantime, just the rules that we have on the books today. Which include things like the UHF discount, which include ownership of two big fours subject to a big four waiver, but it's—the rules as they exist today do actually afford most players, including Sinclair, a significant amount of flexibility for M&A. So I think that, at least from our perspective, you're going to see more activity from us. You've already seen some, right? We announced a sale of five markets, a station swap—but you're going to start seeing more in the weeks to come, we will start filing for some of the JSA buy-ins that I've been talking about before, and that's a very accretive trade that should add tens of millions of dollars to our bottom line with very little cash out the door. I think station swaps are going to happen in the meantime, while we wait for some of these rules to change and even large-scale M&A or mergers, are on the to-do list, I think, for many broadcasters and I don't think many and depending on the situation, <u>I just don't necessarily have to wait for the rules to change</u>.") (emphasis added).

the Chairman strains to find more and more streamlined ways to "delete, delete" important public safeguards.

The only price for consolidation is bending the knee, and the line starts outside of the FCC Chairman's office. Trump's vanity and autocratic demands seemingly have no bounds, and Carr apparently has no qualms about satisfying them. Carr's grossly partisan and deeply hypocritical water-carrying for Trump have forever stained the agency, making it clear that the Commission is no longer independent, impartial or fair. Carr once suggested of elected Democrats' actions that their alleged questioning regarding "a private entity's decision about what news to carry cannot be reconciled with bedrock principles of free speech and journalistic freedom."[10] He said their inquiry was "a chilling transgression of the free speech rights that every media outlet in this country enjoys," because "[a] newsroom's decision about what stories to cover and how to frame them should be beyond the reach of any government official, not targeted by them."[11] My how times have changed, now that Carr is the one doing the targeting at this president's bidding.

Chairman Carr has made it known that every FCC-licensed firm's continued existence will now be contingent upon that company's editorial and internal personnel decisions aligning with the White House's wishes.[12] Carr's actions disregard the First Amendment and the

[10] Office of Commissioner Brendan Carr, *FCC Commissioner Carr Responds to Democrats' Efforts to Censor Newsrooms*, FCC (Feb. 22, 2021).

[11] *Id.*

[12] *See* Michael J. Socolow, "ABC and CBS settlements with Trump are a dangerous step toward the commander in chief becoming the editor-in-chief," *Nieman Lab* (July 15, 2025) ("It's not certain what the ABC and CBS settlements portend, but many are predicting they will produce a 'chilling effect' within the network news divisions. Such an outcome would arise from fear of new litigation, and it would install a form of internal self-censorship that would influence network journalists when deciding whether the pursuit of investigative stories involving the Trump administration would be worth the risk."). This article was written shortly before the Commission's final approval of the Skydance-Paramount merger, an order that desecrates the First Amendment by conditioning the government's approval of the license transfer on

Communications Act[13]. Mob-style government is back, and this time without the need to face the electorate again unless a "Trump 2028" run defies yet another constitutional provision, the administration is unshackled from any pretense of respect for the laws and institutions like the First Amendment that actually make America unique.[14]

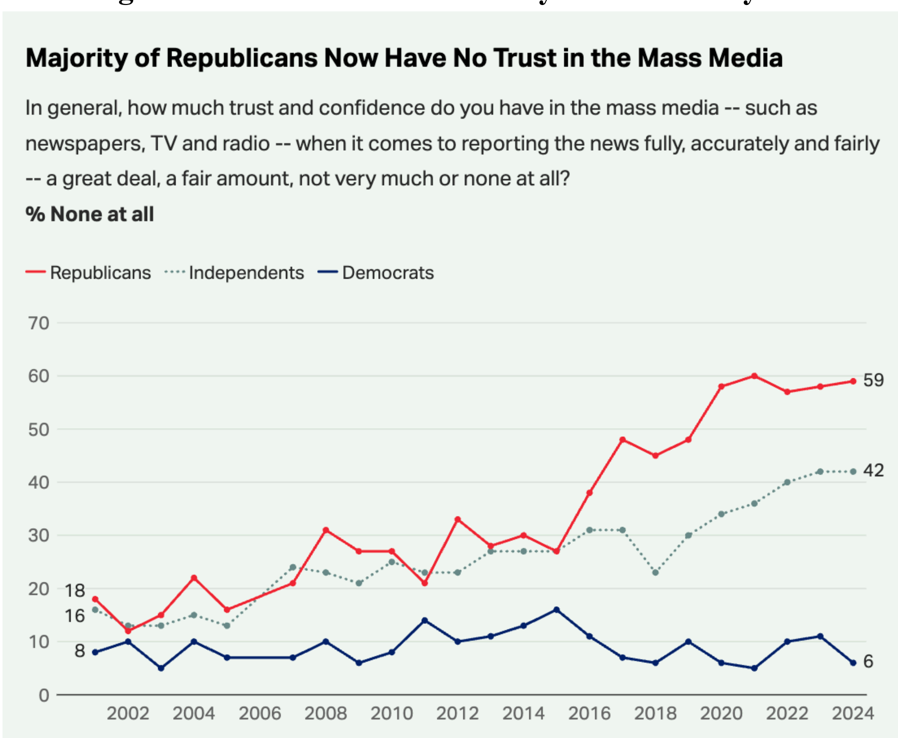
Skydance's installation of an ombudsman to monitor CBS's news content to ensure it doesn't anger Donald Trump, even though there's a lengthy history of basic facts upsetting his fragile narcissistic ego. *See* Ashley Belanger, "Skydance deal allows Trump's FCC to 'censor speech' and 'silence dissent' on CBS," *Ars Technica* (July 25, 2025); *see also* Comments of The Foundation for Individual Rights and Free Expression at 7–8, MB Docket No. 25-73 (filed Mar. 7, 2025) ("[T]he Commission's request for public comment lacks any legitimate regulatory rationale, but its realpolitik purpose is sadly transparent. This proceeding is designed to exert maximum political leverage on the CBS network at a time when President Trump is engaged in frivolous litigation against it over the same 60 Minutes broadcast, with the FCC using other regulatory approvals the network needs to exert added pressure. This is not just unseemly, it is precisely the sort of unconstitutional abuse of regulatory authority the Supreme Court unanimously condemned in *NRA v. Vullo* . . . . There is a name for this kind of thing—it is called a show trial. When proceedings become a performative exercise conducted to further a political purpose, they forfeit any claim to legitimacy. Show trials tend to be retributive rather than corrective and are designed to send a message, not just to their unfortunate victims, but as a warning to other would-be transgressors. There is a dark and deadly history of such showcase proceedings in authoritarian regimes around the world, ranging from Stalin's purges of perceived political opponents to China's trials of 'rioters and counterrevolutionaries' after the 1989 Tiananmen Square protests. In our own country, similar tactics were employed during the Red Scare with investigations and hearings aptly described by the Chairman of the House Committee on Un-American Activities as 'the best show the committee has had yet.' Those who staged the proceedings 'were not seeking justice but staging a show trial to accuse, indict, and punish.' And while the stakes of a sham FCC proceeding obviously differ, the perversion of the rule of law is the same.") (internal citations omitted).

[13] Chairman Carr's actions in his baseless CBS 60 Minutes "news distortion" investigation, which was launched during the review of the Skydance-Paramount merger, along with the final deal approval amount to a backdoor violation of Section 326. *See* 47 U.S.C. § 326 ("Nothing in this Act shall be understood or construed to give the Commission the power of censorship over the radio communications or signals transmitted by any radio station, and no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."); *see also* Comments of Free Press, MB Docket No. 25-73, at 32–33 (filed Mar. 7, 2025).

[14] Of course, Trump's first term also posed threats to press freedom and open internet policies as well, along with a slew of other harms. Amidst a flurry of open corruption and norms violations in this second Trump term, it is all but forgotten that the Trump administration already secured a deal with one of the largest U.S. local TV chains ahead of his first term. *See, e.g.*, Josh Dawsey & Hadas Gold, "Kushner: We struck deal with Sinclair for straighter coverage," *Politico*

Chairman Carr insists that his *quid pro quo* exercise of power and intrusion into the First-Amendment-protected editorial decisions of the news media is simply required to restore "trust" in the media, even as he ominously notes that "we will be watching."[15] But it is not the greater public who express a decline in trust of the media; this distrust is heavily partisan. It is a view widely held by Republican Party voters who have had their minds poisoned against journalists, scientists, civic institutions, people of color, LGBTQ+ persons, Democrats, any Republicans who investigated the January 6, 2021 insurrection, sexual assault victims, and any other groups or individuals that Fox News deems worthy of hating (see Figure 1).

Figure 1: Distrust in the Media by Political Party ID[16]



Source: Gallup

(Dec. 16, 2016).

[15] *See* Ted Johnson, "'Trump Transaction Tax': Skydance's FCC Saga Raises Fears That It's The Template For Future Media Merger Reviews," *Deadline* (July 25, 2025).

[16] *See* Megan Brenan & Lydia Saad, "Five Key Insights Into Americans' Views of the News Media," *Gallup* (Feb. 27, 2025).

The Chairman's intrusion into CBS News' editorial decisions, his hassling of public media stations, and his thuggish "investigation" of NBC are not going to restore anyone's trust in the news media.[17] But query whether that is truly his goal. Much of the right-wing media "entertainment" ecosystem (left untouched by Carr) amounts to propaganda and demonstrable falsehood,[18] and constantly feeds viewers a distorted version of reality they wouldn't readily find from legitimate journalism operations.[19] Though now with the Commission's Skydance-Paramount "deal," there is legitimate reason to question whether other established outlets have crafted their news coverage to curry favor with Trump as well, or to not run afoul of the president and his FCC henchman.

The late Speaker of the House Tip O'Neill famously quipped that "all politics is local." Whatever the ultimate truth of that statement, it is certainly the case that local broadcast TV news stations (and their websites)[20] are the dominant source that Americans use to inform

[17] *See, e.g.*, Austin Fuller, "FCC chair requests investigation into NPR, PBS underwriting," Current (Jan. 30, 2025); *see also* "FCC Chairman Opens Inquiry Into Comcast-NBC Affiliate Practices With Local Broadcasters," Newsmax (July 29, 2025).

[18] *See, e.g.*, Dan Froomkin, "Fox News isn't news: A new study suggests Fox News viewers aren't just manipulated and misinformed — they are literally being made ignorant by their consumption habits," *NBC News* (Apr. 9, 2022).

[19] *See, e.g.*, David Folkenflik, "You Literally Can't Believe The Facts Tucker Carlson Tell You. So Say Fox's Lawyers," *NPR* (Sept. 29, 2020); David Bauder, Randall Chase & Geoff Mulvihill, "Fox, Dominion reach $787M settlement over election claims," *Associated Press* (Apr. 18, 2023) ("Dominion set out to prove in the lawsuit that Fox acted with malice in airing allegations that it knew to be false, or with 'reckless disregard' for the truth. It presented volumes of internal emails and text messages that showed Fox executives and personalities saying they knew the accusations were untrue, even as the falsehoods were aired on programs hosted by Maria Bartiromo, Lou Dobbs and Jeannine Pirro. Records released as part of the lawsuit showed that Fox aired the claims in part to win back viewers who were fleeing the network after it correctly called hotly contested Arizona for Democrat Joe Biden on election night. One Fox Corp. vice president called them 'MIND BLOWINGLY NUTS.' During a deposition, Murdoch testified that he believed the 2020 election was fair and had not been stolen from Trump.").

[20] "2024 Local Broadcast TV News Study," TVB (2025) ("There is duplication between local broadcast TV news viewers and those who access local broadcast TV station news websites/apps. 76% of TV station news website/app users also view local TV news on TV. 46%

themselves about electoral politics.[21] Certainly all <u>broadcast television</u> is local, and the privilege to use these portions of the public airwaves for constitutionally protected speech is limited to very few speakers because broadcast spectrum remains scarce.

This is why this proceeding—one that ignores the congressionally-set national cap limit—threatens democracy and freedom. Chairman Carr is placing a "for-sale" sign on the public's airwaves, and inviting media companies to monopolize the local news markets as long as they agree to display political fealty to Donald Trump and the MAGA movement. These and other Trump administration actions have landed the U.S. "on a watchlist for urgent concern over the health of its civic society, alongside Turkey, Serbia, El Salvador, Indonesia and Kenya."[22]

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of TV station news viewers also access websites/apps. <u>Local broadcast TV news is the #1 source for news, not only for local news, but for all news in general</u>.") (emphasis added).

[21] *See, e.g.*, Elisa Shearer *et al.*, "Americans Changing Relationship with Local News," *Pew Rsch. Ctr.* (May 7, 2024); Elisa Shearer *et al.*, "Americans Views of 2024 Election News," *Pew Rsch. Ctr.* (Oct. 10, 2025); Danilo Yanich & Benjamin E. Bagozzi, "Reusing the News: Duplication of Local Content" at 6–7, University of Delaware, (May 2025) ("Yanich 2025 Study") ("Americans use several sources for local news. Still, almost two-thirds (64%) get local news from TV news stations, more than online forums (52%); radio (52%) or daily newspapers (33%). However, those data obscure an important reality: the stories that are consumed online are overwhelmingly produced by legacy mass media sources. For example, almost one-quarter of the public who viewed local TV news in 2019 did so online. For daily newspapers, that proportion was even higher, at 43 percent. In 2024, the proportion of online use by local television consumers rose to 38 percent. That pattern is evident in the prominence of newspapers and local television websites in television markets. The size of the market affects the prominence of newspapers and television as the main sources of local news. In the largest 22 markets in the country (excluding New York and Washington, DC, with their national newspapers), local newspaper websites were the most popular in 14 of them; local TV websites led in the remaining 8 markets. Further, that dominance extended to a sample of 37 smaller television markets (between #25 and #150), where local television led in 23 and local newspapers led in 13 markets.") (internal citations omitted).

[22] *See* Betsy Reed, "US placed on rights watchlist over health of its civil society under Trump," *The Guardian* (July 30, 2025) ("'The United States appears to be sliding deeper into the quicksands of authoritarianism. Peaceful protests are confronted with military force, critics are treated as criminals, journalists are targeted, and support for civil society and international cooperation have been cut back,' Mandeep Tiwana, Civicus's secretary general, said in a statement. . . . Tiwana also pointed to the Trump administration's latest attacks against media networks, including funding restrictions on public broadcast stations including PBS and NPR.").

Perhaps Chairman Carr believes this despicable use of executive power by his own party won't one day be turned around, and used by other partisans against Trump and his ideological brethren. However, by opening the door to broadcast TV monopolization, Carr will have unleashed a force that is near impossible to control. Billionaires have recently gone on a spree of buying local media outlets. Most of those billionaires have largely expressed fealty towards Donald Trump and MAGA, but not all (much to the Chairman's disdain).[23] But as Elon Musk's more recent actions show, oligarchs answer to no one.[24] Handing even more media control to a handful of conglomerates and billionaires already so dominant in the space is a wildly dangerous idea no matter who holds the presidency, even as Trump and his captured FCC have tightened their grip on what those media moguls do and say for now.[25] And as we explain in the section below, doing so by increasing or eliminating the broadcast TV national audience reach cap set by Congress is outside of this Chairman's authority.

[23] In a comment made during an appearance on Fox News last fall, Carr played to his audience's predispositions, stating that "for too long in this government, particularly over the last couple of years, your last name dictated how the government treated you . . . . If your last name was Soros, well, the Commission bent over backwards and gave you a special, unprecedented Commission-level shortcut to buy 200 radio stations. If your last name was Musk, then you lost $800 million contracts that you lawfully got." Kristen Altus, "Trump's pick for FCC chairman vows to take 'very hard look' at broadcast operations, Soros radio takeover," *Fox News* (Nov. 24, 2024).

[24] *See, e.g.*, Dave Smith, "Elon Musk says Trump 'is in the Epstein files. That is the real reason they have not been made public,'" *Fortune* (June 5, 2025).

[25] *See generally* Tim Karr, "A More Perfect Media: Saving America's Fourth Estate from Billionaires, Broligarchy and Trump," *Free Press* (July 2025).

II. The Commission Does Not Have Authority to Increase or Eliminate the National Audience Reach Cap.

A. Congress Set a Specific 39 Percent National Audience Reach Limit in the Consolidated Appropriations Act of 2004. Only Congress Can Change this Number.

The law is rarely as clear as it is on the central issue of this proceeding. Congress specifically set the national audience reach limit for broadcast television licensees (the "national cap") at 39 percent of U.S. television households.[26] Contemporaneous reporting suggested that Congress had definitively set the cap, and precluded the FCC from altering it[27]—a conclusion with which consumer advocates[28] and broadcasters themselves[29] repeatedly agreed. Following the plain and uncontroversial meaning of this congressional enactment, as several of the largest broadcast conglomerates in the country have long interpreted it, ought to be simple for a Chairman that likes to don the guise of a humble regulator.

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[26] *See* Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629(1), 118 Stat. 3 (2004) ("CAA").

[27] *See, e.g.*, Frank Ahrens, Democrats Decry 'Compromise' on FCC Rule, *Wash. Post* (Nov. 25, 2003), archived at https://archive.ph/ambG5 ("The new language means that the cap would no longer be set by regulation but by federal law, making it more difficult to challenge in court. Several media companies have already had success in getting courts to block enforcement of the existing FCC regulations, in part because the limits are not spelled out in law.").

[28] *See, e.g.*, Comments of Free Press at 5–6, MB Docket No. 13-236 (filed Dec. 16, 2013).

[29] For example, when Sinclair was worried a different FCC might lower the 39 percent figure, it told the Commission "[t]he CAA also 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." Comments of Sinclair Broadcast Group at 6, MB Docket No. 13-236 (filed Dec. 16, 2013). Likewise, in 2013 ION Media argued that the national ownership cap was foreclosed from future revision by the Commission, noting that CAA's Section 629 "stands as an ongoing directive to the FCC to maintain the national ownership cap at 39%." Comments of Ion Media Networks at 12, MB Docket No. 13-236 (filed Dec. 16, 2013). And at the time, Fox Broadcasting argued that the CAA "unequivocally converted the Cap into a statutory limitation of 39% potential audience reach," and that "these efforts were designed to ensure that the FCC would have no further independent authority to modify the Cap." Comments of 21st Century Fox, Inc. and Fox Television Holdings, Inc. at 2, MB Docket No. 13-236 (filed Dec. 16, 2013).

Yet here we are with a request from that same Chairman to refresh the record of an eight-year-old proceeding, in which the changing external market conditions are simply not germane to the law. As former Commissioner Mike O'Rielly noted in 2016, the national ownership cap "remains one of the few media ownership rules specifically set by statute and the only one exempted from the Quadrennial Review process governing the other ownership rules, in order to protect a tenuous compromise from the whims of the Commission."[30] Rejecting the too-cute-by-half argument that Congress's action in the Consolidated Appropriations Act in 2004 ("CAA") simply removed the cap from the Quadrennial Review proceeding but not from other Commission revisions, Commissioner O'Rielly noted that "such a reading is preposterous as it would effectively create one of the biggest backdoors in the history of legislating."[31]

It may be tempting for some of the broadcasters who argued a few short years ago that the Commission had no authority to change the national cap to now change their own tune, because they see an administration ostensibly willing to raise or eliminate that cap instead of lowering it. As we discuss below, those regulatory favors will not be free, as the Trump FCC and Brendan Carr have taken every opportunity to strain the First and Fourteenth Amendments and exact an exorbitant political price alongside literal bribes to get deals approved.

Yet it's remarkable how proponents of lifting the cap now must contort themselves to make this legal argument. As Commissioner O'Rielly described last time around, it requires people to believe that the FCC is free to change any number set by Congress itself unless Congress also wrote into the law "and the agency can't change this figure either." That kind of

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[30] A*mendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213 (2016) ("*UHF Discount Repeal Order*") (Dissenting Statement of Commissioner Michael O'Rielly).

[31] *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017) ("*2017 UHF Discount NPRM*") (Statement of Commissioner Michael O'Rielly).

drafting requirement would make a mockery of almost every clear pronouncement in statute. Congress need not specify "and we really mean it" in the law, by taking the extra step of explicitly disallowing agency changes to its rules.[32] Yet that's essentially what Congress did in this instance, writing a "no-backsies" policy into the admittedly unusual structures of forbearance, the media ownership rules, and the quadrennial review.

Indeed, the manner by which the current national cap came to be is a rare example of Congress swiftly acting to directly and unambiguously overrule Commission action. When Congress overhauled the Communications Act with the Telecommunications Act in 1996, it placed a 35-percent limit on any broadcast television license holder's national reach.[33] In 1998, the Commission retained this cap in its first biennial review,[34] a decision that the D.C. Circuit remanded in the *Fox I* case because the Commission had failed to show that retaining the specific 35-percent limit was in the public interest pursuant to the court's understanding of the then-biennial review requirements in Section 202(h) of the 1996 Act.[35] In response to this

[32] *Cf. UHF Discount Repeal Order*, 31 FCC Rcd 10213, at ¶21. The Wheeler FCC suggested not only that it could modify or eliminate the UHF discount calculation, but that it even had "the authority to modify the national audience reach cap" more generally, because "no statute bars the Commission from revisiting the cap . . . in a rulemaking proceeding so long as such a review is conducted separately from a quadrennial review of the broadcast ownership rules pursuant to Section 202(h) of the 1996 Act." As we explain below, this view is incorrect when it comes to the cap figure set by Congress itself as opposed to the Commission's home-made UHF discount. Contrary to Commissioner O'Rielly's assertion on this specific point in his *2017 UHF Discount NPRM* statement, Free Press never made any such argument with respect to the 39 percent national audience reach figure itself. *See* Comments of Free Press at 6 n.8, MB Docket No. 17-318 (filed Mar. 19. 2018).

[33] Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, § 202(c)(1)(B) (1996).

[34] *1998 Biennial Regulatory Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 18-349, Report and Order, 15 FCC Rcd 11058, 11072–75 ¶¶ 25–30 (2000) ("*1998 Biennial Review Order*").

[35] *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027, 1042–43 (D.C. Cir. 2002) ("*Fox I*").

remand and subsequent agency review, the Commission then increased the cap to 45 percent in July 2003.[36]

Mere days later, the FCC's action was met by a rapid and stern Congressional rebuke,[37] led by Senators Ted Stevens (R-AK), Trent Lott (R-MS), and Byron Dorgan (D-ND).[38] After the bicameral congressional actions and resolution of disapproval that immediately followed the FCC's 2003 decision, Congress's eventual response[39] in the CAA passed in early 2004 consisted of five clear actions. That law moved the cap to 39 percent,[40] and set parameters for how firms exceeding the cap should come into compliance through timely divestitures;[41] it barred the Commission from using its Section 10 forbearance authority to allow firms to exceed 39 percent national reach;[42] it changed the omnibus biennial media ownership rule review requirement to a

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[36] *2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules*, GC Docket No. 02-277, Report and Order, 18 FCC Rcd 13620, ¶583 (2003) ("*2002 Biennial Review Order*").

[37] Ahrens, *supra* note 27 ("Many members of Congress and advocacy groups said the change would allow the big media companies to grow too big, potentially at the expense of local broadcasters. Sen. Ted Stevens (R-Alaska) added a rider to an omnibus spending bill under consideration that would fix the 35 percent cap in federal law. In July, the House passed a spending bill with language identical to Stevens's.").

[38] On September 16, 2003, the Senate adopted a resolution of disapproval concerning the FCC's *2002 Biennial Review Order* on a 55-40 basis. *See* Roll Call Vote 108th Congress - 1st Session, Vote No. 348, concerning S.J.Res.17, "A joint resolution disapproving the rule submitted by the Federal Communications Commission with respect to broadcast media ownership" (2003); *see also* Frank Ahrens, Compromise Puts TV Ownership Cap at 39%, *Wash. Post* (Nov. 25, 2003), archived at https://archive.ph/FPaXR.

[39] The Senate's final compromise on the national cap in the 2004 CAA first appeared in the Conference Report after the Senate adopted the CAA. *See* H.R. Rep. No. 108-401, at 98 (2003) (Conf. Rep.).

[40] CAA § 629(1).

[41] *Id.* § 629(2).

[42] *Id*.

quadrennial review;[43] and it barred the Commission from considering the national cap in the quadrennial review, clearly addressing and routing around the D.C. Circuit's decision in *Fox I*.[44]

Despite this clear congressional intent to cement the national cap at 39 percent and remove it from the congressionally required review of all other media ownership rules, the current Commission is contemplating a transparently corrupt attempt to change that national cap and enable massive consolidation of local news markets by the nation's biggest broadcast conglomerates. If it obliterates the national cap in this fashion, the Commission will be open for business: Broadcasters who wish to swap, sell, or buy TV licenses will need to gain approval from the FCC, an agency that is currently led by a radical ideologue who has repeatedly demonstrated his willingness to use the deal-approval process as a way to ensure fealty to Donald Trump and his fascist agenda. That means deal applicants must become supplicants to a dictatorial president, and show fealty by changing their corporate diversity policies[45] as well as their editorial news coverage.[46]

To illustrate the unlawfulness of the big broadcasters' current push to have the Commission increase or eliminate the national cap, consider the following hypothetical: It is January 24, 2004, mere hours after President Bush signed the CAA into law setting the cap at 39 percent. Imagine that Chairman Powell then issued a new NPRM (outside of the Quadrennial Review) to increase the cap from 39 percent to 40 percent. It would have been the ultimate act of regulatory hubris, even if Chairman Powell had asked questions in this hypothetical NPRM

[43] *Id.* § 629(3).

[44] *Id.*

[45] *See, e.g.*, Karr, *supra* note 25 at 8.

[46] *Id.* at 6, 17.

about how the market had changed in the intervening months since Congress acted. No judge worthy of their robe would have blessed such a move.

The hypothetical is no less absurd today if we merely lengthen the time period between the CAA becoming law and the Commission issuing a public notice to revisit Congress's decision. It does not matter whether it is eight months, eight years, or eight decades since Congress put the "39 percent" figure into the law and directed the FCC to adopt this figure in its rules. Nor does it matter that a future FCC would take such potential action outside of the quadrennial review. In light of the *Fox I* history, the CAA's removal of the national cap from the quadrennial review was not merely a superfluous step designed to build just one additional speed bump for agency reconsideration. Congress set a specific value for national reach, and barred the FCC from substituting the agency's judgement for Congress's own.

B. Though the Law Bars the Commission from Altering the 39 Percent National Audience Reach Value, It Retains the Authority to Determine How That Reach Is Calculated.

In the instant *Notice*, the Commission asks if it "retains the cap in any form, should [the cap] include a UHF discount or any other form of discount?"[47] The premise of this question is off-base, as the 2004 CAA forbids the Commission from deciding not to retain the 39-percent value chosen by Congress. However, as the courts have affirmed, Congress left the manner by which a license holder's national reach is determined to the Commission's reasoned judgement (so long as alterations to that method are made outside of the quadrennial review).[48]

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[47] *Notice* at 2.

[48] Shortly after the CAA became law in 2004, the Third Circuit held that all objections to the Commission's 2002 action in the *Biennial Review Order* to change the national cap from 35 to 45 percent were rendered moot. However, the Third Circuit further held that the Commission retained authority to consider regulations defining the UHF discount outside of the context of the quadrennial review. *See Prometheus Radio Project v. FCC*, 373 F.3d 372, 397 (3d Cir. 2004) ("*Prometheus I*") ("Although we find that the UHF discount is insulated from this and future periodic review requirements, we do not intend our decision to foreclose the Commission's

When the Commission established the UHF discount in 1985, it did so based on the physical realities of UHF and VHF analog signal transmission and reception, and the former's limitations.[49] In other words, the UHF discount was the best available method for calculating for a license holder's actual reach at a time when the overwhelming majority of U.S. households accessed broadcast stations via an antenna.[50] Thus, the Commission's framing in the instant *Notice* is inappropriate because the UHF discount was never intended as an economic modification of the national ownership cap. Other than impacting how many people a single license actually is capable of reaching via over-the-air or pay-TV transmission pathways, changing market realities have nothing to do with the rationale for the discount; the discount was predicated solely on technological realities.[51] And the DTV transition upended this technological reality, making the current discount an utter anachronism. As the Commission found in 2016, "experience since the DTV transition demonstrates that UHF channels are equal, if not superior,

consideration of its regulation defining the UHF discount in a rulemaking outside the context of Section 202(h). The Commission is now considering its authority going forward to modify or eliminate the UHF discount and recently accepted public comment on this issue. Barring congressional intervention, the Commission may decide, in the first instance, the scope of its authority to modify or eliminate the UHF discount outside the context of §202(h).").

[49] *See Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations*, GN Docket No. 83-1009, Memorandum Opinion and Order, 100 FCC 2d 74, 88–94, ¶¶ 33–44 (1985) ("*1985 UHF Discount Order*").

[50] In 1985, only approximately 32 million of the 87 million U.S. households subscribed to cable television service. *See* Television & Cable Factbook, *Warren Comm'cns News, Inc.*, archived at https://archive.ph/z005A; *see also* Federal Reserve Bank of St. Louis, U.S. Census Bureau, Total Households (retrieved from FRED, July 11, 2025).

[51] A licensee's actual reach is impacted by the market realities of pay-TV adoption (and carriage of a broadcast station on pay-TV systems). In other words, though the UHF vs. VHF signal disparity issue remained a technological reality until completion of the DTV transition, a UHF licensee's actual potential population reach via the combination of over-the-air and pay-TV distribution was some degree higher than simply a maximum potential reach of 50 percent of the television households in a given Designated Market Area ("DMA").

to VHF channels for the digital transmission of television signals. Thus, . . . the UHF discount can no longer be supported on technical grounds."[52]

We note that when Congress set the national cap at 39 percent (5 years prior to completion of the DTV transition), it was well aware of the Commission's prior determination that "the digital transition will largely eliminate the technical basis for the UHF discount."[53] Thus there is no hidden meaning to be gleaned from the fact that Congress did not mention the UHF discount in the 2004 CAA; to Congress, limiting a single licensee's <u>actual potential reach</u> to 39 percent was the sole policy objective.[54] The Commission's ongoing use of the cap some 16 years after completion of the DTV transition is methodologically indefensible, especially given the technological superiority of UHF digital signal transmission compared to VHF digital coverage. To faithfully comply with the law, the Commission should adopt a reach-calculation methodology that better captures a licensee's <u>actual</u> potential reach, and enforce the statutorily imposed 39-percent limit based on that more technologically defensible methodology.

III. Limiting Broadcast Television Licensees' National Reach Remains Critical to Promoting Competition, Localism, and Diversity.

A. Local TV News Stations Have a Disproportionate Impact on Public Opinion and Voting Behavior.

As noted in the previous section, only Congress can change the national ownership cap. Therefore, any discussion of the supposed rationale for the policy changes the Commission here contemplates is irrelevant. But the national cap itself remains an incredibly important policy, and its elimination would further harm the health of our democracy.

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[52] *UHF Discount Repeal Order,* 31 FCC Rcd 10213, at ¶ 2.

[53] *2002 Biennial Review Order*, 18 FCC Rcd 13620, at ¶591 ("[I]t is clear that the digital transition will largely eliminate the technical basis for the UHF discount.").

[54] We use the term "potential" here to reflect that the 39-percent national reach value was established without regard to whether or not a household does tune into a given station, but instead what broadcast TV signals a given household could tune into.

The axiom that "a well-informed electorate is a prerequisite to democracy" is often attributed to Thomas Jefferson,[55] though the actual quote is even more salient: "wherever the people are well informed they can be trusted with their own government; that whenever things get so far wrong as to attract their notice, they may be relied on to set them to rights."[56] A functioning democracy that is healthy enough to thwart totalitarian forces requires the free flow of news and information from diverse and independent sources, as well as representatives who act with integrity and courage to uphold the rights of all. The public requires this diverse array of high-quality journalism in order to inform itself on pressing political issues at both the national and local levels. This principle is the basis of the First Amendment, and remains as true today as when that amendment was conceived in the late 18th century.

In fact, even with the internet having torn down publishing barriers, this principle is more important than ever to protect and promote. Changes in technology and advertising-supported media markets do not eliminate the need for media ownership limits, especially the national cap. Despite the prominence of social media and online streaming, local television stations remain the most important sources of local news and information.[57] Indeed, with the secular decline of the local newspaper industry and dramatic decline in the number of working print journalists,[58] local broadcast television stations are in many places the only well-resourced producers of local news.

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[55] *See, e.g.*, Moshe Marvit, "A Well-Informed Electorate Is a Prerequisite for Democracy," Century Found. (May 2, 2013).

[56] Letter from Thomas Jefferson, to Richard Price (Jan. 8, 1789) (on file with the Library of Congress).

[57] Yanich 2025 Study at 4–5.

[58] According to Free Press's analysis of the Bureau of Labor Statistics Occupational Employment Survey, the total number of persons employed in the occupation category "news analysts, reporters and correspondents" working at newspaper publishers declined from 36,270 in 2002 to 15,250 in 2023. *See* Bureau of Labor Statistics, Occupational Employment and Wage Statistics, Occupational Employment Survey.

With the President and Republican-led Congress's recent callous move to defund public broadcasting, local commercial television stations will be even more dominant as a source for local news.[59]

Nothing about the changes in technology and in Americans' general media consumption habits has diminished local TV news' impact on voters. Certainly, the absolute deluge of candidate and Political Action Committee ads that fills the commercial time around local news broadcasts before every election is a testament to how local TV impacts and shapes public opinion.[60] According to Pew, "regular voters' pathway of choice is local TV," and local TV was by far the most-used news source among survey respondents, including people who describe themselves as "highly active" in local politics[61] A study by Gallup and the Knight Foundation reported that "Americans who primarily access news online are less likely than those who mostly rely on newspapers or TV to say they are highly knowledgeable about issues facing their local community . . . . Differences by media platform are smaller or nonexistent when people are asked how knowledgeable they are about issues facing the country as a whole."[62]

The conclusions of these studies still hold today. According to a TVB survey of voters in nine swing states following the November 2024 election, "TV was the most important influence throughout the voter decision process. This was true of all political parties and all age groups, as well as Hispanic and AA-Black voters. Of those that cited TV as most important in the

[59] *See, e.g.*, Timothy Karr, "Defunding Public Media Makes Perfect Sense If Destroying Democracy Is the Goal," *Free Press* (July 18, 2025).

[60] *See, e.g.*, "The 2024 Voter Funnel Study," TVB (2025), archived at https://archive.ph/00h1t ("2024 Voter Funnel Study") ("80% of respondents took some action after seeing/hearing a TV ad, including word of mouth, online use and even voting!").

[61] Michael Barthel, Jesse Holcomb, Jessica Mahone & Amy Mitchell, "Civic Engagement Strongly Tied to Local News Habits," *Pew Rsch. Ctr.* (Nov. 1, 2016).

[62] "American Views 2020: Trust, Media and Democracy: A Deepening Divide," Gallup & Knight Found (Nov. 9, 2020).

awareness stage, seven out of ten picked broadcast TV over cable, eight out of ten for Democrats and AA-Black voters. . . . For local news and information, the websites of choice were local TV stations' sites."[63] Only eight percent of these swing-state voters cited social media as influencing them to vote for a candidate.[64]

We expect broadcasters to file comments in this proceeding with similar data reflecting the importance of local TV news; but where we will almost certainly disagree with them is in our assessment of the financial state of their industry, and of the impact of the national cap and consolidation on the news itself and the public who watches it. Broadcast-TV firms routinely lump their business in with local newspapers in policy discussions on local news (particularly those involving potential subsidies). But the financial trajectories of local print and local TV are in <u>opposite</u> directions.

Because print journalism has declined while broadcast revenues and profits have grown,[65] local TV stations arguably have even more of a disproportionate impact on public opinion than they did when Congress fixed the national cap at 39 percent in 2004. Yet there's no indication that the Carr Commission even considers the negative impact that consolidation could have on the health of our democracy. For Chairman Carr, there apparently is one gigantic media market, and he's going to help his Republican-friendly broadcast TV chains further consolidate the airwaves, in order to supposedly help them compete with the big tech firms that dominate their respective online search and social media markets. Of course, it is patently ridiculous and economically ignorant to draw a formal market boundary around every single firm that generates revenues from advertising (as we discuss below in Section IV). But discarding the realities and

[63] *See* 2024 Voter Funnel Study.

[64] *Id.*

[65] *See infra* Section IV.

economics of the local marketplace of ideas like Carr proposes, all to suit the interests of a small number of politically connected and profitable corporations, is simply not in the public interest. American communities will pay a hefty price if the Commission jettisons the national cap. Doing so would unleash market forces that diminish localism while giving a small number of for-profit corporations undue influence over the public through those companies' control over local news sources.

B. The National Cap and Local Broadcast Ownership Limits Remain Vital Policies that Promote the Public Interest and Strike a Balance Between Private Profits and Democracy's Needs.

Broadcasting is a unique form of media, in part because spectrum (or more colloquially, "the public airwaves") is a finite and scarce resource. This scarcity justifies government regulation,[66] as does broadcasting's pervasiveness.[67] In *Red Lion*, the Court held that "differences in the characteristics of new media justify differences in the First Amendment standards applied to them."[68] Scarcity justified differential treatment for broadcasting because "[w]here there are substantially more individuals who want to broadcast than there are frequencies to allocate, it is idle to posit an unabridgeable First Amendment right to broadcast comparable to the right of every individual to speak, write, or publish."[69]

Nothing about the ongoing march of technology in the half-century since that case has changed this reality. Broadcast TV licenses remain incredibly scarce, and broadcast TV

[66] *See Nat'l Broad. Co., Inc. v. United States*, 319 U.S. 190, 226 (1943).

[67] In *Pacifica*, the Supreme Court noted that broadcast regulation is justified because of the medium's two distinct features: broadcasting is "uniquely pervasive" with broadcast signals reaching into private domiciles; and "broadcasting is uniquely accessible to children," with broadcasters largely unable to age-gate specific programs. *FCC v. Pacifica Found.*, 438 U.S. 726, 748–49 (1978).

[68] *Red Lion Broad. Co., Inc. v. FCC*, 395 U.S. 367, 386 (1969).

[69] *Id.* at 389.

continues to have an outsized impact on democracy, even in the digital content age.[70] Broadcast license holders have a unique statutory obligation to serve the public interest, convenience and necessity. This obligation to serve the interests of a local community of license implicates quite a bit more than simply airing a newscast filled with content produced for airing across multiple localities.[71] The law—the Communications Act of 1934, along with the 1996 Telecommunications Act and its amendments to the 1934 Act, and the CAA's further amendments to it in 2004, all—require the FCC to pursue the goals of competition <u>in broadcasting</u> (not merely video), and to promote localism, diversity of opinion and diversity of ownership in broadcasting as well.[72] In other words, broadcasting is a fundamentally distinct form of media, in terms of both the information market in which it resides and in legal terms too.

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[70] The different advertising strategies during the 2024 national election cycle certainly reflect this reality. *See, e.g.*, Shane Goldmacher & Nicholas Nehamas, "Harris, With an Online Avalanche, Outspends Trump by Tens of Millions," *N.Y. Times* (Sept. 20, 2024) ("Mr. Trump is also being outspent on television — but by smaller margins. Part of that spending emphasis reflects Mr. Trump's own worldview. Mr. Trump, who starred in the network television show "The Apprentice," has said privately that he thinks digital spending is a waste and has urged his campaign to spend more on TV, according to a person who has heard him make such remarks and insisted on anonymity to discuss his private comments."); Kiara Alfonseca & Soo Rin Kim, "Trump and allies are pouring millions into anti-trans election ads as election nears," *ABC News* (Oct. 21, 2024) ("[T]he Trump campaign and Republican groups have spent more than $21 million on anti-trans and anti-LGBTQ television ads as of Oct. 9, nearly a third of roughly $66 million television ad spending during that time period, media tracking agency AdImpact told ABC News. However, transgender issues are among the least important issues motivating voters to head to the ballot box, according to a Gallup poll.").

[71] *See infra* Section III.E.b. (discussion of the growing trend of local broadcast news sharing within and across markets).

[72] *FCC v. Consumers' Rsch.*, 145 S.Ct. 2482, 2507 (2025) ("For we have long held that 'the words "public interest" in a regulatory statute' do not encompass 'the general public welfare' but rather 'take meaning from the purposes of the regulatory legislation.'" (citing *NAACP v. FPC*, 425 U.S. 662, 669 (1976) and *N.Y. Cent. Sec. Corp. v. United States*, 287 U.S. 12, 24–25 (1932)).

C. Promoting a Vibrant Marketplace of Ideas at the Local Level Requires a Jurisprudence Standard Beyond Antitrust.

Broadcast-TV licenses are a special class of spectrum licenses;[73] and as with all such licenses, there tend to be far fewer licenses than potential speakers wishing to access these public airwaves. This scarcity, and the potential "tragedy of the commons" it creates, serve as the original impetus of the "public interest, convenience and necessity" language in the Act.[74] The Commission's local multiple-ownership policies and Congress's statutory limitation on a broadcast-TV licenseholder's national reach act in conjunction to balance broadcasters' commercial incentives and the public's interest.

In other words, by preventing monopolization of the public airwaves, these policies promote the Act's goals of competition, localism, and diversity. This standard is rightly <u>far more</u> rigorous than the one at the center of an antitrust inquiry, which is concerned with price and

[73] Broadcast license holders are not common carriers, unlike Commercial Mobile Radio Service spectrum license holders. The latter transmit the speech of others, and are prohibited by law from unjustly or unreasonably discriminating against, or giving "any undue or unreasonable preference or advantage to any particular person" accessing these portions of the public airwaves. Thus common carriers are important <u>mediums</u> that carry the public's speech. In contrast, broadcasters use the public airwaves to transmit <u>their own</u> First Amendment-protected speech. When they are granted exclusive access to this portion of the public airwaves for this purpose, they are privileged, which comes with the price of acting in the public interest. This exclusive license distinguishes broadcast TV firms from both common carriers and other media firms. *See, e.g.*, Written Testimony of Matthew F. Wood, Policy Director, Free Press and the Free Press Action Fund, before the Congress of the United States House of Representatives Committee on Energy and Commerce, Subcommittee on Communications and Technology, "From Core to Edge: Perspective on Internet Prioritization," at 29–30 (Apr. 17, 2018).

[74] *See* Stuart A. Shorenstein & Lorna Veraldi, "Defining the Public Interest in Terms of Regulatory Necessity," 17 *J. Civ. Rts. & Econ. Dev.* 45, 46 (2003) (recounting a report from Newton Minow concerning an interview with Sen. Clarence Dill, leading sponsor of the Radio Act of 1927: "[Sen. Dill] and his colleagues . . . knew they had to have some legal standard with which to award licenses to some people while rejecting others, because there were not enough channels to go around. 'A young man on the committee staff had worked at the Interstate Commerce Commission for several years,' Dill recalled, 'and he said, "Well, how about 'public interest, convenience and necessity'? That's what we used there." That sounded pretty good, so we decided we would use it, too.'").

market power alone. As the court in *Prometheus I* noted, "[t]he Commission ensures that license transfers serve public goals of diversity, competition, and localism, while the antitrust authorities have a different purpose: ensuring that merging companies do not raise prices above competitive levels."[75]

The marketplace of ideas is fundamentally different from the marketplace for goods and services. The local news market that would result from elimination of the national cap would not be one that produces journalism in service of democratic values, such as an informed electorate and robust debate on issues of local and national importance. What's more, without a national cap, the local television market would not serve all audiences efficiently and fairly.[76] Broadcast-TV news firms have a strong incentive to maximize profit, which in today's media market favors maximizing share of the most frequent local TV news viewers, doing so at the lowest possible cost.[77]

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[75] *Prometheus Radio Project v. FCC* ("*Prometheus I*")*,* 373 F.3d 372, 414 (3d Cir. 2004).

[76] *See infra* Section III.D.

[77] Recent survey-based research from the Shorenstein Center illustrates the real-world consequences of these economic incentives. *See* Thomas E. Patterson, "Can They Do Good and Still Do Well? Local TV Stations and Communities' Information Needs" 11, Harv. Kennedy Sch. Shorenstein Ctr. on Media, Pol. & Pub. Pol'y, (June 2025) (*Shorenstein Center Study*) ("A second news director worried that they understood only part of their community. 'We have thorough research that provides clear direction to what television news viewers want to see in our newscasts,' he said. 'But we have very little research focused on people who have elected not to watch television news. I worry that we're steering our content to the "choir" and not the congregation.'").

First Amendment jurisprudence for decades has supported the premise that media policy is about more than economics[78] and concerns both the preservation of robust debate[79] and the airing of a diversity of views[80] on a broad swath of issues.[81] What's more, the uniqueness and civic importance of local news requires policy makers to consider both the potential long-term <u>and</u> short-term effects of consolidation. Long-term effects include the neglect of certain issues, as well as increased vulnerability to government censorship.[82] But the short-term and transitory effects are equally dangerous to democracy. Local TV news is a critical source of information for voters as they solidify their opinions in the final weeks of an election.[83] What stories a licensee chooses to emphasize and explain at a substantive level, and what PAC attack ads they choose to

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[78] *See, e.g.*, *Associated Press v. United States*, 326 U.S. 1, 20 (1945) ("The First Amendment, far from providing an argument against application of the Sherman Act, here provides powerful reasons to the contrary. That Amendment rests on the assumption that the widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public, that a free press is a condition of a free society. Surely a command that the government itself shall not impede the free flow of ideas does not afford non-governmental combinations a refuge if they impose restraints upon that constitutionally guaranteed freedom."); *Fox Television Stations, Inc., v. FCC*, 280 F.3d 1027, 1047 (D.C. Cir. 2002) ("An industry with a larger number of owners may well be less efficient than a more concentrated industry. Both consumer satisfaction and potential operating cost savings may be sacrificed as a result of the Rule. But that is not to say the Rule is unreasonable because the Congress may, in the regulation of broadcasting, constitutionally pursue values other than efficiency — including in particular diversity in programming, for which diversity of ownership is perhaps an aspirational but surely not an irrational proxy.").

[79] *See, e.g.*, *Red Lion*, 395 U.S. at 390 ("It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail, rather than to countenance monopolization of that market, whether it be by the Government itself or a private licensee."); *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 638–39 (1994) ("*Turner I*").

[80] *See, e.g.*, *Associated Press*, 326 U.S. at 20.

[81] *See, e.g.*, *Red Lion*, 395 U.S. at 390.

[82] While the potential for government censorship of private news media previously seemed like a distant memory from the 1918 Sedition Act (repealed in 1920), the Carr FCC's intrusion into broadcast licensees' editorial decisions marks a return to this unthinkable practice.

[83] *See, e.g.*, 2024 Voter Funnel Study.

accept, reject, or fact-check, can determine electoral outcomes.[84] This necessitates a more careful regulatory approach for broadcast television ownership than a general antitrust, even if the geographic and economic product markets are properly defined.

Balancing a license holder's economic interest and the public's interest (while maintaining the critical firewall that keeps government from interfering with a license holder's editorial choices) requires <u>structural</u> ownership barriers. Market forces alone in a scarce physical medium simply will not result in "the widest possible dissemination of information from diverse and antagonistic sources [that is] essential to the welfare of the public."[85] Indeed, the Supreme Court articulated this "positive vision" of the First Amendment[86] in *Red Lion*, where it ruled that "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount . . . . It is the right of the public to receive suitable access to social, political, aesthetic, moral and other ideas and experiences which is crucial here."[87] As the high court said, "the 'public interest'

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[84] While it is rare, broadcast stations have rejected PAC ads in the past. *See, e.g.*, Scott Finn, "Should TV Stations Refuse To Air Political Ads That Make False Claims?," *NPR* (Oct. 3, 2012) (noting several instances of broadcast stations refusing to air PAC ads); Timothy Karr, "Left in the Dark: Local Election Coverage in the Age of Big-Money Politics" 7, *Free Press* (Sept. 2012) ("Broadcasters in the markets that we studied devoted little to no airtime to segments that fact-checked the claims made in political ads. They spent no time investigating the organizations that funded the ads.").

[85] *Associated Press*, 326 U.S. at 20.

[86] SAGE Encyclopedia of Journalism 1277–79 (Gregory A. Borchard, ed., Sage Publications 2d ed. 2022) ("A positive First Amendment approach insists that the government should have a more active role in promoting a better speech environment for citizens so that a healthier democracy can flourish . . . . Undergirding the vision of a positive First Amendment is the belief that media should represent a diversity of voices and viewpoints—and that government, backed by the First Amendment, should mandate access and create infrastructure that allows for multiple voices. From this view, the First Amendment permits the government to enact policies that ensure public access to important information and to media systems.").

[87] *Red Lion*, 395 U.S. at 390.

in broadcasting clearly encompasses the presentation of vigorous debate of controversial issues of importance and concern to the public."[88]

Limits on media ownership are therefore based on the notion that "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."[89] Furthermore, "the greater the diversity of ownership . . . the less chance there is that a single person or group can have an inordinate effect, in a political, editorial, or similar programming sense, on public opinion at the regional level."[90]

In sum, the Commission's ownership policies are chiefly concerned with promoting competition, localism, and diversity <u>in broadcasting</u>.[91] Economic concentration is only one of several dangers that the Communications Act as amended and the Commission's rules intend to avoid.[92] Excessive influence over public opinion, diversity, and ensuring high-quality journalism and service to local communities are additional goals. Economic efficiency, already at the core of antitrust policy, is—and must be—a secondary concern to these core precepts of the Communications Act that governs this Commission's actions.

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[88] *Id.* at 385.

[89] *FCC v. Nat'l Citizens Comm. for Broad.*, 436 U.S. 775, 780 (1978); *Prometheus I*, 373 F.3d at 383 (citing *Nat'l Citizens Comm. for Broad.*, 436 U.S. at 780).

[90] *Sinclair Broad. Grp., Inc. v. FCC*, 284 F.3d 148, 160 (D.C. Cir. 2002) (internal citations omitted).

[91] *See 2002 Biennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules*, MB Docket 02-277, Report and Order, 18 FCC Rcd 13620, ¶ 17 (2003) ("*2002 Biennial Review Order*") ("We identified diversity, competition, and localism as longstanding goals that would continue to be core agency objectives in this area.").

[92] The Commission's concern about economic concentration of broadcast TV licenses is usually based on concerns about how this market power would impact the balance between broadcasters and multichannel video program distributors in their carriage negotiations.

D. The National Cap Is an Important Structural Tool that Mitigates Large Ownership Groups' Market Incentives to Abandon Localism.

The physical realities of over-the-air transmission make broadcasting a local medium. Because of these physical realities, U.S. policy has long focused on ensuring that broadcasting serves the diverse needs of local communities.[93] The Commission, Congress, and the Supreme Court have over the years noted the importance of local broadcast stations serving local communities, "as an outlet for local self-expression."[94] As the Court explained in *Turner I*, "Congress designed this system of allocation to afford each community of appreciable size an over-the-air source of information and an outlet for exchange on matters of local concern. . . . [T]he importance of local broadcasting 'can scarcely be exaggerated, for broadcasting is demonstrably a principal source of information and entertainment for a great part of the nation's population.'"[95]

As we've noted, nothing about the march of media technology into the internet and streaming era has diminished the importance of local broadcasting. Thus it remains true that "the people as a whole retain their interest in free speech by radio and their collective right to have the medium function consistently with the ends and purposes of the First Amendment."[96] And it should be exceedingly clear that national conglomerates serving more and more television markets have every incentive to cut back on local coverage, local facilities, and local reporters, in favor of national and generic coverage they can produce more cheaply and in centralized fashion.

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[93] Localism as a core public policy goal has roots in the 1927 Radio Act. *See, e.g.*, Philip Napoli, *Foundations of Communications Policy: Principles and Process in the Regulation of Electronic Media* 203 (2001).

[94] *United States v. Sw. Cable Co.,* 392 U.S. 157, 174 (1968) (quoting H.R. Rep. No. 1559, 87th Cong., 2d Sess., 3).

[95] *Turner I*, 512 U.S. at 663 (quoting *U.S. v. Sw. Cable*, 392 U.S. at 177).

[96] *Red Lion*, 395 U.S. at 390.

The D.C. Circuit in *Sinclair* highlighted the necessity of the Commission's focus on localism in promoting the public interest.[97] The growth of online media has not made localism any less important; in fact, America's growing diversity makes localism more important than ever. The civic issues that are most salient to people living in smaller metropolitan areas along the southern border are going to be distinct from those that most concern people living in Great Plains farming communities or in the dense Northeast I-95 corridor. We elect our state and federal representatives on a local basis. And many of the public policies that impact families and small businesses—such as education, policing policy, and zoning regulations—are predominantly made at the local level.

Thus, the need for quality local news and civic information goes well beyond electoral impacts. Localism impacts the criminal and civil justice systems. Juries are locally selected, and they make impactful decisions on a variety of civic issues. These decisions involve juries relying on local standards, which are likely impacted over time by local broadcast TV media.

While we do not expect the Commission will expressly discard its past findings on the importance of localism because of changes in the broader media markets, the *Public Notice* reflects a dated and over-simplified understanding of how present market forces and consolidation work <u>to</u> disincentivize localism.[98] The Commission seems to believe (or to

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[97] 284 F.3d at 160.

[98] *Notice* at 2 ("In the [2017] National Cap NPRM, the Commission discussed economies of scale made possible by expansion of station ownership that may help broadcast television remain competitive in the marketplace and deter the migration of expensive over-the-air programming to other video programming distributors. The Commission also reasoned that, by placing limits on the expansion of network owned and operated station groups, a national cap would preserve a balance in the marketplace between the networks and their local affiliates. Do these prior conclusions remain accurate in 2025, and can they be expected to remain valid going forward? If so, and the Commission retains a national audience reach cap, should common ownership of stations that are not affiliated with major national broadcast networks (i.e., ABC, CBS, NBC, or FOX) be excluded from the cap?").

espouse, for purely political and partisan purposes) that broadcast-TV localism is merely a question about the relationship between national broadcast networks and their news-producing affiliated stations.[99]

The localism rationale for the national cap articulated in the *2002 Biennial Review Order* did indeed incorporate the thesis, as stated by NAB, that "the cap is necessary to counteract the networks' strong financial incentive to promote the widest distribution across the nation of network programming irrespective of the tastes of one or more particular local cities."[100] Yet as those same national networks shift away from linear programming in all but the sports and news categories, following viewers' changing demand and consumption patterns, and the networks thus sink billions of dollars into their subscription video on demand (SVOD) internet-delievered services, this analysis is far too simplistic. Because of viewer demand for live sports (and the cost to for this content, either directly through the networks' deals with sports leagues, or indirectly through the affiliates' reverse retransmission fees), <u>both</u> the national networks and local affiliates have a strong incentive to air that programming live over local stations. But the networks are less incentivized today to preempt local programming with other national content, either on their owned stations or affiliates, because they are better able to reach and satisfy a wider audience for this entertainment fare by steering viewers interested in such non-sports and non-news programming to their SVOD services. Contrary to Chairman Carr's blithe assertions and saber-rattling, the "Big 4" networks may have more incentive today to forge direct

[99] *Id.* at 2, n.7 ("Specifically, the Commission noted its prior conclusions, dating back to 2003, that a national cap would promote localism by enabling local affiliates to influence programming decisions by the networks and to exercise their rights to preempt the airing of network programming in favor of programming better suited to their local communities' needs.").

[100] *See 2002 Biennial Review Order* ¶541; NAB/NASA Comments at 9, 33, MB Docket No. 02-277 (filed Jan. 2, 2003).

relationships with subscribers and viewers of their entertainment programming; but they actually have less incentive and ability to impact (much less dictate) what the local TV affiliates they do not own may air outside of live sports and national news blocks.

However, the rationale of the *2002 Biennial Review Order* about the incentives of the networks is now apt for the national broadcast chains such as Nexstar and Sinclair. These and other national chains have a strong financial incentive to promote the widest distribution of their own news and vertical network programming irrespective of the tastes of one or more particular local cities. Sinclair offers a prime example of how this incentive translates in the increasingly concentrated local TV market.[101] And Nexstar, now owner of The CW and NewsNation (formerly WGN), has also made it abundantly clear that its business model favors distribution of centrally produced programming to their local stations, and repurposing already overworked local reporters to spend more time working for NewsNation.[102]

The broadcasting industry's push to eliminate the national cap is motivated by potential "synergies" achieved from economies of scale. But the synergies gained from the marginal benefit of further consolidating the already consolidated back-office functions of local stations

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[101] *See, e.g.*, Jacey Fortin & Jonah Engel Bromwich, "Sinclair Made Dozens of Local News Anchors Recite the Same Script," *N.Y. Times* (Apr. 2, 2018).

[102] *See, e.g.*, Comments of Perry A. Sook, Founder, Chairman and CEO, Nexstar Inc., Bank of America 2024 Media, Communications & Entertainment Conference (Sept. 5, 2024) ("Sook Sept. 2024 Bank of America Comments") (When asked about synergies between local news departments and NewsNation, Sook noted the company had "built a facility in Washington, D.C. at 400 North Capitol, which is steps off of the Hill . . where . . . a senator can come in and do a national interview for NewsNation or *The Hill*, can go sit with a correspondent for the Hill . . . and we can deliver that to 70% of the U.S." Sook also emphasized the synergies from putting local reporters to work for NewsNation, stating "we have the largest newsgathering organization collectively in the United States of any company in the world. And that those 5,500 journalists that are spread across 40 states could augment the coverage of [NewsNetwork] and provide resources that other folks simply wouldn't have. So it has been profitable from day one, given that we had embedded distribution revenue in WGN America that we've substantially improved on. The advertising is sold at a higher cost per thousand in news than it is in entertainment programming. And so we've been the beneficiary of that.").

are not material enough to justify the premiums these firms will have to pay to acquire smaller station groups. The synergies that have these firms pushing for national consolidation are found in programming. The evidence strongly suggests that as station groups become larger, economies of scale favor greater production and distribution of national content.

As Sinclair grew larger it implemented its so-called "news directive," and forced its "News Central" and later "National News Desk" programming onto its local affiliates.[103] It also expanded its programming portfolio by purchasing the Tennis Channel and Fox's former Regional Sports Networks, and by launching a number of national broadcasting digital subchannel networks such as Comet, Charge!, Roar, and The Nest. As Nexstar grew, it took its increased profits and bought a national broadcast network (The CW) and a national basic cable network (WGN). This growth not only undermined localism incentives, it also gave these firms increased market power to impose exponential increases in retrans rates.[104]

Therefore today, this "balance in the marketplace between the networks and their local affiliates" has more to do with how these very profitable companies divide up the growing

[103] *See* Fortin & Bromwich, *supra* note 101; *see also* Elizabeth Jensen, "Sinclair Broadcast Group thrusts itself into the news," *L.A. Times* (May 8, 2004);Andrew Heyward, "All news may be local—but more and more of it is going national," Knight Cronkite News Lab (Sept. 2, 2021).

[104] *See, e.g.*, Justin Nielson, "Retransmission-per-subscriber rates continue to climb in Q4 2024," *S&P Glob. Market Intel.* (May 7, 2025) (showing that between the fourth quarter of 2023 and the fourth quarter of 2024 the weighted average monthly per-subscriber retrans fee rose 16 percent for the entire industry, but Nexstar led the pack with a 50 percent increase, with Sinclair's one year increase amounting to 18 percent). These increases are impacted by the timing of retrans negotiations with cable, satellite and virtual distributors. But the industry's double-digit gains reflect local TV broadcasters' strong bargaining position even in the streaming media era. *See, e.g.*, Comments of Christopher S. Ripley, President & CEO, Sinclair, Inc., Deutsche Bank 32nd Annual Leveraged Finance Conference (Sept. 24 2024) ("We just reiterated our net retrans guidance over the next couple of years of mid-single digits. And that's having gone through a very significant renewal cycle that we currently have completed about 75 percent of all of our Big 4 traditional subscriber renewals and they've all been either meeting or exceeding our internal expectations. So again, back to momentum, a lot of operating momentum there on the advertising side, on the retransmission side.").

retransmission consent fee "pie" than it does with the core public interest concern of localism.[105] Networks need affiliates to reach sports viewers, and affiliates need the network's marquee sports programming.

When the FCC concluded in the *2002 Biennial Review Order* that "a local station maximizes its income by providing programming desired by its local community irrespective of national programming preferences"[106] that was theoretically plausible <u>only under the conditions in which local broadcasters were statutorily prohibited to grow beyond a certain size</u>. Indeed, consider the case of ION (then Paxson). Because of its greater national reach, thanks to the UHF discount, its financial incentives were heavily tilted towards building its own national network <u>that aired very little local content</u>.[107]

In sum, the dividing line between large national networks and local station ownership groups does not lie exclusively along the axis between traditional Big 4 networks' owned and operated ("O&O") stations on one side, and other network affiliates owned by broadcasters other than ABC, CBS, Fox and NBC on the other. Nexstar and Sinclair—two of the largest U.S. broadcast ownership groups—each have a history of regularly using their tremendous reach to acquire, shutter, and consolidate local newsrooms; each have acted in ways demonstrating that their economic incentives favor centralized content. Thus the notion raised in the *Notice* of

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[105] *Notice* at 2.

[106] *See 2002 Biennial Review Order* ¶ 392.

[107] Paxson did eventually make some news sharing agreements in 2000 that involved tape-delayed re-airing of other local station's broadcasts. But the Commission's elimination of the main studio rule in 2019 was predictably followed by Ion stations closing local studios and consolidating operations in E.W. Scripps' national facilities. *See, e.g.*, Brian Lowry, "Pax TV Is Giving Reruns a Whole New Meaning," *L.A. Times* (Apr. 22, 2000); Jon Ellis, "FCC/CRTC Monitor: New FM Signal in Brainerd, New LPTV in Fargo," *N. Pine* (Oct. 31, 2021) (noting several FCC filings by E.W. Scripps notifying the Commission of relocations of Ion affiliate studios to the company's Cincinnati facility).

applying the national cap to "Big 4" O&O firms but not other licensees[108] is completely unjustifiable, and the Commission cannot find any source of authority in the law for any such differential application.[109] Any weakening of the national cap, whether impermissibly tailored in this fashion or simply applied to all license holders, would do irreparable harm to localism.

E. Broadcast TV Consolidation Has Harmed Localism.

a. The Number of Stations Producing Original Local News Has Declined Since 1996.

Perhaps the most damning evidence against the national broadcast ownership groups' push to eliminate the national cap in the name of "saving local news" is the fact that the number of broadcast TV stations producing original local news declined since consolidation accelerated following the changes to broadcast ownership limits specified in and precipitated by the Telecommunications Act of 1996. Dr. Bob Papper, Professor of Broadcast and Digital Journalism at Syracuse University, on behalf of the Radio and Television Digital News Association ("RTDNA"), has conducted an annual survey of U.S. broadcast station news directors since

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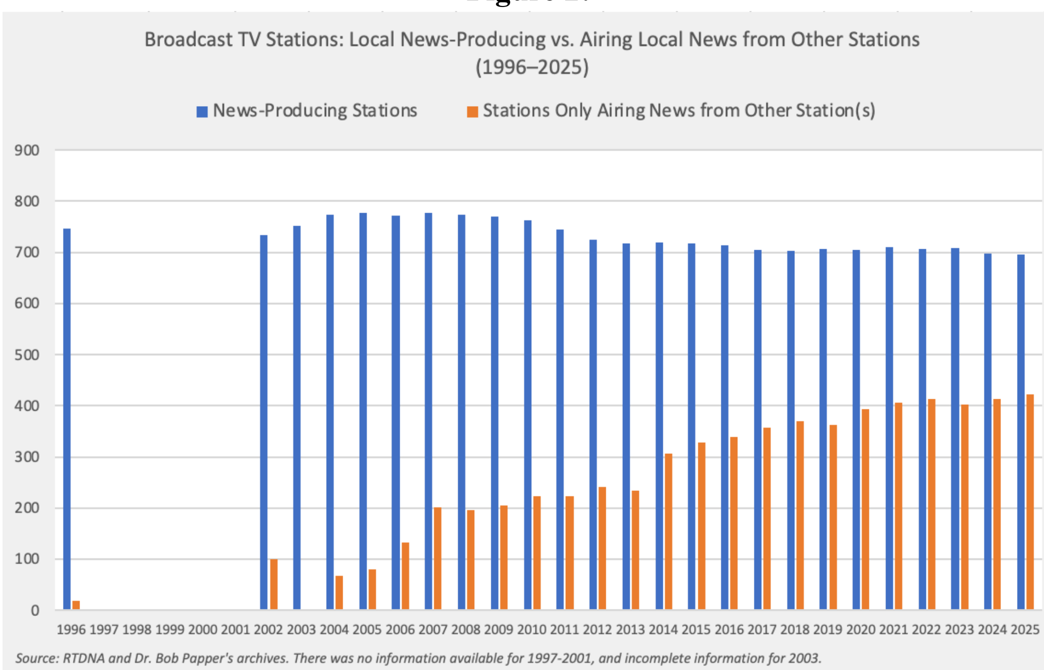
[108] *Notice* at 2 ("If . . . the Commission retains a national audience reach cap, should common ownership of stations that are not affiliated with major national broadcast networks (i.e., ABC, CBS, NBC, or FOX) be excluded from the cap?").

[109] As discussed in Section II, when Congress enacted the CAA in 2004 it removed the Commission's authority to increase the 39 percent cap. The Commission retains the authority to determine how this reach is calculated (*e.g.*, with or without the UHF discount), so long as this change is deliberated and made outside of the Quadrennial Review. *See Prometheus I*, 373 F.3d at 396. But it would be completely arbitrary and capricious for the Commission to calculate reach differently depending on whether or not a licensee owns one of the Big 4 networks. The text of the CAA, directing the Commission to adopt the 39 percent cap in its rules, says nothing about national network owners or local affiliates. In straightforward fashion, the resulting rule simply forbids grant transfer, or assignment of a commercial television broadcast station license to any party if it would result in that party exceeding the 39 percent national audience reach cap. 47 C.F.R. § 73.3555(e)(1). And there's nothing in the CAA to suggest the Commission retains authority to use a technical determination when calculating reach in order to implement an economic policy goal. What's more, the economic arguments about the cost differential between UHF and VHF that the Commission relied on in the *2002 Biennial Review Order* are not valid for digital television transmission. *See 2002 Biennial Review Order* ¶ 591.

1995. As a part of this research, Dr. Papper also conducted an annual census of all U.S. broadcast television stations to determine if they aired any local news, and if so, whether it was produced by the station itself or originated from a different station.

This RTDNA research shows that despite massive increases in revenues and profits (nominal and inflation-adjusted),[110] the number of local TV stations originating news declined from 746 in 1996 down to 695 in 2025.[111] Meanwhile, the number of stations not originating, but rather receiving and airing local news originated by another station, increased from 18 in 1995 to 422 in 2025 (see Figure 2).[112]

Figure 2:



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[110] See *infra* Section IV for full discussion of the broadcast TV industry's financial performance during the past three decades.

[111] *See* Bob Papper, Michael Gerhard, & Joe Misiewicz, "Another Growth Year for News and Staff," *RTNDA* (June 1997); *see also* Bob Papper, Keren Henderson, & Tim Mirabito, "Amount of local news stays steady – for a change," *RTDNA* (June 21, 2025).

[112] Free Press compiled these data directly from RTDNA research and Dr. Papper's archive, available at https://bobpapper.com/clients/.

These trends clearly reflect that as broadcast TV ownership further consolidated—with deals promised not only to bolster the bottom line but to bolster local news production too—original and locally originated news production declined. The number of original local news-producing stations declined, while firms simply re-aired existing production on stations that either never had any local news to begin with (usually the UPN, WB, MyNetworkTV or CW affiliate in a duopoly with a Big 4 affiliate) or on stations that formerly produced their own local news. Stations that previously added to competition, diversity of opinion, and localism, completely lost original local news. These are the "synergies" that the Commission should expect from its unlawful exploration of eliminating the national cap in this proceeding, and any plans to otherwise decimate what remains of its local ownership limits in other dockets.

b. Research Demonstrates How National Consolidation Diminishes Competition, Localism, and Viewpoint Diversity. Large National Chains Achieve Their Post-Consolidation Synergies by Replacing Original Local News with Duplicated and Out-of-Market Programming.

The common refrain from the broadcast TV chains and their lobby is that consolidation is in the public interest because an increase in local news follows,[113] or that without consolidation, local news will decline.[114] But this is nonsensical. Companies seek to maximize profit to generate

[113] *See, e.g.*, Ted Johnson, "Broadcast TV Lobby Praises FCC Chairman For Deregulatory Push, Even As He Also Investigates Some Of Their Members," *Deadline* (July 29, 2025). Broadcasters point to the increase in hours of local news. But as we discuss below, a closer look at the actual content of these broadcasts show that these increased hours are simply repeated stories. What's more, local stations bring in more advertising revenue during local news day parts than they would running syndicated programming, because syndicated deals usually involve a split of ad revenues with the syndicator. *See, e.g.*, "Competition in Television and Digital Advertising," Transcript of Proceedings at the Public Workshop Held by the Antitrust Division of the United States Department of Justice (May 2-3, 2019) ("2019 DOJ Workshop") (reporting Gray Media co-CEO Pat LaPlatney explaining that "there are three types of ad inventory. There's network, like primetime[;] local news and local programming where the broadcaster owns and sells all of the inventory. And then, there's syndicated programs, syndicated inventory where the inventory is divided between the syndicator and the station.").

[114] Broadcast companies often equate their own financial fortunes with the fortunes of journalism itself, which they claim can only be saved by blessing their monopolization of all

greater returns for shareholders. The trickle-down notion that more revenues will inexorably lead to more spending is fanciful and false. Firms maximize returns by <u>minimizing</u> costs and increasing revenue. Cost-cutting economics at local TV stations favor practices such as cutting staff, news sharing, greater use of social media clips in the news instead of original reporting, emphasis on partisan and sensationalistic content, substitution of local coverage with national content, and less investment in investigative journalism or other public interest journalism with high positive externalities because that is expensive to produce and attracts fewer viewers than infotainment fare does.[115]

local news markets. *See, e.g.,* Hank Price, "The Reality Of Local TV Station Consolidation," TV News Check (June 27, 2025) ("By reducing the number of owners, the theory is that combined stations will be able to increase advertising rates, reduce expenses and become much more profitable than single stations are today."); Mike Reynolds, "Nexstar eyes station expansion amid expected deregulation after US election," *S&P Glob. Market Intel.* (Nov. 8, 2024) ("Sook also advocated for the preservation of local journalism, stating the industry needs strong companies that compete on a level playing field for viewers and advertisers on every screen in the US, not just some of them. He said that while 'Big Tech has unfettered access,' broadcast is kept to a 39% ownership cap. 'We're not allowed to reach every television home in America with our local station footprint. To preserve that last mile, we think the Republic has a vested interest in maintaining a free and independent press,' he said, adding that the company sees 'broadcast journalism remaining or becoming that last bastion of a free and independent press at the local level.'").

[115] *See, e.g.*, Gregory J. Martin & Joshua McCrain, "Local News and National Politics," 113 Am. Pol. Sci. Rev. 372, 372(2019)("We investigate whether this trend is demand- or supply-driven, exploiting a recent wave of local television station acquisitions by a conglomerate owner. Using extensive data on local news programming and viewership, we find that the ownership change led to (1) substantial increases in coverage of national politics at the expense of local politics, (2) a significant rightward shift in the ideological slant of coverage, and (3) a small decrease in viewership, all relative to the changes at other news programs airing in the same media markets. These results suggest a substantial supply-side role in the trends toward nationalization and polarization of politics news, with negative implications for accountability of local elected officials and mass polarization."); Price, *supra* note 114 ("As we have seen so often, expense cuts will be the primary goal of most companies. For some owners, expense cuts may be their only priority. Because payroll is the largest expense for any television station, eliminating staff will top the list of cuts . . . . News product will, of course, be impacted. As we have seen in the past, an owner with two major stations in the same market will likely eliminate the entire staff of whichever station is weaker. In many cases one newscast will then be simulcast on both stations . . . . However Top 4 consolidation is achieved, we also know that after reducing expenses, many companies will then continue to do business as usual.").

These are the real-world consequences of consolidation, and they must factor into the Commission's public interest analysis. The gating factor cannot simply be whether "consolidation increase[s] profits," as that likely outcome is self-evident from the push to do so. The question that is unique to the Commission's task is: "will these rule changes improve incentives that lead to license holder actions serving the public interest?" As we discuss below, it is clear from thirty years of non-stop consolidation that shareholder interests cannot, and do not, map cleanly onto the public interest. Indeed, in the short term (which is the horizon of most C-suite executives at publicly-traded companies),[116] the corporate interest and the public interest are orthogonal at best and diametrically opposed all too often.

The goal of localism is inseparable from the other pillar of American broadcast policy: diversity. Diversity does not just mean programming from different corporate producers; it requires diversity in the content and viewpoint of programming.[117] Thus, ten or even twenty newscasts that all serve up the same superficial, if-it-bleeds-it-leads soundbites do not constitute diversity. Serving local interests is meaningless if the diverse elements in a community—cultural, social, and political—are not represented on the airwaves.

And recent evidence, compiled from surveys of news directors and from a detailed study of the actual content of local news broadcasts, demonstrates clearly that large broadcast chains prioritize increasing their own profits over increasing localism and diversity. A recently released Shorenstein Center survey of local TV news directors from many major U.S. broadcast news firms offers a window into how corporate strategies are harming localism. The survey "asked respondents to indicate the degree to which their stations relied on content from outside sources,

[116] Dennis Carey, Brian Dumaine, Michael Useem, & Rodney Zemmel, "Why CEOs Should Push Back Against Short-Termism," *Harv. Bus. Rev.* (May 31, 2018).

[117] *Red Lion*, 395 U.S. at 389–95.

such as their network, management group, or other providers," and found that those who indicated that they rely on such content "quite a bit" or "a lot" were "typically part of a large ownership group."[118] These stations in "large ownership groups" were far more likely to rely on third-party content to fill their newscasts than either network O&O stations or independently owned stations.[119]

A groundbreaking study by University of Delaware Professor Danilo Yanich and his co-author Benjamin E. Bagozzi provides a detailed look into the extent of this type of "news sharing."[120] Yanich and Bagozzi constructed a database of transcripts from the local news broadcasts of 861 stations in all 210 U.S. television markets, encompassing a three-month period in the fall of 2019.[121] The authors "employed automated text reuse methods to measure the extent to which local broadcast station pairs duplicated (exact text reuse) each other's news content."[122] And their standard for duplication was very conservative. Duplication required "50% of the broadcast news content (excluding sports, weather and commercials) of a station pair" to be a match.[123]

The study first classified stations into those who "originated local news" and those stations which "only presented news," or so-called "non-originators," based on RTDNA's 2019

[118] *Shorenstein Center Study* at 13 ("Seventeen percent of respondents stated that 'not much' of their content came from these sources, while 51 percent said their stations used only 'some' outside content. However, the 28 percent of stations relying 'quite a bit' on externally provided material and the 6 percent relying on it 'a lot' were typically part of a large ownership group.").

[119] *Id.* ("In contrast, only 26 percent of the Network Owned-and-Operated stations (O&Os) and 19 percent of independently owned stations claimed to rely 'quite a bit' or 'a lot' on outside-produced content.").

[120] Yanich 2025 Study.

[121] *Id.* at 2. The authors chose a time window "before the COVID pandemic so that coverage was not affected by a single overwhelming story."

[122] *Id.*

[123] *Id.*

census.[124] Yanich and Bagozzi's data indicated that "three quarters of the stations (n=647) were originators with the remaining one quarter (n=214) being non-originators."[125] This figure is similar to, though slightly lower than, RTDNA's census of originators (n=706, 66%) compared to non-originators (n=363, 34%) in 2019.[126] The difference between the two estimates is explained by the difference in the total sample size. RTDNA's analysis included all stations that aired news in early 2019 (n=1,069), while Yanich and Bagozzi's sample (n=861) was smaller, limited by the availability of transcripts from the firm TVEyes.

After a rigorous analysis of the database transcripts, Yanich and Bagozzi found "96 duplicating station pairs involving 182 unique stations (some stations had multiple arrangements)." Over half of these duplicating station pairs (52%) were stations in a so-called "shared services agreement" ("SSAs").[127] Though the prevalence of duplication was not linear with market size, overall the researchers found that "smaller DMAs had higher proportions of duplicating station pairs than did larger markets."[128] The prevalence of duplication was high,

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[124] *Id.* at 10.

[125] *Id.*

[126] *Supra* Figure 2.

[127] For a history of the use and prevalence of SSAs and other operational arrangements that big chains have used to evade the local multiple ownership rules, see S. Derek Turner, "Cease to Resist: How the FCC's Failure to Enforce Its Rules Created a New Wave of Media Consolidation," *Free Press* (Mar. 2014).

[128] Yanich 2025 Study at 10, 25 ("The top 100 DMAs . . . accounted for 40 percent of the duplicating stations with the highest proportion in DMA Group 1 [markets 1-25] (14%) and lowest in DMA Group 4 [markets 76-100] (7%). However, the two DMA Groups that represent the smallest television markets (DMA Groups 5 [markets 101-150] and 6 [markets 151-210]) . . . accounted for 60 percent of the duplicating station pairs (28% and 32% for DMA Groups 5 and 6, respectively). Clearly, duplicating station pairs were a substantial feature in the smallest television markets across the country.").

with the authors reporting that "across all station pairs, the average proportion of duplicated content was 69 percent, with a range of 51 to 96 percent."[129]

Notably, the authors found that "just four station groups controlled over half (53%) of the duplicating station pairs."[130] And the largest U.S. broadcast chain "Nexstar was the most active controller of duplicating station pairs (22%)."[131]

Because the most common form of news sharing arrangements involves duopolies, SSA station pairs, or other connecting agreements for stations operating in the same DMA, it is not surprising that the study found that "in a significant majority of cases, 86 percent (83 out of 96 duplicating pairs), the duplication occurred inside the market. In the other 14 percent (13/96) there was at least one station whose duplicating partner was outside the market."[132]

However, that they found any different-market pairs of stations duplicating content is notable for a study of local TV news. What's more, the study found that the prevalence of sharing was higher between out-of-market duplicating pairs than it was for those inside the same DMA. "For the outside-of-market station pairs, the average duplication of content was 80 percent over 83 percent of the rolling 3-day windows. For markets in which the duplicating pairs were inside the DMA the average duplication of content was 68 percent on 61 percent of the rolling 3-day windows."[133]

The finding of a higher level of content duplicated by these out-of-market pairs is highly germane to this proceeding, as it speaks to the economic incentives and the balancing act

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[129] *Id.* at 26.

[130] *Id.* at 3.

[131] *Id.*

[132] *Id.* at 31.

[133] *Id.* at 33.

broadcasters strike in these arrangements. The owners of the stations in these combined operations are incentivized to air the minimal amount of locally produced content that makes it seem local (particularly weather and sports, which were not included in the Yanich study) to attract an optimal audience size, while keeping costs down by using content produced outside the market.

The study's authors ended their report noting that "the inescapable conclusion that we draw is that ownership—or more accurately control—matters in the production of local television news. The control of television stations that is derived from duopolies, service agreements, and common ownership often results in duplicated content that serves the calculus of the economies of scale. We should not be surprised by that finding, because the system is designed that way . . . . Text reuse—the duplication of the exact same material across news broadcasts—is a direct and unambiguous form of the achievement of economies of scale. The station group bears the cost of production of the story once and sells it to advertisers multiple times. As fewer station groups control more of the local television ecosystem, accomplishing that duplication becomes easier. And all the incentives for it are clear. Our analysis shows that those incentives are significantly utilized."[134]

c. Evidence from Inside Local TV Newsrooms Demonstrates How Consolidation Undermines the Public Interest and Creates a Race to the Bottom.

The 2025 Shorenstein Center survey of local TV news directors and station general managers referenced in the prior section should serve as a canary in the coalmine for the Commission, as it contemplates unleashing another massive wave of media consolidation. Though the industry's CEOs and lobbyists like to pat themselves on the back, morale inside

[134] *Id.* at 57.

newsrooms is bad, and there is a widely held perception among newsroom staff that the quality of local TV news is in decline. When asked about their perception of the trend in the quality of news in their local market area, "sixty percent said the quality has declined, with a quarter of them categorizing the decline as very substantial."[135]

This is the reality inside newsrooms after two decades of consolidation – economies of scale make broadcast chain CEOs more money,[136] but at the expense of competition, localism, and diversity in local news and content. And as the Shorenstein Center survey demonstrates, consolidation exacts a steep personal cost from working journalists, threatening the future of the profession as younger generations perceive it as a dead-end. As the study's author Thomas Patterson notes, "a widely expressed view among respondents was that their station's reporting is declining in quality, partly from thinly stretched staff, partly from the departure of talented journalists, and partly from inadequately trained entry-level journalists."[137] These responses center on the connection between adequate staffing and training, something that station owners might be able to address with investment. Indeed, when local news directors were asked whether an "increase in broadcast staff" would "improve their 'ability to better serve audiences' information needs,'" an overwhelming majority (66%) agreed that such an increase in staffing

[135] *Shorenstein Center Study* at 7.

[136] *See, e.g.*, Tom Stephenson, "The Life and Times of a Media Magnate," *D Mag.* (June 8, 2020) ("The Nexstar CEO is proud to say, 'I want my commission salespeople to be the highest-paid people in town.' He'd like to be paid more, too. In the last two years, shareholders have, by the slimmest of margins, rejected multimillion-dollar compensation packages for the CEO. 'I guess if they felt they wanted to vote with their feet, they wouldn't own the shares. But that doesn't seem to be what's happening,' Sook says. 'So, yeah, it's a point of frustration for me, because the performance has been there.'"). Sook eventually got what he wanted. According to SEC filings, his total annual compensation between 2020 and 2024 ranged from $21 million to $39.3 million.

[137] *Shorenstein Center Study* at 17.

would be "important" or "very important" to that effort.[138] But these local TV news directors aren't counting on their corporate offices to actually put resources behind their sloganeering. "When these respondents were then asked about the likelihood that their station would be able to increase its broadcast staff, only 8 percent deemed it 'very likely' while 33 percent judged it 'somewhat likely.'".[139]

The Shorenstein Center survey also provides evidence that rising profits do not mean station group owners invest more in their local TV news stations. Though one assistant news director reported that "[o]ur ownership . . . proves that good journalism can be good business," others weren't so upbeat. One respondent said "[w]e are chronically short-staffed. <u>Ownership groups for decades have been extracting more output from fewer staff with less money</u>."[140] That respondent lamented how staffing cuts had become untenable, stating "[w]e're getting ever closer to the point of simply being unable to get newscasts on the air because we just don't have the people to do it."[141] Another respondent reflected, "[o]ur corporate ownership cares more about making money than serving our community."[142] Echoing this sentiment, a respondent told Shorenstein Center researchers, "[o]ur station's primary function has become generating cash for the corporation."[143] There were many more responses in this vein.[144]

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[138] *Id.*

[139] *Id.*

[140] *Id.* at 27 (emphasis added).

[141] *Id.*

[142] *Id.*

[143] *Id.* at 28.

[144] *Id.* at 27–28. Other quotes include: "Local news needs investment from ownership, not just to increase content and coverage, but for staff. The current staff is spread too thin."; "Corporate ownership groups need reasonable profit margins but their response is always 'we need to operate lean' or 'the money isn't there this year.'"; and "Corporate owners need to prioritize paying news staff higher salaries. We are losing too many good young journalists to jobs outside of broadcast news." *Id.*

Local TV newsroom staff already perceive their salaries as abysmally low.[145] A 2024 RTDNA study found high levels of newsroom employee burnout, particularly as stations looking to cut costs rely on journalists to be "multi-media journalists" who handle all aspects of story production.[146] Any Commission rulings leading to yet another massive wave of local and national consolidation would only worsen this situation, as consolidation of the market into the hands of fewer and fewer owners would increase these firms' monopsony power over labor. This would reduce the quality and expertise of newsroom labor forces over time (as staff retire, leave for other careers, or eschew the career altogether), further harming the public interest. The staff that remain will become more overworked, forced to take on more duties that take them away from the core task of reporting.

When corporate chain owners cut staff to boost profits, it should not be surprising that this has an impact on the scope and quality of news coverage. However, consolidation also reduces the market incentives for local TV news stations to differentiate their product through editorial decisions too. When station owners face little competition locally and nationally, they are incentivized to gain audiences through shock, fear, and sensationalism, as well as through repetitive emphasis on weather updates and breaking news stories. While these may be of interest to the public, they do not adequately serve the public's democratic information needs.[147]

[145] *Id.* at 10 ("TV station stations worry about their ability to attract and retain talented staff. Local TV news has one of the lowest salary levels for college graduates of any profession, a problem of growing concern for local stations.").

[146] Bob Papper & Keren Henderson, "Local TV news staffing rises despite burnout challenges" 4, *RTDNA* (May 21, 2024) ("For the second year in a row, the survey asked whether news directors had seen more evidence of staff burnout than in the past. Staff burnout continues to be a growing problem, with nearly two-thirds (62.9%) of news directors agreeing. In the top 25 markets, the percentage is lower at 52%, as well as in the smallest markets at 54.5%. Nevertheless, all market sizes are over 50%, with markets 26 to 100 surpassing 70%.").

[147] *Shorenstein Center Study* at 19 ("News is inherently a construct, shaped by subjective judgments about what is important on any given day. Certain events virtually command attention, but they are uncommon. News outlets have choices when deciding on the day's lineup

These economic consequences of consolidation are seen in the Shorenstein Center study, which found that that only 12 percent of news directors report their stations have a "heavy" emphasis on "local government and issues," versus 35 percent saying they have a heavy "emphasis on breaking news (such as crime and accidents)."[148] Only 32 percent of respondents said their station had a reporter assigned full-time to cover local government.[149] This de-emphasis on local government reporting is nothing new; it's been the defining trend of the consolidation era.[150] But it can continue to decline. Indeed, there are station directors that would like to use existing staff to do more "community" reporting.[151] But the study found that "staff size was

of stories. News directors will weigh perceived relevance, interest, and impact in making these choices but there are no objective criteria. As a result, the 'news' is not a mirror of the community but a curated narrative that amplifies certain topics while downplaying or ignoring others. Local TV news has traditionally prioritized weather, crime, and breaking stories, assuming they capture and hold viewer attention. Crime stories particularly elicit emotional responses like concern for personal safety, which can strengthen viewer engagement. This focus has, over time, shaped audience expectations, with viewers now seeking out this content, thereby reinforcing its demand.").

[148] *Id.* at 12.

[149] *Id.* at 13.

[150] *Id*. at 13 ("In general, when examined through the lens of the priority assigned to specific topics, the emphasis aligns with what we found when comparing the relative importance of breaking news versus coverage of local governance and issues. The emphasis also aligns with a longer-term tendency in local TV news. The movement away from coverage of local government to breaking news is more than two decades old, illustrated by the shift away from assigning a full-time reporter to cover city hall. When we asked respondents whether their station had a reporter assigned full-time to cover local government, only 32 percent said it did.").

[151] *Id.* at 21–22 ("Among the hallmarks of newspaper reporting at its peak was a commitment to types of journalism – enterprise, community, and investigative reporting – that go beyond the straightforward reports of the day's events. Enterprise journalism involves stories that reporters pursue independently without relying on external prompts like press releases or news conferences. Community journalism focuses on covering local neighborhoods and groups, while investigative reporting seeks to uncover developments that are not readily evident. . . . Enterprise reporting and community journalism go beyond standard news, providing stories and amplifying voices that help the audience to be more aware and connected to their community. By emphasizing these forms of journalism, while being mindful of their community's diversity, TV outlets can ensure that local narratives are aired. Investigative reporting is equally important but more challenging, given the substantial reporting resources typically required to thoroughly

unrelated to the use of community journalism, suggesting it is less an issue of resources than of editorial interest."[152] In other words, stations are not investing enough in news, but the market incentives of consolidation can also impact what type of news they invest in too.

This survey offers evidence that stations that differentiate themselves by eschewing the cheaper crime blotter model and moving towards covering local government issues are likely to find long-term success. "Stations that strongly emphasize local government and issues were most likely to report a gain in audience. Sixty-one percent of these stations reported an increase in audience share – 11 percentage points higher than the other stations' average."[153] While noting that "there is more than one path to attracting and building an audience," the Shorenstein Center survey recounted the experience of one station news director whose station increased ratings after moving away from heavy breaking news coverage in favor of community reporting:

> We addressed this question a couple years ago and decided to lean into neighborhood news. Rather than all reporters living and working within a 5-mile radius of the station, we now have reporters spread throughout our market living and reporting in communities that only saw a TV reporter when bad news happened. We have filled a vacuum of news and information in communities that saw a substantial decrease in local news outlets. We now report on local government, schools, businesses, and people on an everyday basis. This is in direct contrast to our traditional competitors who report heavily on breaking news and crime.[154]

Indeed, given the twenty-year decline in the newspaper business, local TV station groups had an opportunity to fill the void in community, enterprise, and investigative reporting. But the Shorenstein Center study confirms what any news consumer knows quite well: local TV as a whole has not moved to fill this void, with many station groups choosing to double down on

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investigate alleged wrongdoing.").

[152] *Id.* at 22.

[153] *Id.* at 21.

[154] *Id.* at 20.

weather and crime.[155] While the survey responses and the data above demonstrate that emphasizing truly local coverage can be profitable for individual local stations, most station groups freed from the sensible media ownership limits the FCC has already discarded will chase the quicker and easier profits that come from ruthless down-sizing and centrally produced, duplicated content. This trend is especially worrisome as our nation becomes more diverse, because when these national, top-down interests prevail, news directors in all markets will be less likely (and able) to devote coverage to marginalized communities and other underserved groups. Indeed, according to the Shorenstein Center study, this is already an ongoing problem in some newsrooms.[156]

IV. Broadcast Television Companies Are in Great Financial Health and Further Consolidation Will Only Benefit Wealthy Shareholders.

As the prior section illustrated, the national cap remains vital to protect localism, as market conditions increasingly favor lower-cost, duplicative, or nationally produced and distributed content. The American public does not need and does not want more media

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[155] *Id.* at 23 ("In our previous study of local public radio, in communities where the newspaper had declined, we found a strong commitment by stations to increase their coverage of local governance and issues to offset the decline. We did not find the same commitment among local TV news stations. In areas where the leading newspaper had scaled back its coverage, two-thirds (64 percent) of our TV respondents said their station had not made a change to accommodate the loss, while 27 percent claimed a moderate increase in coverage of local governance and issues, and only 9 percent reported a substantial increase.").

[156] *Id.* at 10–11 ("[W]e asked respondents about the significance of some of the challenges their stations might face. At the top of respondents' list of challenges was serving 'the community's information needs.' Eighty-eight percent of respondents identified as 'significant' or 'very significant.' A news director explained, 'How can we truly serve our audience to the best of our ability if we do not know exactly what they need?' . . . Of less concern to stations were the 'information needs of underserved local groups' and the 'diversity of our news staff.' Each was mentioned by two-thirds of respondents as a "significant" or "very significant" challenge. Here, unlike the other concerns, the demographic composition of the media market was related to the responses. TV stations in racially and ethnically diverse markets were twice as likely as stations in heavily white areas to say staff diversity and the needs of underserved groups were "very significant" concerns.").

consolidation. They want more diverse and independent media sources for the sake of healthy democratic discourse.[157] This preference matches what Congress enacted into law and directed the FCC to implement with respect to the national cap. The only constituency clamoring for the Commission to unleash another wave of local media mergers is the broadcast lobby.

The subtext of the *Notice*'s request to refresh the record in this proceeding is largely an economic pleading: that complete removal of ownership limitations—including the national cap at issue here—is necessary to preserve localism, because without further consolidation the local news business becomes uneconomical. But the evidence strongly suggests a different conclusion. Despite massive change in the overall information markets in the internet era, broadcast TV stations are doing well financially. FCC Policies that promote competition, diversity, and localism by preventing broadcast monopolies are not—and have never been—in conflict with the economic necessities of this for-profit industry.

Below we analyze the financial state of the local broadcast television industry over the past two decades, at the sector level and individual-company level. This analysis indicates that despite ongoing changes to the broader information markets, the local TV industry's financial health is good—certainly generating enough cash to support their local news operations. Unlike other parts of the media business such as newspapers or linear cable networks, the local TV sector's future looks bright. Broadcast executives at the same companies likely to plead the need for consolidation in this docket routinely extol their financial performance data and forecasts. They also praise and even brag about the numerous technological and market opportunities on

[157] *See* Jessica J. González, S. Derek Turner, Matt A. Barreto, & Henry Fernandez, "Free Press 2024 Poll: Detailed Analysis of Finding" 25, Free Press, BSP Research & African American Research Collaborative (May 28, 2024) (showing a majority of American adults agreeing that "having more independent news outlets is important to stopping disinformation and is good for the health of our democracy," compared to 32 percent saying "we already have enough choices in news outlets, and creating more news outlets won't change anything").

the horizon that will allow broadcast license holders to continue to return the level of growth that Wall Street demands (even if that pursuit of excess profit is harmful to Main Street).

Indeed, to see that consolidation is not necessary for local TV station groups to continue to thrive, one only needs to examine what the large national ownership groups were saying a year ago about the state of their business. Their comments prior to the 2024 election came at a time when the 39 percent national cap remained a legal certainty under the prior FCC. On Nexstar's final investor call before that election, its CEO, Perry Sook, gushed about "the power of broadcast television," stating that "at a time when the pay-TV industry continues to experience subscriber attrition and there is intense competition for national advertising dollars, Nexstar generated the highest first and second quarter distribution and total revenue levels in the company's history."[158] Sook also noted that even after national media companies sunk billions into their SVOD application services, linear TV remains "the only segment that generates profit."[159] Sook's comments echo other analysts' observations that content companies are rethinking the value proposition of SVOD because of linear TV's better

[158] *See* Comments of Perry A. Sook, Founder, Chairman & CEO, Nexstar Media Group, Inc., Nexstar Q2 2025 Investor Call (Aug. 8, 2024) ("Sook Aug. 2024 Comments") ("Nexstar's strong second quarter financial results mark another quarter of record total net revenue and our third consecutive quarter of all-time high quarterly distribution revenue. We translated this revenue growth into another quarter of solid adjusted EBITDA and adjusted free cash flow growth, reflecting our disciplined operating strategies. Just stop and think about that for a minute. <u>At a time when the pay-TV industry continues to experience subscriber attrition and there is intense competition for national advertising dollars, Nexstar generated the highest first and second quarter distribution and total revenue levels in the company's history.</u> Why is that? Well, it comes down to the value of our programming and reach delivered to our audiences, customers and programming partners. The power of broadcast television was again validated in a few recent high-profile settings.") (emphasis added).

[159] *Id.* ("Moreover, as more media companies lean back into the power of linear, the only segment that generates profit, by the way, we expect the relative value of the pay-TV bundle with all of its premium sports and local news content to look more and more attractive, leading to an inflection point in the future in subscriber attrition. . . As a result, we have delivered outsized long-term returns for our shareholders.").

economics[160]—especially when it comes to live sports and news,[161] where linear delivery still reigns supreme.[162]

Helping to fuel this renewed optimism (which, we must note again, was also expressed last year before the election) is the fact that cord-cutting appears to be slowing.[163] The remaining

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[160] *See, e.g.*, Tom Wainwright, "Streaming slows to a trickle in 2025," *The Economist* (Nov. 19, 2024) ("Yet making money from streaming is proving harder than expected. Netflix, its largest exponent, is making steady profits. Disney's streaming division broke even in the second quarter of 2024. But most of Hollywood's older studios are still losing money on their digital ventures, and shareholders are jumping ship."); Adam Rumanek, "The Future Of Streaming: Balancing Ads, Subscriptions And Content," *Forbes* (June 23, 2024) ("As a whole, the streaming industry is coming to the realization that subscriptions don't pay for platforms—advertisers do. Subscriptions alone can't sustain unlimited growth, and not everyone has the disposable income to spend an extra $15 per month on streaming content."); "Analysis: As NFL Streaming Viewership Grows, Linear TV Continues to Dominate," VAB Press Release (Feb. 4 2025) ("While streaming expanded its viewership, broadcast and cable TV continued as the dominant platforms for primetime games.").

[161] *See, e.g.*, Jay Langan, "Surviving the Streaming Surge: How Linear TV Still Holds Value," *Ocean Media Inc.* (May 21, 2024) ("Despite these challenges, one segment of linear TV that continues to thrive is sports broadcasting. Along with live events such as award shows, sporting events remain a cornerstone of linear TV. Ratings for sports have remained robust, and in some cases, have even grown. This resilience makes sports broadcasting a prime area for investment . . . . News is another segment where linear TV maintains its relevance. In an election year, for example, news ratings typically see a significant boost. However, advertisers must navigate the complex landscape of brand safety, especially when it comes to politically charged content on channels like Fox News. Despite these challenges, news programming offers a consistent and reliable audience, making it a viable option for certain advertisers.").

[162] *See, e.g.*, Zaneta Kucerova, "A Sports League Maximizes Revenue from Media Rights," *S&P Glob. Market Intel.* (Apr. 4, 2024) ("Despite these challenges, sports content remains dominant on linear TV, accounting for over 95% of the most-watched programs in 2023 in the U.S. Live sports programming strength grows as networks compete with streaming services for valuable media rights. Additionally, sports content continues to be vital for broadcasters as audiences tune in for live games despite alternative entertainment options. In the U.S., local rights are shifting from regional sports networks to local broadcast stations and new sports-centric streaming services that target broader audiences.").

[163] *See, e.g.*, Comments of Kevin P. Latek, Executive VP, Chief Legal & Development Officer and Secretary, Gray Media Inc., Q2 2025 Investor Call (Aug. 8, 2024) ("We remain optimistic that the pace of sub declines will slow going forward. This is a result of the addition of more streaming apps to MVPD bundles, the proliferation of ads and price increases in streaming products, more MVPD control over the carriage and payment for the little watch[ed] cable channel and the migration of sports to broadcast networks and local stations."); Mau Rodriguez & John Fletcher, "Multichannel video market share Q4 2024: Turning a corner?," *S&P Glob.*

linear subscribers are customers with high demand for live sports and live local news.[164] As broadcast station magnates and TV advertising execs routinely crow to investors, this is vital programming that broadcast has "got a monopoly on."[165]

Local broadcast TV companies are largely fiscally optimistic because of live sports. In particular, local TV broadcasters are filling the void left by the collapse of the cable Regional Sports Network (RSN) business, and doing so by striking deals directly with local sports teams and leagues.[166] Half of all U.S. TV households have kept their traditional pay-TV

Market Intel. (July 25, 2025) ("[H]ope exists with some US households warming to streaming bundles, according to commentary and results from the big three cable operators."); Mike Reynolds, "Charter sees lowest video subscriber losses since 2021," *S&P Glob. Market Intel.* (July 25, 2025) ("CFO Jessica Fischer told analysts on the company's July 25 earnings call that the second quarter represented Charter's best video period since 2021. Fischer attributed the improvement primarily 'to better connects year-over-year, resulting from the new pricing and packaging we launched last fall and lower churn year-over-year, driven in part by our programmer app inclusion packaging.'").

[164] *See, e.g.*, Logan Jones, "51% of Americans still have cable TV, here's why," *CableTV.com* (Mar. 28, 2025) (describing a survey of cable TV subscribers, in which the two top programming types cited as reasons for continued linear cable TV subscriptions were live sports and news).

[165] *See* MediaTalk,: *TVB Chief Shares How Local Broadcast is Winning the Ad Game* (A S&P Global Market Intelligence PodcastFeb. 27, 2025) (Steve Lanzano, President and CEO of TVB noting, "The world as it comes from broadcast is, quite frankly, is a sports and news world, right? We have NFL football, basically almost exclusively, and we're really the local news game in town, right? Radio's kind of walked away from local news. Newspapers are non-existent. So we've got a monopoly on those two things. And as long as that continues, we're going to be okay.") (emphasis added).

[166] *See* Sook Aug. 2024 Comments ("For example, the NBA bypassed the contract renewal on a cable television network in favor of a deal that included increased distribution on broadcast television, given our tremendous proven value of the broadcast model that that will bring to the league. In fact, a recent statement by the NBA said, 'Throughout these negotiations, our primary objective has been to maximize the reach and accessibility of our games for our fans.' We know that reach and accessibility is the lifeblood of every sport and there's no platform that can match the reach of broadcast television. This is a proven path that has sustained the long-term growth of the NFL and one we believe the NBA will prosper from as well. To that point, NFL Commissioner Roger Goodell reiterated his commitment to broadcast television during an interview just last month, saying, 'A lot of our media is not about the dollars as much as it is about how we reach more fans. That's the primary objective for us.' He went on to comment that the NFL's presence on broadcast is 'what has led to the great not only popularity of the league, but obviously, the great ratings.'") (emphasis added).

subscriptions,[167] and they tend to be more affluent and have a high willingness to pay for live sports and news. As Sook explained it last August, "[t]he broadcast television business model is anchored by loyal pay television subscribers, including sports and news viewers who subscribe in order to access our content and which account for the increasingly large percentage of the pay-TV subscriber universe, and the high net worth audiences aged 45 plus who enjoy the superior interface and experience that payTV provides."[168] Local TV chains are shifting their mix towards more live sports,[169] which they expect will bolster their ability to continue commanding retransmission payment increases that outpace inflation.[170]

The reality is that even prior to November 2024, local broadcast TV conglomerates had been forecasting a bright financial future. Clearly, they did not view the national cap as a barrier to continued earnings growth.[171] These companies were returning value to shareholders, both

[167] *See, e.g.*, Mau Rodriguez & John Fletcher, "Multichannel video market share Q1 2025: Lowest first-quarter losses since 2019," *S&P Glob. Market Intel.* (May 23, 2025) showing that the number of residential multichannel subscriptions (including virtual) amounted to 50 percent of US occupied housing units.

[168] *See* Sook Aug. 2024 Comments.

[169] *See* Sook Sept. 2024 Bank of America Comments ("And so now we've increased the amount of programming that the network offers by over 40% total hours of network programming, and we went from 100% entertainment programming to now 46% sports, 54% entertainment. And I can imagine over the next 3 years that those numbers will flip, that will be majority sports versus entertainment. And again, live sports, it's what people watch and they watch it live. You can DVR it if you're not going to be home to see the start of the game, but you'll likely know the outcome if you wait until the next day to watch it. And advertisers are into it not only because of the association with the sport. It's a lean forward experience, I'm alert, paying attention to what's going on as well as the ads. But then the things we can do with our local assets to tie a bow around it and do local activation for that particular network sponsor at a local level in the markets, where they do business and we do business.").

[170] *See* Sook Aug. 2024 Comments ("But again, I think you'll see the impact on our distribution fees as these sports become part of the package that our affiliate stations as well as our O&Os are able to take to market in discussions with distributors. So it's a virtuous circle going in the right direction.").

[171] *See, e.g.*, Comments of Lee Ann Gliha, Executive VP & CFO, Nexstar Media Group, Inc., Citigroup 2024 Global TMT Conference (Sept. 4, 2024) ("Gliha 2024 Bank of America Comments") ("I think historically, the company has a significant return based on M&A –

through earnings and, in Nexstar's case, by buying back its own stock to generate a hefty 20-percent embedded return.[172]

A. Local TV Broadcasters Are Not in the Same Relevant Product Market as Online Tech Giants Like Google, Meta, and Amazon, Nor Are They in the Same Relevant Product Market as Online Video Distributors Like Netflix. Eliminating the National Cap Will Harm Localism and Will Not "Rein in" Big Tech Companies.

The broadcast lobby and its allies argue that elimination of the national cap and other broadcast regulations are necessary to let them "compete against 'Big Tech.'"[173] While it is understandable that the local TV industry would want to harness for its own financial gain the bipartisan political frustration with tech giants, local broadcast television is in a separate formal

debt-financed M&A. That's become less a part of our story. Sort of not since 2019 have we done a major M&A deal, because we're at the cap, as Perry mentioned earlier. So there's less of that to do these days. So that means that we need to figure out ways to generate great returns for our shareholders with that excess cash flow. And so we've been doing that in a variety of ways. We have a dividend now that's north of a 4% yield, that's a claim of a little over $200 million on our cash. We have some mandatory amortization that has to get paid every year on our debt, and that leaves a significant amount of free cash flow left to make the decision on what to do. Because our stock trades at like a 20% free cash flow yield, it's very, very accretive on a free cash flow per share basis to be buying back our stock on a regular basis.").

[172] *Id.* Prior to the 2024 election, Sook laid out Nexstar's basic dealmaking calculus, which was only to pursue those "accretive deals" that generate better than a 20-percent embedded return, which is the return the company sees on share repurchases. In other words, the rationale for its push to kill the national cap is that Nexstar views national consolidation as highly "accretive" to return value to share holders, not because more consolidation advances some altruistic motive to improve journalism or fill news deserts. *See* Sook 2024 Bank of America Comments ("I always tell people it would have to be an actionable transaction and highly accretive, more accretive than buying back our own stock, which is an embedded 20% return that Lee Ann does every day. And so if the profile existed at a risk-adjusted return and it was an actionable transaction, I think we would certainly lean into it. But in this regulatory environment, it would be very tough to get done.").

[173] *See, e.g.*, George Winslow, "Broadcasters Urge FCC to Hit the Delete Button on Antiquated Regs," *TV Tech* (Apr. 21, 2025); John Eggerton, "NAB: Deregulating Broadcasters Is Key to Competing with Big Tech, *Broad. & Cable* (Jan. 19, 2023).

economic market than online search, social media, and online retail commerce.[174] Local broadcast television stations sell advertising in the "television spot advertising market," with geographic market boundaries set by the DMA.[175]

As explained above, antitrust alone is not a sufficient barometer or legal framework for assessing whether broadcasting serves the public interest; but antitrust law does provide the parameters for assessing and establishing relevant product markets between alleged competitors. None of the "Big 3" tech giants that bring in significant advertising revenues (Alphabet, Meta Platforms, and Amazon) compete in the local television spot advertising market. Google competes in other markets, chiefly the general search services,[176] publisher ad servers, ad exchanges, and advertiser ad network markets.[177] The FTC is currently arguing in court that Facebook competes in the "personal social networking market," and though its parent company Meta disputes that, neither side is arguing for a product market definition that also includes local TV stations.[178] The FTC has also brought an antitrust case against Amazon (which earns billions

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[174] Local broadcast television stations sell advertising in the "television spot advertising" market. *See, e.g.*, Complaint ⁋ 2, *United States v. Sinclair Broad. Grp., Inc.*, No. 1:18-cv-2609 (D.D.C. Nov. 13, 2018), Dkt. No. 1.

[175] *See, e.g.*, Competitive Impact Statement at 2 n.1, *United States v. Sinclair Broad. Grp., Inc.*, e No. 1:18-cv-2609 (D.D.C. Nov. 13, 2018), Dkt. No. 3 ("Spot advertising differs from other types of television advertising, such as network and syndicated television advertising, which are sold by television networks and producers of syndicated programs on a nationwide basis and broadcast in every market where the network or syndicated program is aired."); *id.* at 2–3 ("Broadcast television 'spot' advertising, which typically comprises the majority of a station's revenues, is sold directly by the station itself or through its sales representatives to advertisers who want to target viewers in specific geographic areas called Designated Market Areas.").

[176] Complaint ⁋ 88, *United States v. Google LLC*, No. 1:20-cv-03010 (D.D.C. Oct. 20, 2020), Dkt. No. 1.

[177] Complaint ⁋ 279, *United States v. Google LLC*, No. 1:23-cv-00108 (D.D.C. Jan. 24, 2023), Dkt. No. 1.

[178] *See, e.g.*, Cecilia Kang, "Does Meta Have a Social Media Monopoly? Here's What the U.S. Has Argued," *N.Y. Times* (May 15, 2025).

from advertisements placed on its commerce website),[179] alleging violations in the "online marketplace services" and "online superstore" product markets.[180] Amazon also bundles Amazon Prime Video with its Amazon Prime subscription service. But that service, like Netflix or Disney+, is not in the "television spot advertising market."[181]

The broadcasters and the Commission cannot simply draw a circle around every single firm that sells advertising and call it a relevant product market. Doing so would throw out decades of precedent based on rigorous economic analysis. For the purpose of antitrust analysis, the other agencies that review broadcasting deals and a wider range of competition issues (*i.e.*, DOJ and FTC) and the courts have consistently favored a narrower approach to market definition.[182] Those other antitrust agencies don't even consider local TV stations as operating in the same product market as local newspapers, even though both types of firms sell space for advertising served to local audiences.[183] While it is true that firms like Alphabet, Meta, Amazon,

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[179] *See, e.g.*, Melissa Otto, "Global Digital Advertising Revenues – A Look at the Big Three: Alphabet (GOOGL), Meta Platforms (META), Amazon.com (AMZN)," *S&P Glob Visible Alpha* (May 17, 2023).

[180] Complaint ¶¶ 122, 186, *FTC v. Amazon Inc.*, No. 2:23-cv-01495 (W.D. Wash. Sept. 26, 2023), Dkt. No. 1.

[181] Though Netflix has not been the subject of a DOJ or FTC antitrust complaint, it has been accused in ongoing litigation of unlawful activities harming competition in the "video-streaming services" product market. *See* Complaint, *Bracamontes v. Meta Platforms, Inc.*, No. 1:24-cv-11839 (N.D. Ill. Nov. 18, 2024), Dkt. No. 1.

[182] *See, e.g.*, *Times-Picayune Publ'g Co. v. United States,* 345 U.S. 594, 612 n.31 (1953) ("For every product, substitutes exist. But a relevant market cannot meaningfully encompass that infinite range. The circle must be drawn narrowly to exclude any other product to which, within reasonable variations in price, only a limited number of buyers will turn; in technical terms, products whose 'cross-elasticities of demand' are small. Useful to that determination is, among other things, the trade's own characterization of the products involved. The advertising industry and its customers, for example, markedly differentiate between advertising in newspapers and in other mass media.").

[183] The agencies have consistently defined the product market that newspapers operate in as "the sale of daily English-language local daily newspapers to subscribers and the sale of local advertising in those newspapers." *See, e.g.*, Application for Temporary Restraining Order and

and local TV broadcasters all earn revenue from selling audience attention to advertisers (on one side of a two-sided market) and doing so must attract a share of the public's attention and time, it is wrong in a formal and practical economic sense to draw the market boundaries so broadly. This is why the FTC and DOJ have consistently applied the "television spot advertising market" definition when considering matters involving broadcast television. Indeed, broadcast TV stations actually have a competitive moat that protects them from competition, but only if they lean into the localism aspects of their business (which also happen to be one central public policy purpose of their exclusive licenses to the public airwaves).[184]

Even setting aside market competition analysis and considering instead the Chairman's supposed goal of "reining in big tech,"[185] there's no explanation of how local TV consolidation enables those firms to compete against Google and Meta. Certainly, local TV firms are not going to lower their advertising rates after consolidating. That's the opposite of what microeconomics suggests would happen, and not one single broadcaster has suggested they would lower spot rates following elimination of the national cap. Carr's ideology and predilections here thus contradict basic logic, which says that increased competition tends to make prices lower; it

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Order to Show Cause at 10, *United States v. Tribune Publ'g Co.*, No. 2:16-cv-01822, (C.D. Cal. Mar. 17, 2016), Dkt. No. 5.

[184] *See, e.g.*, *Shorenstein Center Study* at 24 ("To compete in this environment, local news outlets need to rely on their competitive advantage – their focus on local news. It sets them apart, not only from national outlets but also from other non-news media that increasingly attract people's attention. Local TV stations should recognize the power of their brand as a trusted local source and enhance their ability to provide timely, relevant local content. While other content types can deepen audience engagement, local stations risk losing relevance if they fail to deliver consistent, robust local news. For audiences seeking local stories, the local TV station remains one of the few trusted sources, whereas when other content is at issue, there are more attractive alternatives.").

[185] *See, e.g.*, Ari Bertenthal, "FCC's Carr Sends Message to Big Tech," *Broadband Breakfast* (Nov. 7, 2024).

doesn't magically make prices higher so long as the revenues from those ad sales (theoretically) might trickle down towards useful outputs like spending on local news production.

If we consider the narrower, but still too broad, product market of "video services," allowing giant local TV broadcast firms to monopolize the public airwaves in every U.S. DMA is not going to materially impact the price of advertising in that broader video market (but it would result in monopoly pricing in the local television spot ad market). Advertisers who spend money to reach audiences watching YouTube, Netflix, Disney+, Apple TV+, Paramount+, Amazon Prime and other global SVOD providers are accessing a <u>different</u> product market than local broadcast TV stations offer. Ad-buying firms create advertising campaigns and access a number of different media distributors across different product markets to reach their target audiences.

Broadcasters have made this clear when talking to their investors. Just last summer, Sinclair's CEO noted that his local stations don't view online video as a competitive threat, and explained that the impact from formerly ad-free SVOD providers now including ads "has not shown up in our core business . . . [it] hasn't affected our CPMs on the linear side."[186] In fact,

[186] *See, e.g.*, Comments of Christopher S. Ripley, President & CEO, Sinclair, Inc., Q2 2024 Investor Call (Aug. 8, 2024) ("Ripley Aug. 2024 Comments") ("So we have not—it's an interesting question in terms of extra ad avails that are coming on to the marketplace from either FAST channels, AVOD, SVOD, and where you would think you could see it would be potentially in the pricing on the linear side, <u>and that has not shown up in our core business</u>. And I believe <u>it hasn't shown up on the linear side because we are still the kings by a wide margin of reach, frequency, premium content, you name it, across all the categories, we're at the top of the heap</u> when it comes to any sort of comparison. Just to give you an idea, 80% of adults on any given day interact with broadcast; 56% cable TV and 43%—if I remember correctly, over 46% for paid streaming. And then paid streaming, you get a dice set up between all the various suppliers. So we have a significant lead in terms of reach, frequency and the premium nature of our content and people watching it live, specifically like news and sports. And so there's a glut of inventory that has come to the marketplace, hasn't affected our CPMs on the linear side. And what it has done, interestingly enough, is it improved our audience extension business. When an advertiser comes to Sinclair, we don't just sell them a slate of linear spots on our networks, we sell them an entire campaign, right? It's a 360 one-stop shop experience and that includes things like AdWords and websites and social and you name it, we do the entire campaign for you. And

Sinclair's CEO noted that the entry of SVOD providers into the online video ad business actually improved Sinclair's margin in its "audience extension business," which is the company's "one-stop shop experience and that includes things like AdWords and websites and social," in addition to its linear networks and stations.[187] The *Notice* suggests[188] that competition from online video might require re-assessing and even eliminating the national cap applicable to broadcasters. Yet Sinclair proudly proclaimed before Trump's re-election, with the cap still firmly in place, that broadcast TV is "still the king[ ] by a wide margin of reach, frequency, premium content, you name it, across all the categories," noting that "80 percent of adults on any given day interact with broadcast" versus "46% for paid streaming."[189] Similarly, last September, Nexstar's CEO told attendees at an investor conference that digital advertising and linear TV advertising are complements, not substitutes, with linear broadcast TV advertising remaining critical for branding purposes.[190]

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a major component of that is here's your linear plate and here's an audience extension package, which will reach on to these various connected TV and OTT platforms. And so that's a pretty significant portion of the digital business. And because there has been so much inventory made available in that area, we've been able to push down what we pay for the inventory. So it's expanded our margins in that business, which affects both STG, which does a significant amount of business on audience extension, but also Compulse360 which services our TV sellers but also services other local media companies and other local ad agencies. The margins there have increased because they've been able to negotiate and push down pricing of all the various publishers that are putting out these ad avails and some of that's translated into the pricing that goes to the ultimate client, but not all of it. <u>And so margins have been expanding there</u>.") (emphasis added).

[187] *Id.*

[188] *Notice* at 2 n.5 ("For example, in the *National Cap NPRM*, the Commission noted, among other developments, the growth of video programming options available to consumers (including online alternatives to traditional video distribution), reverse compensation fees paid by affiliates to broadcast networks, common ownership of broadcast and cable networks, consolidation among both MVPDs and non-network owned broadcast television station groups, and continuing MVPD video subscriber losses.") (internal citation omitted).

[189] Ripley Aug. 2024 Comments.

[190] *See* Sook Sept. 2024 Bank of America Comments ("I mean you can spend so much time and effort trying to be specific with your targeting, you can forget to build a brand. And I think

If this Commission conducts an honest and unbiased analysis of the continuing need for the national ownership cap, it will recognize that broadcasters talk out of both sides of their mouth, pleading poverty before regulators while telling Wall Street that the local TV market is "not nearly as competitive as the national landscape" and that broadcast TV still reigns supreme in these vital and lucrative local markets.[191]

B. The Rise of Online Video Does Not Lessen the Need for the National Cap. Local TV Broadcasters Do Not Compete Directly Against National Online Video Providers, Including the Online Services of the Big 4 Networks.

In the *Notice*, the Commission asked, "how has the national audience reach cap affected broadcast television's market position in relation to other video distributors, such as online video providers, that are not restricted by ownership limits?"[192] In doing so, the *Notice* referenced the 2017 *National Cap NPRM*'s discussion of "economies of scale made possible by expansion of station ownership that may help broadcast television remain competitive in the marketplace and deter the migration of expensive over-the-air programming to other video programming distributors."[193]

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of all purchasing kind of coming through a purchase funnel, right, where you need to be creating a brand at the top of the purchase funnel, and at the bottom, you can be very price and item specific. But you need to use television and digital assets to work in tandem as people work through their purchase funnel, making those decisions, whether it's for household goods or appliances or cars. And so I think the two assets that we concentrate on are <u>TV and digital, and I think they complement each other very well</u> through the purchase funnel.") (emphasis added).

[191] *See* Comments of David Lougee, President and CEO, TEGNA Inc., Q2 2024 Investor Call (Aug. 7, 2024) ("Lougee Aug. 2024 Comments") (When asked about the future outlook for the broadcast TV business, TEGNA's outgoing CEO said "we have a tremendous amount of assets. <u>We've got strong local brands in local communities, which are not nearly as competitive as the national landscape</u>, that's a valuable asset. To have valuable local content that is strongly branded is—can be a jumping off point to source significant new business, whether organic or inorganic, as Julie and we have said many times.") (emphasis added).

[192] *Notice* at 2.

[193] *Id.*

As discussed above, it is fundamentally wrong for the Commission to treat online video providers as operating in the same relevant product market as local television broadcasters. The prior Commission recognized this in the *2018 Quadrennial Review Order*, noting that "non-broadcast sources of video programming do not compete with broadcasters for retransmission consent fees, network affiliations, or the provision of local programming, which continue to remain largely unique to broadcast television."[194] And "while broadcasters may be seen as participating in various markets or competing along various dimensions . . . the provision of local programming remains a hallmark of broadcast television and an area where viewers directly benefit from competition among local broadcast television stations."[195] Thus the Commission concluded that these non-broadcast programming options are not "substitutes to broadcast programming."[196]

With the instant *Notice*, the Commission now appears to be myopically focused on the business of broadcasting in the context of the larger advertising and video markets, while ignoring the important fact that broadcast license holders have a monopoly right to a portion of the public airwaves, and one that comes with legal obligations that are unique to that spectrum band. This is not only a radical departure from the agency's prior analytical standard, it is a departure from the Commission's prior conclusion that even under a "competition-only" analytical framework, "loosening our rules and allowing additional consolidation (or, under some proposals, unlimited consolidation) would cause substantial harm to the public interest."[197]

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[194] *See, e.g.*, *In the Matter of 2018 Quadrennial Regulatory Review – Report and Order*, 38 FCC Rcd. 12782, 12824 (2023) ⁋ 75 (2023) ("*2018 Quadrennial Review Order*").

[195] *Id.*⁋ 75.

[196] *Id.* ⁋ 73.

[197] *Id.* ⁋ 21 n.68.

But to be clear, maintaining the national cap has not meaningfully harmed the broadcast chains in any way; in fact, the national cap has acted to incentivize localism, and that comes with economic benefits to broadcasters, not just the detriments they pretend. Online video distributors do not produce local news. Advertisers have demand for viewers who watch local news broadcasts, and those advertisers have a limited number of options to reach that audience in each specific DMA. This specific demand, with limited supply, gives broadcast TV owners pricing power within the local television spot advertising market. Indeed, as the former Trump administration Assistant Attorney General Makan Delrahim noted that there are "varying levels of substitution for ad placement across media" and that "even if it means absorbing a price increase, some of the evidence we have seen suggests that advertisers are unlikely to look beyond broadcast spots within a given DMA."[198] Thus, given the limited ad inventory for local affiliates during national programming blocks and the high demand for that inventory, it's no surprise that local broadcast TV stations generate the bulk of their advertising revenues from local spot ads.[199] What's more, differential regulatory treatment even within the local news market has always been the norm (for example, print vs. broadcast). That decision for differential treatment was made by Congress (and upheld by the Supreme Court in cases like *Red Lion*) because of the limited nature of these airwaves that are a public resource.

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[198] *See* 2019 DOJ Workshop.

[199] *See, e.g.*, Justin Nielson, "Complete picture of US TV station industry revenues, 2009–2030," *S&P Glob. Market Intel.* (July 29, 2025) ("S&P Complete Picture") (containing data indicating that core local and political advertising revenues were 90 percent of local U.S. TV broadcaster's 2024 revenues, with core national ad revenue only 10 percent); 2019 DOJ Workshop (featuring Gray Media co-CEO Pat LaPlatney noting that ads are "sold three ways—locally, regionally, and nationally. And for Gray, in 2018, local and regional was roughly 80 percent of our advertising revenue, excluding political.").

The "growth of video programming options available to consumers"[200] consists almost entirely of non-local subject matter. It's heavily tilted towards entertainment content, and the growth in news content is programming covering national topics. If anything, these programming trends in the broader video markets highlight that market forces alone would incentivize <u>less</u> localism were there no national cap.

The *Notice* likewise points to "online alternatives to video distribution"[201] as a factor that implicates the policy purpose of the national cap, but concerns about broadcast license consolidation impacting localism are not germane to how programming is <u>distributed</u>. They are about the programming itself. Indeed, many local broadcasters have free online streams of their own programming (*i.e.*, not network content), and they are reaching audiences via their own websites (multimedia) and "FAST" platforms.[202] Thus, many local broadcasters already have national reach when <u>distributing</u> their programming online, as they always have in the internet era. What has not changed, and will not change, is the physical reality that broadcasting is a local phenomenon, and monopoly spectrum licenses to distribute programming via broadcast are granted on an eight-year renewable basis, under the terms defined by the Commission and the Communications Act.

The *Notice* also raises the issue of reverse compensation fees paid by affiliates to broadcast networks,[203] which are today about half of the amount that pay-TV distributors pay to

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[200] *Notice* at 2 n.5.

[201] *Id.*

[202] FAST is an acronym for free advertiser-supported television, and includes online services such as Pluto TV (Paramount-owned), Xumo TV (Comcast-owned), Tubi (Fox-owned), Roku TV, and many others. Sinclair's NewsON has 285 TV station partners in more than 165 U.S. markets. *See, e.g.*, "NewsON Partners with Lilly Broadcasting to Expand Coverage in NY and PA," Press Release, NewsON (Apr. 1, 2025).

[203] *Notice* at 2 n.5.

those affiliates for retransmission consent.[204] National broadcast networks are taking a growing share of the growing retransmission consent fee pie. But that is the reality of having to pay for content that attracts audiences. Local broadcasters may not like this (the same way pay-TV customers don't like the below-the-line "broadcast recovery" fees),[205] but it does not harm local stations' positive financial health. Local TV affiliates have a self-proclaimed "monopoly" on airing whatever must-see national content these rising reverse retrans fees pay for (*e.g.*, live sports), which is programming that drives viewers to their channels. And that ultimately benefits the local broadcasters' bottom lines, while it also helps maintain audience attention to live local news—the other compelling, must-have content over which local broadcasters themselves have a monopoly. The exponential rise in retrans fees[206] enriched broadcasters and broadcast networks, and it also directly contributed to cord-cutting by MVPD customers less willing to pay those price hikes. Allowing broadcasters to increase their market scale will enhance their market power to extract even higher fees from pay-TV distributors, particularly as the remaining MVPD customers are those who have stuck around for live sports and local news. Broadcasters are still coming out ahead when considering the entire retrans picture, and broadcast TV consolidation has only strengthened their position against pay-TV providers.[207]

[204] *See, e.g.*, S&P Complete Picture.

[205] *See, e.g.*, Luke Bouma, "Comcast Price Hikes Push Monthly Bills Over $250 for Many Customers With TV & Internet," *Cord Cutters News* (Jan. 21, 2025) ("Adding to the burden for customers, Comcast has also significantly increased several add-on fees. The Broadcast TV fee, a controversial charge levied to recoup the costs of carrying local broadcast channels, has skyrocketed to $25.25 per month. . . . These fee increases have long been a source of frustration for consumers, who feel they are being nickel-and-dimed for essential services. The lack of transparency surrounding these fees and their substantial increases contribute to customer dissatisfaction.").

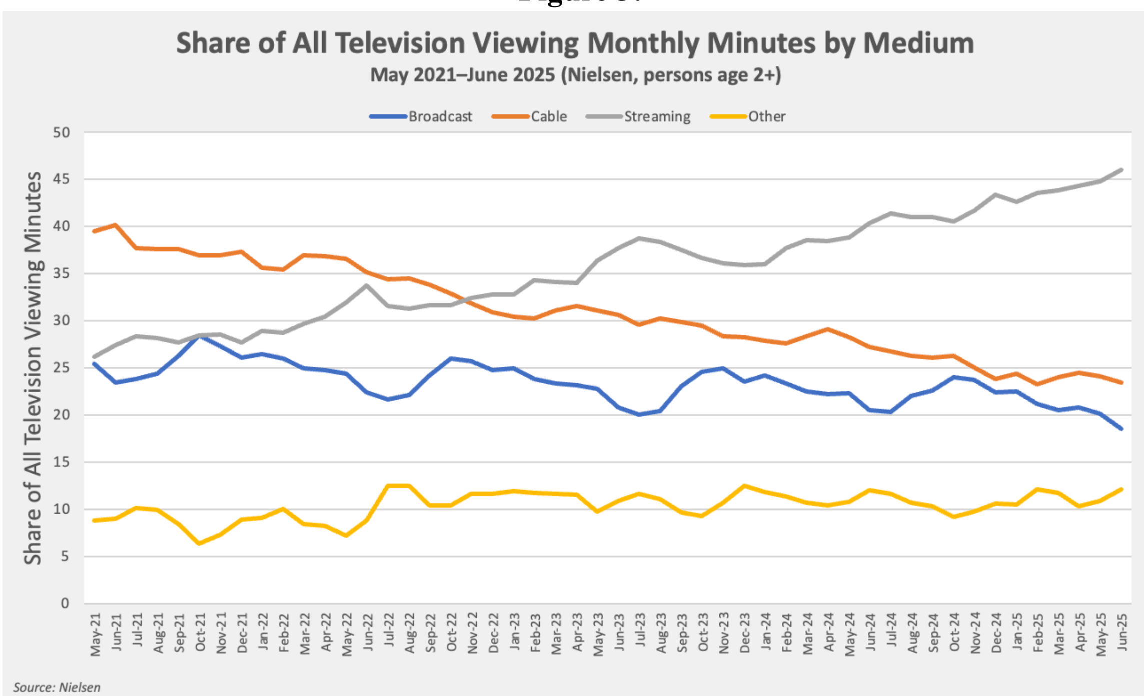
[206] *See infra* Figure 6.

[207] The *Notice* asks about the impact of "consolidation among both MVPDs and non-network owned broadcast television station groups." *Notice* at 2 n.5. MVPD consolidation doesn't seem to have impacted broadcasters' negotiating power when it comes to retrans, and the pay-TV

C. The Decline in Linear TV Viewing Has Disproportionately Impacted Cable Networks, Not Local Broadcast Television.

While viewership of linear television is in decline, this trend is not observed equally amongst all linear television sectors. Online television continues to take a larger share of viewing time, but virtually all at the expense of time previously spent watching linear cable networks. We can see this in Figure 3 below, which shows data from Nielsen's "The Gauge," reflecting the relative shares of viewing hours for online, linear cable, linear broadcast, and "other" viewing such as watching DVDs.[208]

Figure 3:



market has expanded since early 2017 with the rise of "virtual" MVPDs. And as the rapid growth in retrans revenues shows, consolidation among non-Big 4 broadcast station groups has contributed to an increase in broadcasters' negotiating power, largely because local stations remain the only way MVPDs can get the programming that their most loyal, traditional viewers want (live sports and news).

[208] *See* "The Gauge," *Nielsen* (June 2025) (noting that "other" includes "TV usage that does not fall into the broadcast, cable or streaming categories. This primarily includes all other tuning (unmeasured sources), unmeasured video on demand (VOD), audio streaming, gaming and other device (DVD playback) use").

These data show that there is stability in broadcast viewership, relative to cable. In May 2021, broadcast accounted for 25 percent of viewing time, while cable captured 40 percent. Four years later in May 2025, cable's share of viewing time had declined to 24 percent, while broadcast had only fallen to 20 percent. In the four years between May 2021 and May 2025, streaming's share of viewing time increased by 19 percentage points while cable's share dropped 15 percentage points.

Last summer, Nexstar's CEO Sook highlighted the difference between online video's impact on linear cable networks compared to its impact on linear broadcasting. "I think you have to separate linear television into two buckets. One is broadcast television and the other is cable television. And there is no question that cable television and the long-tail cable network, companies that have long-tail cable portfolios, are under pressure. But I would say broadcast television, which is where we live primarily with what we do, is – again, we just put up another record quarter, last quarter of net revenue growth."[209] Sook went on to point out the differences in viewership between local TV stations and cable networks, noting that because of this disparity, "cable nets are overpriced relative to their viewership, broadcast nets are underpriced relative to their viewership."[210] In Sook's view, this underpricing gives broadcasters like Nexstar the ability to command ever-escalating retransmission consent fees from pay-TV providers. As he noted too, those fees are forecast to grow faster than the typical rate of general inflation.[211] Sook's

[209] See Sook Sept. 2024 Bank of America Comments.

[210] *Id.*

[211] *Id.* ("And so we've been able to kind of improve our position every single time we've gone back to the well in that regard. And I think we expect we will continue to be able to do that for some period of time. . . . I read a piece of research, last night on the plane coming up, that has a projection of affiliate fees, cable networks, down 5% through the forecast period, which I think went through maybe '26, retransmission fees, which is broadcast, increasing 5% over that same period of time.").

comments about his company's "outsized returns," which he attributed to that fact that "what we're negotiating are for local broadcast stations and signals," reflects the positive financial prospects for the local TV industry.[212] That industry does <u>not</u> need further consolidation in order to continue to thrive.

D. Local TV Broadcast Revenue Growth During The Previous Two Decades Did Not Result in Newsroom Staffing Increases.

We now turn to a detailed examination of the operational and financial state of the local TV industry, both at the sector-level and at the leading ownership groups. We then conclude with an examination of the industry and other analysts' forecasts for how the business will fare in the coming decade.

We begin by looking at local TV newsroom employment. Unlike the local newspaper sector, employment in local TV newsrooms has held steady over the past decade. RTDNA published data indicating that TV newsroom employment has been essentially flat since the industry rebounded from the Great Recession, at approximately 28,000 jobs both in 2012 and in 2024.[213]

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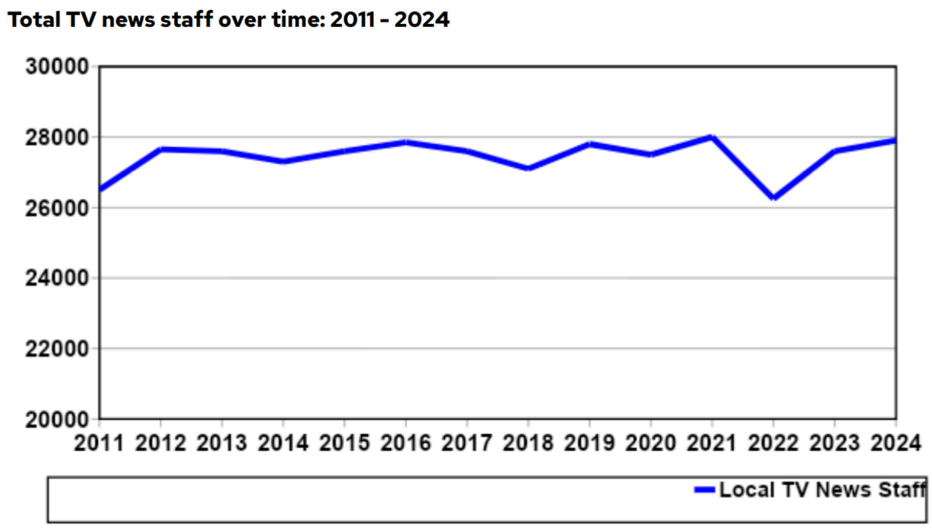
[212] *Id.* ("And I think it's that divergence that you're seeing, and obviously, we get outsized returns, again, because of our scale fact that the predominance of what we're negotiating are for local broadcast stations and signals. And so I think we do see that continuing. We're not at parity. We're not at stasis to where we feel like we're getting our fair share. We're still working our way up.").

[213] *See* Papper, *supra* note 146 at 2.

Figure 4:



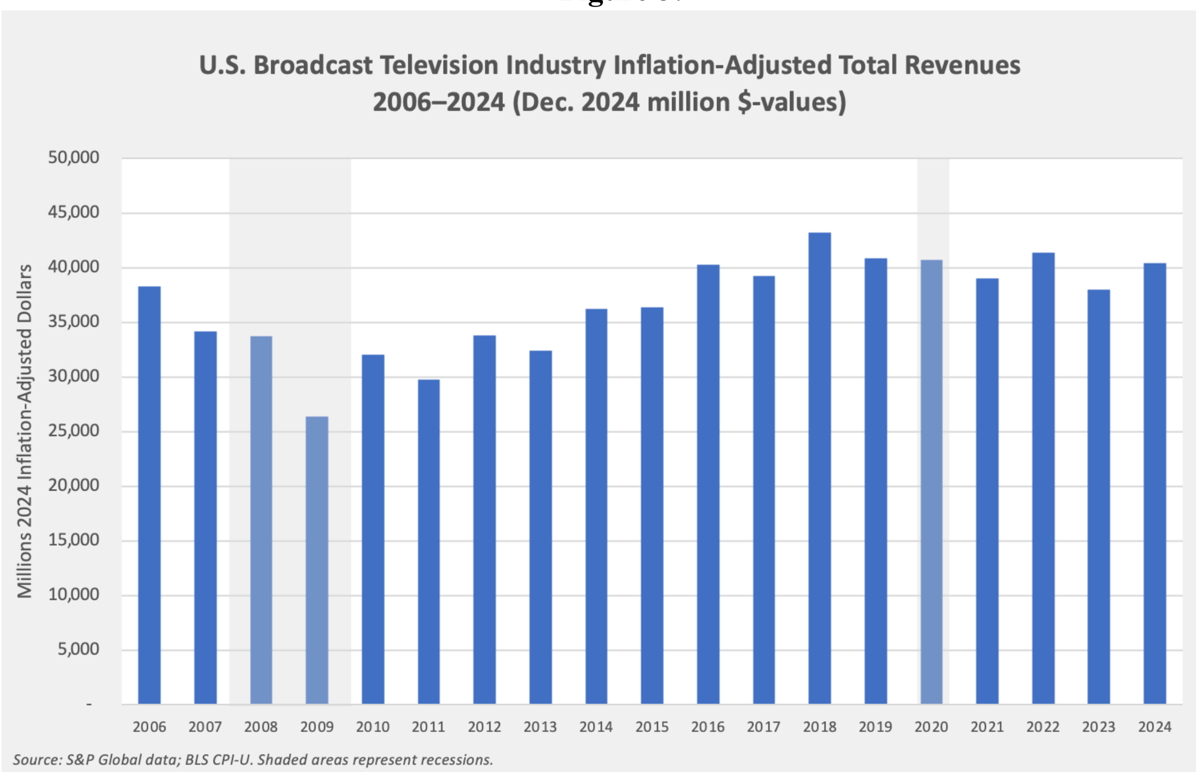
Source: RTDNA.

Employment holding steady is certainly preferable to a decline. Yet the most salient fact for present purposes is that this flat employment trend occurred during a time when local TV revenues were growing faster than the rate of inflation (see Figure 5). Between 2012 and 2018 (the latter being the peak year for U.S. broadcast TV station inflation-adjusted revenues), revenues increased 28 percent on an inflation-adjusted basis, but U.S. broadcast TV newsroom employment declined even as revenues soared. Indeed, despite record revenues in 2018, broadcast TV news employment was at its lowest level of any year between 2012 and 2024. COVID-era financial disruptions, inflation, and slowing retrans growth flattened the broadcast TV industry's revenue curve. Yet 2024 inflation-adjusted total revenues were still 19 percent higher than they were in 2012, while newsroom staffing was essentially flat as noted above.[214]

[214] Based on other historical RTDNA TV newsroom employment data (via Dr. Papper's archives, *supra* note 112) the number of local TV newsroom jobs increased by only 5 percent from 2009 to 2024, while total local TV industry revenues increased by 49 percent during that same timeframe even after adjusting for inflation. During this time, there was considerable industry consolidation. These divergent trajectories reflect the industry's chief method for improving the economic bottom line: mergers and cost-cutting, often in the form of cutting newsroom jobs.

And as discussed previously, these revenue increases came at a time when the number of TV stations producing local news declined.[215] Consolidation is making broadcasters more money, in large part because stations save money as the number of TV newsrooms producing news declines, and the amount of duplicated news aired on other stations increases. As Dr. Papper put it in a 2018 report, "the total number of stations running local news . . . keeps increasing, but it's doing so because a smaller number of newsrooms are running news on more and more outlets."[216]

Figure 5:



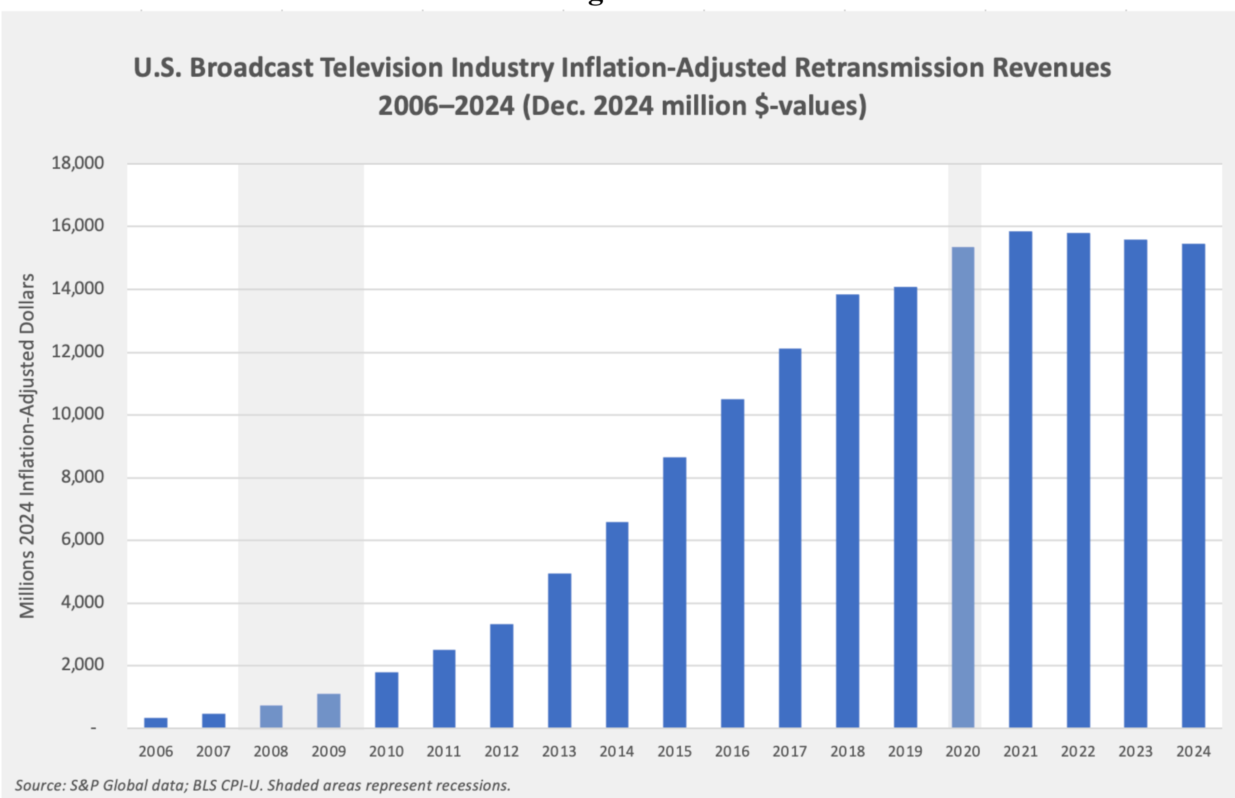
The local TV industry's economic recovery following the Great Recession was largely due to massive increases in revenues from retransmission consent payments and political

[215] *Supra* Figure 2.

[216] *See* Bob Papper, "Research: 2018 local news by the numbers," *RTDNA* (June 13, 2018).

advertising.[217] Figure 6 shows local TV stations' annual (inflation-adjusted) retransmission fee revenues between 2006 and 2024. If we compare two national election years (2008 and 2024) we see a remarkable inflation-adjusted increase in retrans revenues of nearly 2,000 percent. While the outsized inflation following the pandemic put an end to this meteoric rise, this only appears to be a lull. A recent forecast by S&P Global suggests retrans revenues (which include carriage payments made not only by traditional cable and satellite pay-TV but also by virtual MVPD distributors to local TV stations) will rise at a compound annual growth rate of 2.2 percent between 2025 and 2030.[218] Though not the exponential growth of the late-aughts to early 2010s, this expected growth is above the Federal Reserve's two-percent inflation target.

Figure 6:



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[217] Inflation-adjusted political ad revenues for the U.S. local TV industry increased 437 percent between 2009 and 2024. *See* S&P Complete Picture.

[218] *Id.*

It’s important to put these revenue data in context with viewership data. As noted above in the discussion of Nielsen’s “Gauge” data, viewing habits have changed in the streaming media era. Though nowhere near the level seen in cable, cord-cutting and streaming have decreased broadcast viewership too. Some publicly available ratings data suggest, however, that local TV news broadcasts are not only outperforming linear cable TV, they are not even seeing the same size declines as primetime network programming. Below in Figure 7, we show an excerpt of ComScore audience data via Pew Research Center. This information captures the average number of televisions turning into news programming on the local network affiliates during key news day-parts, from 2016 through 2022. While there was a 9 percent drop between 2018 and 2022 (even-numbered non-Presidential election years) in the average local TV news audience,[219] this drop is far less than the 31 percent drop in average primetime viewership at the Big 4 broadcast networks.[220] Comparing two presidential election years (2016 vs. 2020), we observe a 12 percent drop in the average local TV news audience compared with a 32 percent drop in the Big 4 networks’ average primetime audience.

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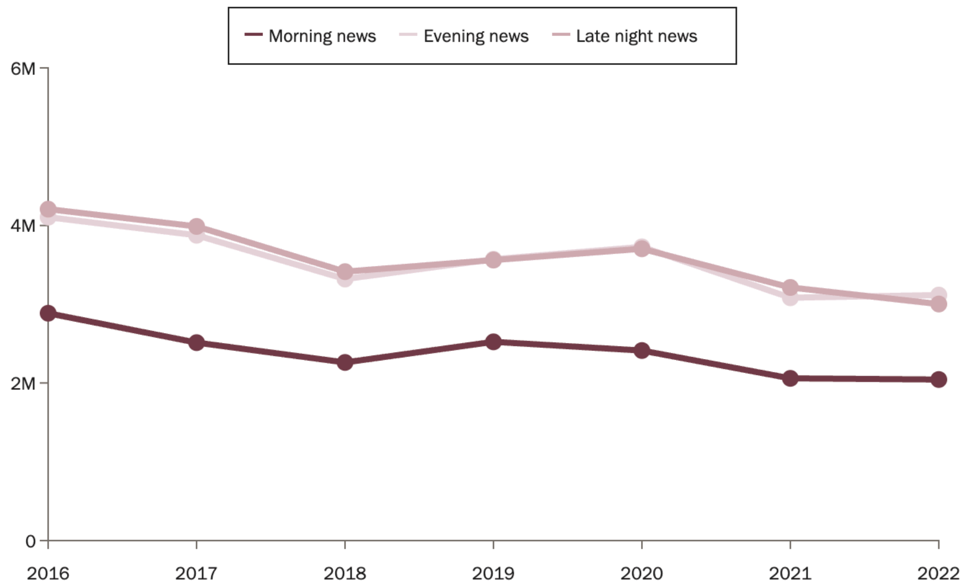
[219] This average is calculated based on the number of televisions tuning into the morning, evening, and late-night local news dayparts. *See* “Local TV News Fact Sheet,” *Pew Rsch. Ctr.* (Sept. 14, 2023).

[220] These figures were calculated based on annual primetime viewership data reported by *Variety*. *See* Michael Schneider, “Most-Watched Television Networks: Ranking 2024’s Winners and Losers,” *Variety* (Dec. 26, 2024).

Figure 7:

Average audience for local TV key time slots

Average number of TVs tuning to news programming during each time slot for ABC, CBS, Fox and NBC affiliates



Source: Comscore StationView Essentials®, 2016-2022, U.S.

While any decline in viewership is not welcome to broadcasting firms, this particular decline is not a cause for great concern, as revenues continued to grow. This indicates the pricing power that broadcasters retain in spite of declining audiences. And it also indicates that broadcasters adding more news day-parts with repeated segments is a low-cost method for them to sell more profitable ad slots than they would have if they stuck with syndicated programming. Furthermore, the declines in local TV news viewers in terms of the percentage of all U.S. TV households are not that large. From the Comscore data presented by Pew, we estimate that about 2.4 percent of all TV households tuned into local news during 2018, compared to 2.1 percent in 2022.

E. Broadcast TV Chains' Healthy Financial Performance During the Streaming Media Era Demonstrates that the National Cap is Not a Barrier to Continued Financial Prosperity.

The historical financial performance of the five largest TV broadcasting companies, as measured both by their total number of licensed stations and total number of DMAs served, generally shows positive results too. These five firms (all publicly traded companies) are Nexstar, Gray, Sinclair, E.W. Scripps, and TEGNA. We do not include the Big 4 networks' parent companies, as they are each multimedia conglomerates that derive a substantial amount of their income from businesses other than local TV broadcasting.

First, we present these five local TV ownership groups' operating revenues, advertising revenues, and political advertising revenues, comparing how these values changed from 2016 to 2024 (adjusted for inflation). All of the firms acquired new broadcast TV stations and entered new markets during this time (see Figures 16–21 below). There are some external factors impacting these results, which are unrelated to the firms' broadcast TV consolidation or the financial performance of their core local TV business during this time. For instance, Sinclair made a costly and ultimately unwise decision to purchase Fox's Regional Sports Networks in August 2019, which the company later spun off into a subsidiary that declared Chapter 11 bankruptcy in March 2023. E.W. Scripps divested all of its print assets in April 2016, and spun-out its broadcast radio business in December 2018. It then acquired Ion Media in January 2021. And Nexstar purchased the CW network in a deal that closed in October 2022.

With these caveats in mind, we see that even after adjusting for inflation, most of the five largest local broadcast TV firms saw healthy operational revenue growth, ad revenue growth, and political ad revenue growth (see Figure 8).

Figure 8

Change in Inflation-Adjusted Values 2016 vs. 2024 (%)	Operational Revenues	Advertising Revenues	Political Advertising Revenues
Sinclair	4%	13%	56%
Nexstar	277%	185%	310%
Gray	245%	158%	324%
TEGNA	19%	-12%	85%
EW Scripps	121%	15%	162%

Source: Company SEC filings; CPI-U

However, as noted, all five firms added stations to their portfolio after 2016. Accordingly, we present these revenue changes on a per-station basis (Figure 9) and a per-market basis (Figure 10). These data are still heavily impacted by each company's entry and exit into and out of non-local TV businesses. Nexstar's and Gray's performances are good indicators of the general trajectory of the local broadcast TV business during this period. Certainly these data capture how much the local TV political advertising business has grown since 2016. During the 2024 election cycle, all of these largest five broadcasting chains saw double-digit or triple-digit percentage growth in their inflation-adjusted political advertising revenues compared to the 2016 cycle, even on a per-station and per-market basis.

Figure 9

Change in Per Station Inflation-Adjusted Values 2016 vs. 2024 (%)	Operational Revenues	Advertising Revenues	Political Advertising Revenues
Sinclair	-28%	6%	46%
Nexstar	96%	48%	113%
Gray	70%	27%	109%
TEGNA	-14%	-37%	33%
EW Scripps	21%	-37%	44%

Source: Company SEC filings; CPI-U

Figure 10

Change in Per Market Inflation-Adjusted Values 2016 vs. 2024 (%)	Operational Revenues	Advertising Revenues	Political Advertising Revenues
Sinclair	-28%	7%	47%
Nexstar	101%	52%	119%
Gray	65%	23%	103%
TEGNA	-11%	-34%	38%
EW Scripps	32%	-31%	57%

Source: Company SEC filings; CPI-U

We next examine the changes in these five ownership groups' publicly traded stock prices since the stock market's bottom in March 2009 to the end of 2024 (see Figure 11).[221] We also include Entravision, which is the next largest publicly traded local broadcast TV firm, but which has a station portfolio that contracted slightly during this period (see Figure 21). During this time, the S&P 500 increased seven-fold (693 percent). The three largest local TV chains all outperformed the broader market, with Nexstar's share price increasing 21-fold. Sinclair's performance is notable given the RSN bankruptcy misstep.

Figure 11

Change in Share Price Since Early 2009 Great Recession Market Bottom (March 2009–Dec 2024)	
Nexstar	20963%
Sinclair	1341%
Gray Media	855%
TEGNA	465%
E.W. Scripps	94%
Entravision	518%
S&P 500	693%

Source: Free Press Analysis. Values calculated using months-end stock prices, begining with Feb. 27, 2009, ending on Dec. 31, 2024. Actual market bottom was on March 9, 2009.

[221] The values presented do not represent total yield during this period, as dividend payments are not included in the calculation.

Because of all of the various business moves that impacted each of these firms' revenues during the comparison period, we next examine two key profitability metrics that enable meaningful comparisons not greatly impacted by one-off events. First, we examine the local broadcast firms' Return on Capital (ROC). This is a useful measure as, over time, successful firms that return value to shareholders should be earning a return on capital that exceeds their cost of capital.[222] Below in Figure 12, we show the ROC for the local broadcast firms, for each firm's entire time as a publicly-traded company. And in Figure 13 that follows, we present ROC values for six other advertising-supported firms (Alphabet, Meta, Warner Bros. Discovery, IAC Corp., Paramount/CBS, and Fox Corp).

All of the local broadcast TV firms had average ROC values between 5 and 8 percent during their time as publicly traded companies. These are reasonable returns that for most time periods would exceed each firms' cost of capital. These returns are also comparable to, or larger than, the ROCs observed at Warner Bros. Discovery, IAC Corp., Paramount/CBS, and Fox Corp. Alphabet and Meta both had ROCs that were above all other firms in this comparison. Those two companies are also widely viewed as some of the most financially successful firms in history, and their businesses have attracted significant antitrust attention.

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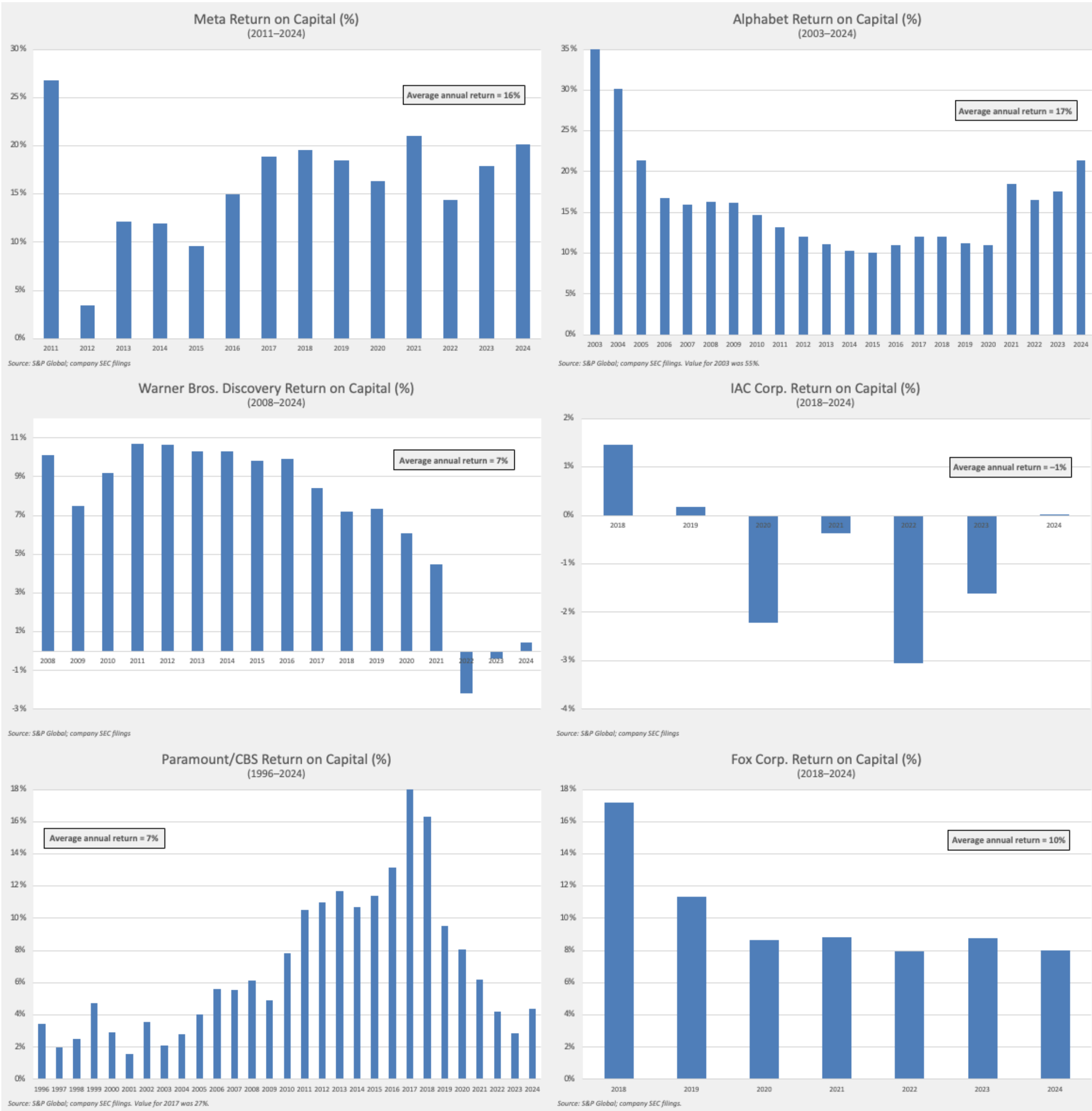
[222] *See* Aswath Damodaran, "Return on Capital (ROC), Return on Invested Capital (ROIC) and Return on Equity (ROE): Measurement and Implications" 5, Stern Sch. of Bus., (July 2007).

Figure 12: Historical Return on Capital of Major Local Broadcast TV Companies

Figure 13: Historical Return on Capital of Other Advertising-Supported Companies



We next conduct a similar comparison of these companies' EBITDA margins. EBITDA (Earnings Before Interest, Taxes, Depreciation, and Amortization) margin is a useful profitability metric that reflects how much revenue a firm converts into operational earnings, before considering certain (often one-time, or irregular) expenses.[223]

[223] "What is EBITDA," *Money* (Feb. 26, 2024).

Figure 14: Historical EBITDA Margins of Major Local Broadcast TV Companies

Figure 15: Historical EBITDA Margins of Other Advertising-Supported Companies

As seen above in Figures 14 and 15, the local broadcast TV companies all have healthy margins, which match or exceed what is commonly considered a "good" EBITDA return.[224] Most of the local broadcasters' average historical EBITDA margins are comparable to

[224] *See, e.g.*, Louise Downing, "Understanding the EBITDA Margin (With Formula)," *Am. Express* (June 3, 2024) ("A good EBITDA margin may fall between 15% and 25%, says Simon Thomas, Managing Director of accountancy firm Ridgefield Consulting. Generally, the higher the EBITDA margin, the greater the profitability and efficiency of a company.").

Alphabet's, and exceed the historical returns seen at Warner Bros. Discovery, IAC Corp., Paramount/CBS, and Fox Corp.

Figure 16:

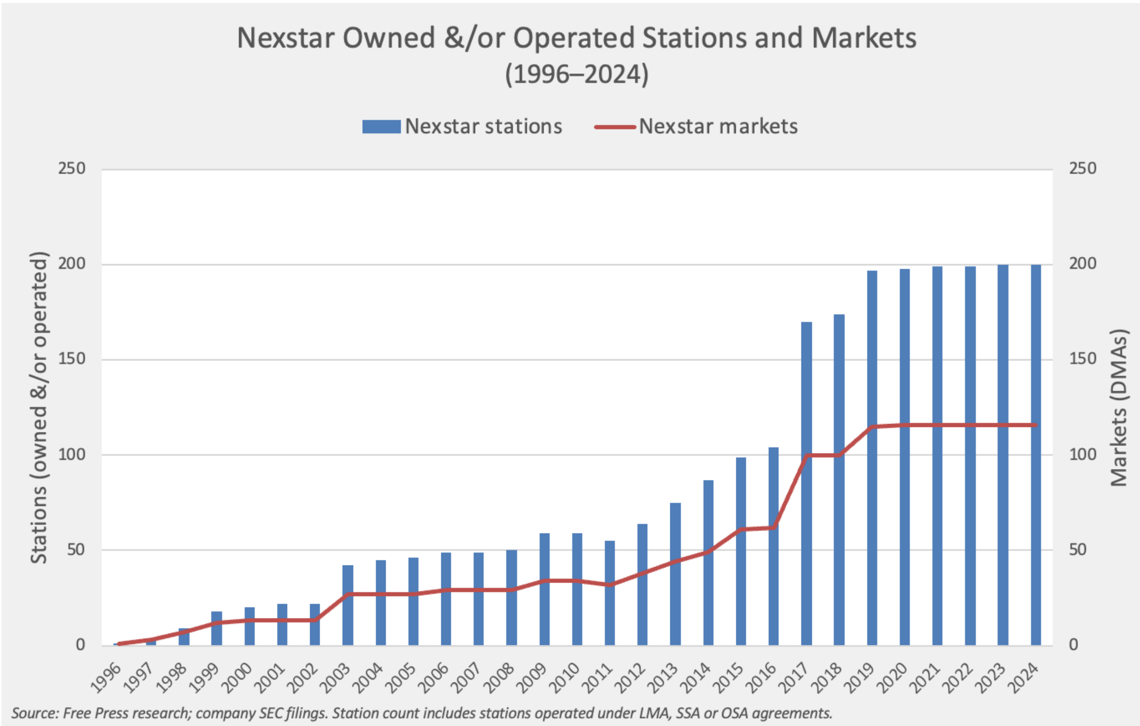


Figure 17:

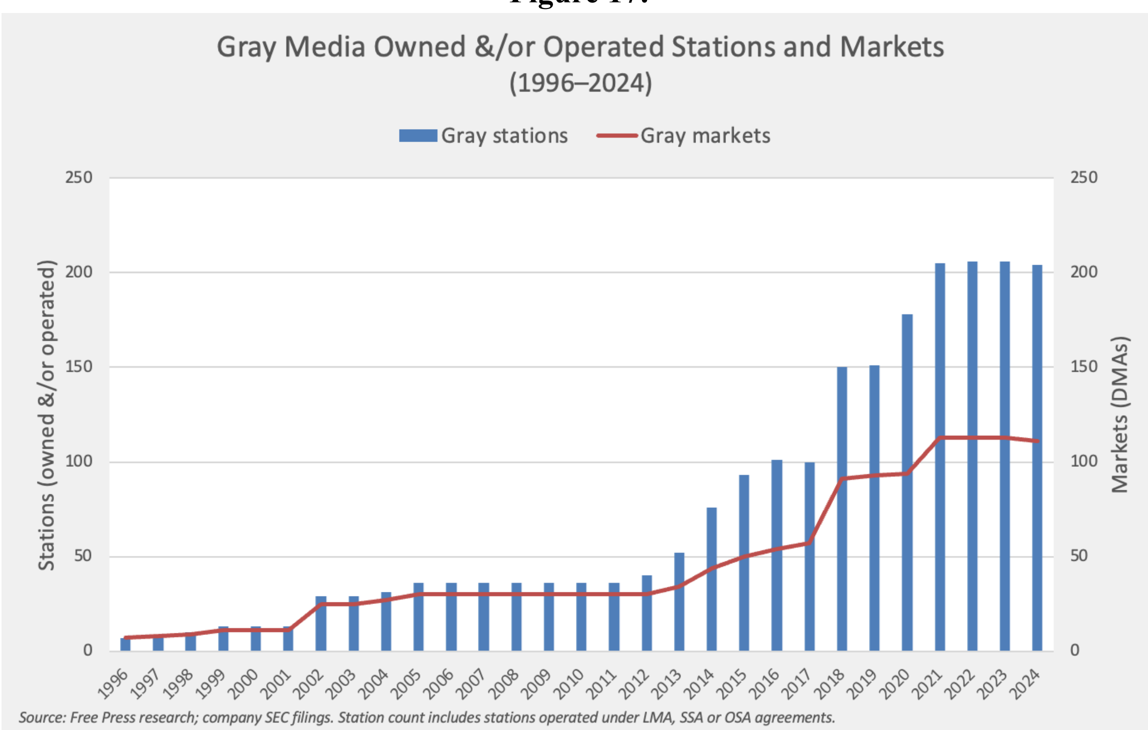


Figure 18:

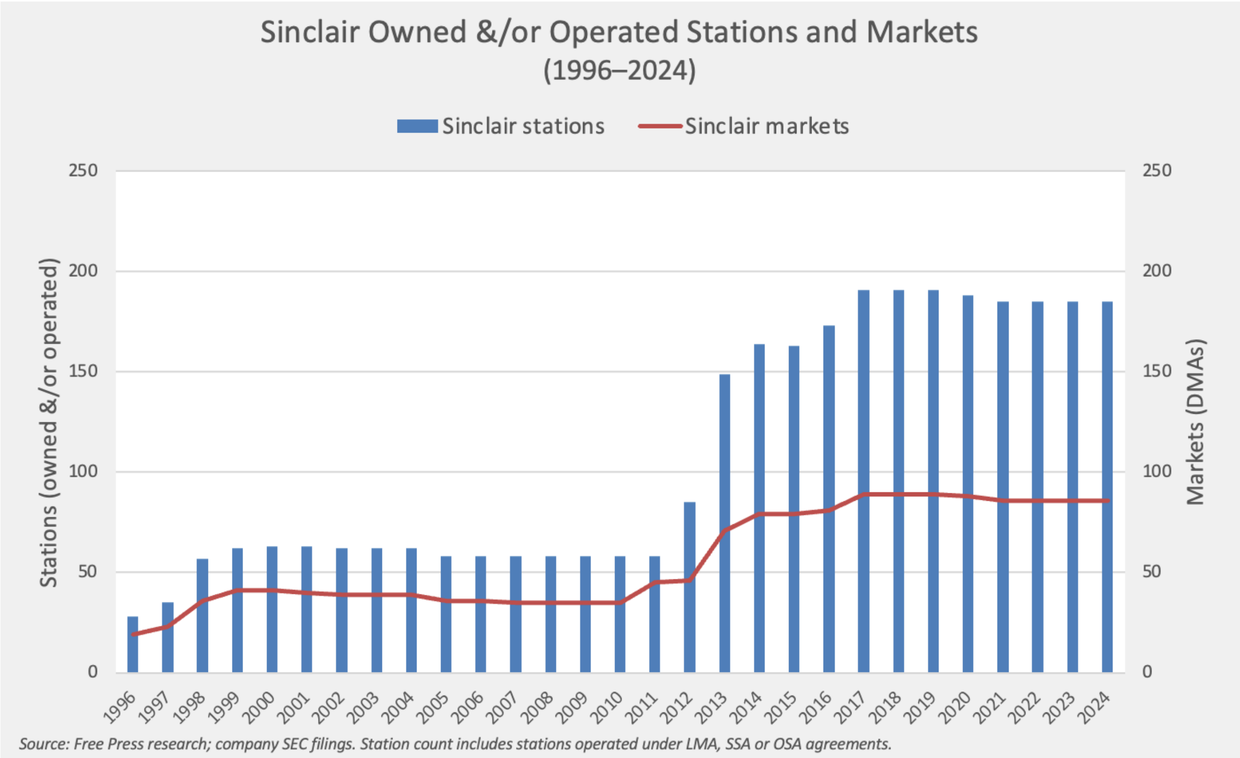


Figure 19:

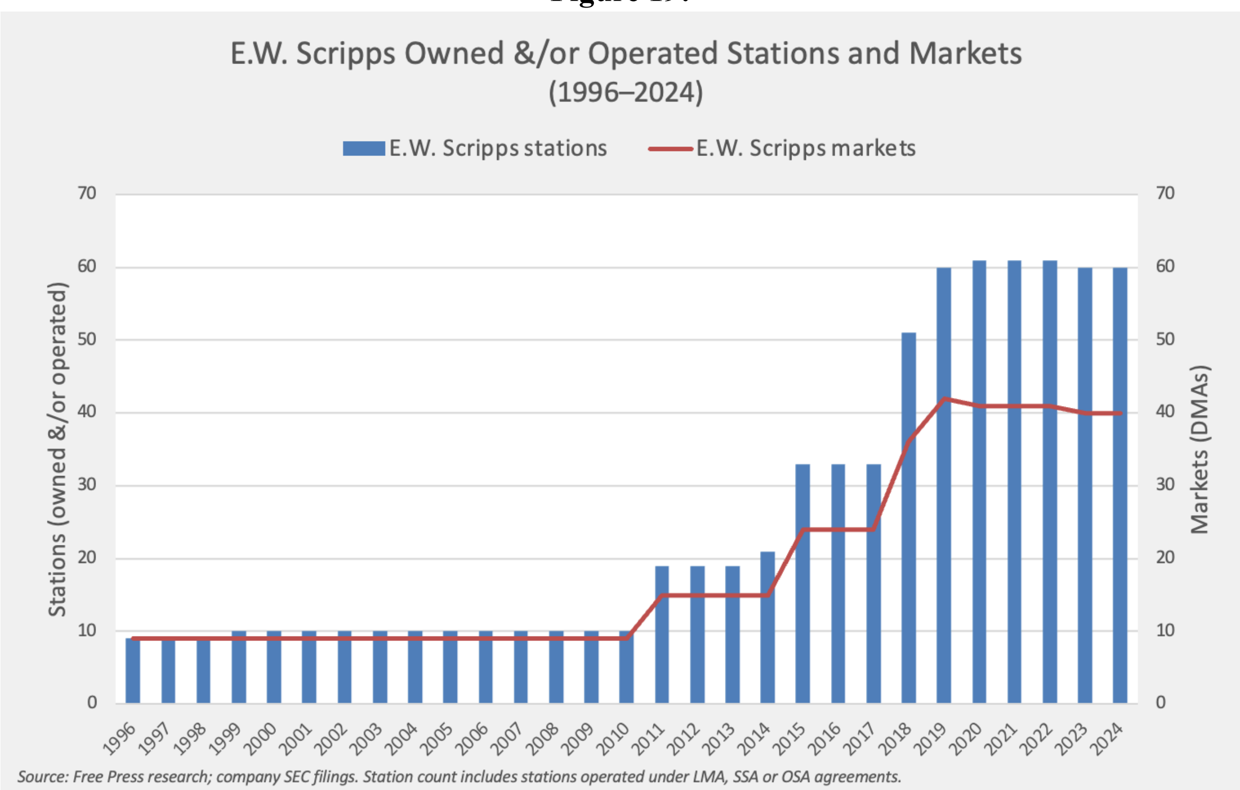


Figure 20:

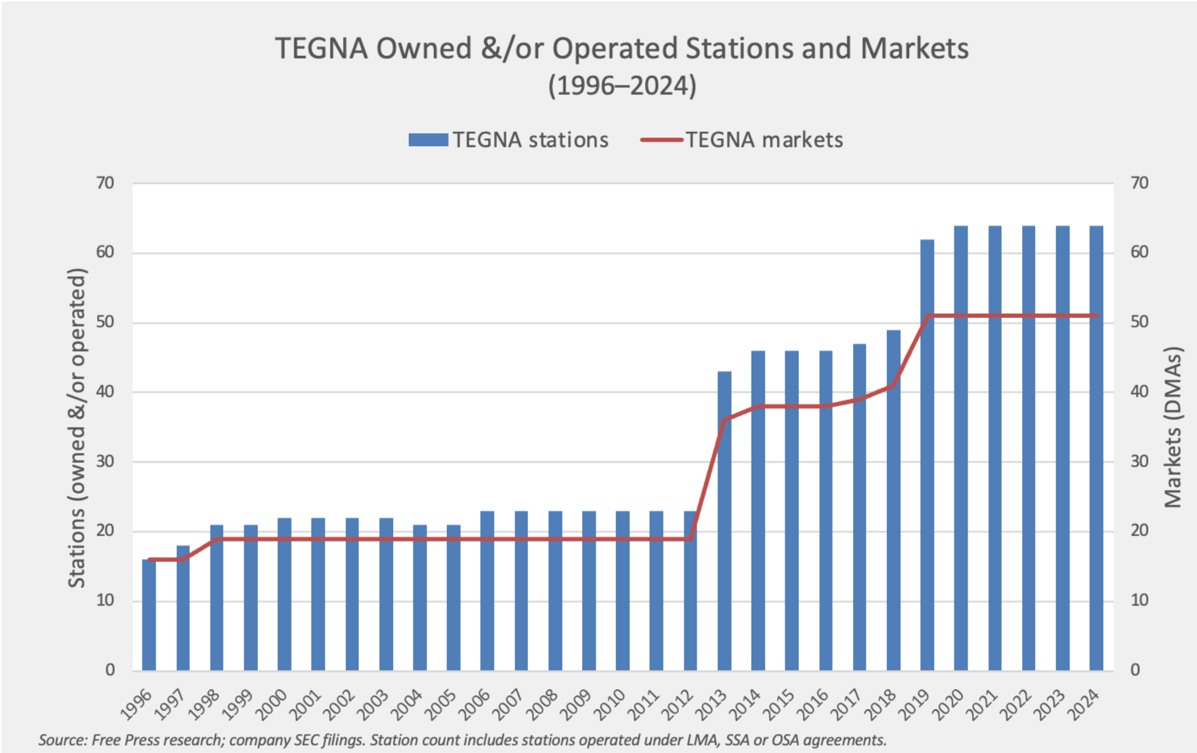
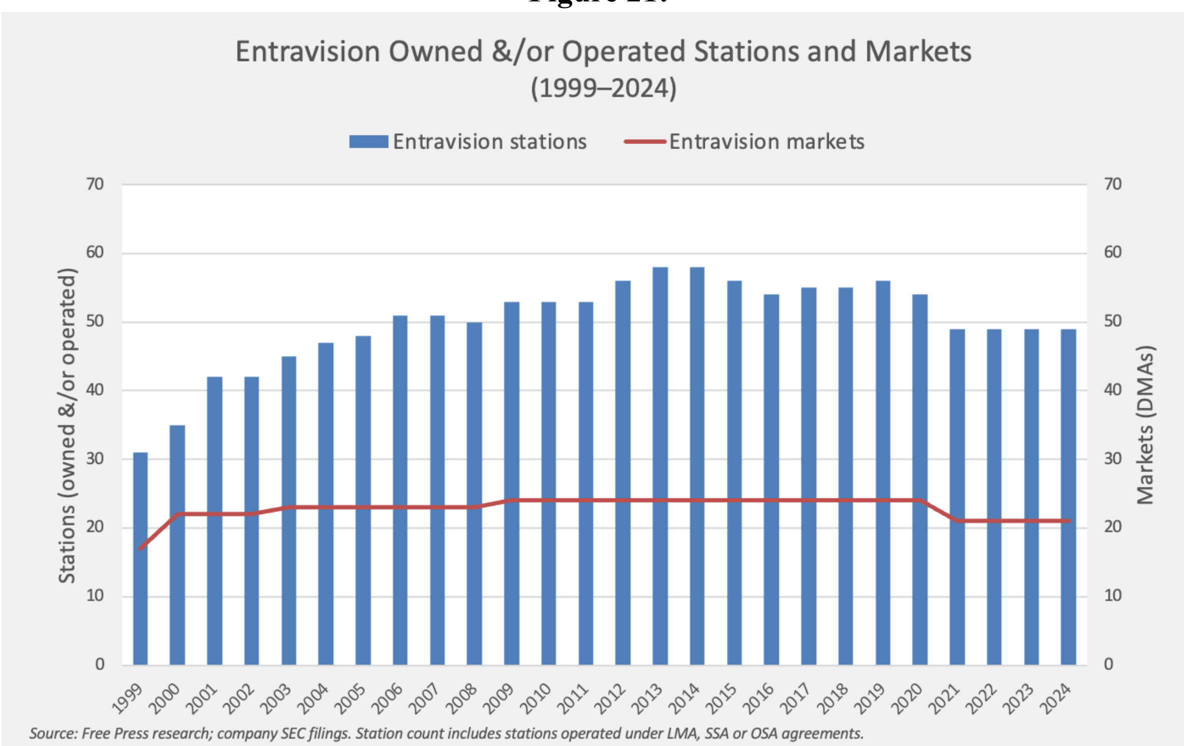


Figure 21:



F. Local TV Broadcasters Have Many New Revenue-Generating Opportunities to Pursue Outside of National Consolidation.

The local television broadcasting industry's financial performance, while that industry was subject to the 39 percent national cap, was more than adequate for these companies to return value to shareholders. And even as they claim the need for more complete deregulation, these same companies project a bright financial future that local broadcasters have ahead of them, even if the Commission chooses to follow the law and declines to eliminate or raise the national caps.

a. Broadcasters Expect to See Continued Healthy Local Advertising and Retransmission Consent Payment Growth Thanks to Strong Viewer Demand for Live Local Sports and News Programming.

As we recounted above, leading local broadcast company executives were ebullient about the future of their industry when speaking to investment analysts last summer. That came at a time when they could not know for sure there would be an FCC willing to raise Congress's 39 percent national cap, all to allow broadcasters further power to monopolize local DMAs. And their optimism was well-founded. Cord-cutting appears to be slowing instead of accelerating as it did in recent time periods, and the remaining linear TV subscribers place high value on live sports and local news. They also are a more affluent demographic sought out by advertisers.[225]

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[225] *See, e.g.*, Gliha 2024 Bank of America Comments ("The other piece that we offer is news and the overlap between what also do[ ] sports fans like, 90% of them also like news. And so it's a great sort of combination. So if you look at the composition of the pay TV ecosystem that was sports and news fans in 2019, it was 51%. Now what is that in 2023, it's 68%. And the actual quantum of sports and news subscribers has actually increased. Now if you look at people that are not interested in sports or news . . . the content is not really kind of our bread and butter. That's decreased from 14% in 2019 to 4% in 2023. So a large portion of that attrition that's been happening has been the folks that are not interested in sports or news. So we're now at this point where . . . those people are out of the ecosystem and maybe we have a moderation. You would look at that data and go, no, that sounds like that could be a thesis that would make sense. And then that's supplemented by the second thesis . . . which is the age, the demographics. So if you look, almost 2/3 of the pay TV ecosystem now is people that are 45-plus. And if you look 5 years ago, it was 59% of the population. So again, you've seen sort of the people that are the demographic, the younger demographic that wanted to leave have left. . . . And we think that sort of will be a very good positive change for our business.").

And though the advertising sector is vulnerable to pull-backs in times of economic uncertainty, broadcast executives have repeatedly told Wall Street that their local ad business is faring far better than the national spot market, because the local ad business tends to be "much more stable than the national market."[226] There's also no sign of the political ad machine slowing down, with S&P Global forecasting compound annual growth rates in this category to exceed the Federal Reserve's two percent inflation target in the coming decade.[227] And we previously discussed the industry's and analysts' expectations that they will be able to continue to count on retransmission consent and vMVPD carriage payment growth exceeding inflation for years to come as well.[228]

Much of this optimism is built on the continued high levels of viewer demand for live sports, and the local broadcasters' recent moves to strike deals with local teams and sports leagues[229] to air games that were once only available on national cable sports networks and

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[226] *Id.* ("We generate somewhere – 68% to 70% of our revenue on the advertising side comes from the local market and the local market tends to be much more stable than the national market, because [the] local market is more call to action versus the national market, which is more branding. And so I would say, we've been seeing a sequential improvement in the rate of decline for the last few quarters . . . on the advertising side."); *see also* Lougee Aug. 2024 Comments ("The economy continues to proceed with a sluggish and uncertain pace, and that's been echoed in national ad spend, which is lower than we anticipated going into the year. That said, local advertising is faring well considering the headwinds facing national as small and medium local businesses show [ ] more willingness to spend."); Justin Nielson, "US TV and radio station ad projections, 2025–2035," *S&P Glob. Market Intel.* (July 1, 2025) ("S&P Projections") ("Over the [2025–2035] forecast, US TV station national core spot ad revenue should decline at a 5.0% CAGR to $3.07 billion in 2034. Local spot ad revenue is forecast to be more resilient to digital alternatives and increase at a 1.5% CAGR to $14.43 billion in 2034.").

[227] *See* S&P Projections.

[228] *See, e.g.*, S&P Complete Picture*;* Comments of Perry A. Sook, Founder, Chairman & CEO, Nexstar Media Group, Inc., Citigroup 2024 Global TMT Conference (Sept. 4, 2024) ("Nexstar has been collecting distribution checks from MVPDs since 2005, and we continue to post linear growth. So the rate of change in unit rate is, has been sufficient to outrun the decline in the universe, right? And that has been a part of our thesis. Again, why? Because the bulk of what we're negotiating for are broadcast stations and not cable networks.").

[229] *See* S&P Projections ("An additional catalyst in the local ad revenue forecast is the influx

RSNs.[230] Nexstar in particular has made a conscious effort to shift the balance of programming towards sports, which it expects will soon be the majority of the content it airs on the CW network.[231] And former TEGNA CEO David Lougee noted last summer, "a great deal of the most passionate and consumed local sports content is returning to local broadcasting."[232] This trend is accelerating, and it will keep broadcasters' bottom lines growing, even if they are not allowed to monopolize the public airwaves even more at the national level and within DMAs too.

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of TV station owners' local over-the-air sports rights deals, with sports partnerships from Gray Media Inc., The E.W. Scripps Co., Nexstar Media Group Inc., Sinclair Inc. and TEGNA Inc. indicating future upside in overall ratings and local ad revenue potential in the companies' markets."); *see also* Comments of Sandra Breland McNamara, Executive VP & COO, Gray Television, Inc., Q2 2024 Investor Call (Aug. 8, 2024) ("Our strong local stations proved themselves over the past year as they demonstrated the power of television to a large number of local professional sports teams and fans alike. In the last 2 weeks, as Hilton mentioned, we announced the launch of Rock Entertainment Sports in partnership with Dan Gilbert's sports and entertainment properties as well as Palmetto Sports & Entertainment, a new statewide sports network in South Carolina. Throughout this year, we have been working aggressively on a number of other opportunities to bring more sports back to local broadcast television stations.").

[230] *See, e.g.*, Comments of Robert D. Weisbord, COO & President of Local Media, Sinclair, Inc., Q2 2024 Investor Call (Aug. 7, 2024) ("One of the most important assets broadcast TV has as an industry are live sports programming assets, which drive the highest viewing audiences of the year. As we noted last quarter, 97 of the top 100 most watched telecasts in 2023 were on broadcast TV, with the other 3 being college football playoff games. 96 of the top 100 most watched telecasts were sports programming content, with the National Football League contributing 93 of the top 100. . . . In addition, we have several professional franchises begin to shift more and more of their on-air games to local broadcast stations and away from cable and regional networks. . . . With limited exposure to near-term league renewals across the sports landscape, we continue to expect sports programming to be an important driver of broadcast value proposition to our viewers for many years to come.").

[231] *See, e.g.*, Sook Sept. 2024 Bank of America Comments.

[232] *See* Lougee Aug. 2024 Comments ("The recently announced NBA network deals is a notable milestone that I don't think has been adequately reported on. Specifically, the deal with NBC signifies a huge shift away from paid cable to broadcast for the league. As we've talked about before, that's no accident. . . . [A]t its core, the implications of this trend are important. A great deal of the most passionate and consumed local sports content is returning to local broadcasting.").

b. Continued Advances in Digital Broadcast Transmission Technology Create New Revenue Opportunities for Broadcasters.

There will likely come a time in the distant future when broadcast viewership declines to an inflection point—one when station owners are no longer able to squeeze out ever-increasing retrans payments and command higher and higher prices for local spot ads. But even if that time comes sooner than anticipated, it does not mean that broadcasters' financial fortunes will follow the same trajectory as other industries that have entered secular decline (such as the local print business).

Broadcasters are already moving their operations more into the digital realm, taking advantage of so-called "connected TV" advertisements and reaching consumers nationwide through FAST platforms.[233] Online services like LocalNow, NewsON and Zeam are just a few of the new ways for local broadcasters to reach cord-cutters, and generate significant revenues through digital ad targeting.[234] Social media companies are increasingly turning to local

[233] *See, e.g.*, Comments of Donald Patrick LaPlatney, President, Co-CEO & Director, Gray Media, Inc., Q2 2024 Investor Call (Aug. 8, 2024) ("Our digital businesses are also continuing to grow audience and revenues. In the second quarter, we once again set new records for engagement as well as double-digit growth in the number of digital advertisers and in total digital revenue which we include in core ad revenue. Our Connected TV and FAST Channel offerings continue to roll out finding viewers and attracting advertisers in this important and growing part of the ecosystem."); Lougee Aug. 2024 Comments ("We're especially seeing that at Premion, our industry-leading CTV sales platform that serves the local marketplace. Our hypothesis continues to hold true that the local market will continue to adopt CTV advertising and Premion is well positioned to capitalize on this opportunity. Our Premion sales footprint reaches almost 80% of U.S. households and there's considerable upside cross-selling to our existing linear customers as they increasingly adopt CTV. We're confident our recent acquisition of Octillion, which marries cutting-edge technology with Premion sales acumen, will further accelerate the combined businesses.").

[234] *See, e.g.*, "News-Focused Local TV App Zeam Expands To LG," *Radio and Television Bus. Report* (July 8, 2025).

broadcasters to license their content.[235] And local TV broadcasters are even getting into the sports podcast business.[236]

ATSC 3.0 technology is expected to provide a huge boost to broadcasters' bottom lines as they use their spectrum to become important players in the internet-of-things and datacasting markets.[237] Broadcasters are already pressuring the Commission to force a technology transition to ATSC 3.0, which will allow them to "fully monetize ancillary uses" of the public airwaves.[238] Broadcasters view this new transmission standard as a way for them to do "what cable did" and move from one-way video distribution to two-way datacasting, something that will generate billions in new revenues, but will likely go towards higher CEO pay tied to company stock prices rather than towards quality journalism.[239]

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[235] *See, e.g.*, David Bauder, "Nextdoor social site, looking for a revival, pins hopes on partnership with local news providers," *Associated Press* (July 15, 2025).

[236] *See, e.g.*, Ripley Sept. 24, 2024 Comments ("And our podcast business, which we don't talk a lot about, but we just launched 2 new sports-focused podcasts. I encourage you all to check them out, one called the Triple Option, the other called Throwbacks. This last week, they were the #1 and #2 sports broadcasts in the country. So having a lot of success there.").

[237] *See, e.g.*, S&P Projections ("Digital/online should be the fastest-growing ad category . . . on the promise of streaming initiatives and NextGen TV, which enhances capabilities for ultra-high definition (UHD), high dynamic range (HDR), multicasting, targeted advertising, spectrum leasing for the internet of things, and subscription-based premium content.").

[238] *See, e.g.*, Sook Q1 2025 Comments ("In addition to our deregulatory agenda to level the playing field and to enable consolidation, we are also seeking to obtain a firm transition date for ATSC 1.0 standards to ATSC 3.0 standard, which will support and advance our rollout of high-speed data transmission and other services to allow us to fully monetize ancillary uses of our spectrum.").

[239] *See, e.g.*, Sook Sept. 2024 Bank of America Comments ("I think our industry, the local broadcast station industry, has the ability to make a similar pivot to what cable did, which distributed legacy video through those pipes and are now distributing data through those same pipes. We have the ability to do the same thing. We still have video on the air, our television product. But ATSC 3.0, next-gen TV is an IP-based transmission schema, which is in sync with all the other devices you have in your hand or your home, but it's also in sync with the rest of the world that's adopting this technology. So it's a more efficient use of the spectrum. So I still have the same 6 megahertz to play with, but I can do more things, because it's a more efficient transmission schema. So we're focused on, first and foremost, the business applications and think that the follow-on of that will be the consumer applications, which is a better picture,

V. Conclusion

The Commission does not have the authority to increase, differentially apply, or eliminate the national cap explicitly set by Congress. And even if the Commission did possess this authority, lifting the cap to allow unchecked national consolidation would cause irreparable harm to the public interest. Stifling competition and diversity through national conglomeration would deal a fatal blow to localism, as national owners follow their economic incentives that lead them away from adequately serving the information needs of local communities.

Respectfully Submitted,

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August 4, 2025

higher-quality audio, but we have to retrofit everything we do, like we did when we transitioned from analog to digital. . . . But the upside is, we see, in 10 years, the ability to make as much money from ancillary uses of our spectrum as we do from distribution revenue today, and that would be for our industry, $15 billion, and for our company, something in the $2.5 billion range. So if that's all net to equity, you can imagine how exciting that could be for those of us that own the stock.").