
**Hearing on**

**“We Interrupt This Program: Media Ownership in the Digital Age”**

**United States Senate**

**Committee on Commerce, Science, and Transportation**

**February 10, 2026**

**Statement of Curtis LeGeyt**

**President and CEO**

**National Association of Broadcasters**

## Introduction

Good morning, Chairman Cruz, Ranking Member Cantwell and members of the committee. My name is Curtis LeGeyt, and I serve as President and Chief Executive Officer of the National Association of Broadcasters (NAB). I am proud to testify today on behalf of nearly 1,300 free, local over-the-air television stations that serve your constituents every day.

Local broadcast television is simple to describe, but hard to replace. It is free. It is local. It is accountable to the public interest obligations that come with a broadcast license.

When your constituents need verified information quickly, they turn on the television and tune to local broadcasting. When severe weather hits, when a wildfire moves fast, when a bridge collapses, when a child goes missing, local stations deliver factual, lifesaving information in real time without a paywall.

That service requires investment in journalists, on-air talent, meteorologists, producers, engineers, towers, studios, safety equipment and modern technology. The national broadcast television ownership cap makes that investment harder by limiting broadcasters' ability to compete for audience, advertising and programming in a marketplace that no longer resembles the one that existed when this rule was created. It is past time to level the playing field and eliminate this antiquated restriction.

## The Problem: A Twentieth-Century Cap in a Twenty-First Century Market

When the Federal Communications Commission (FCC) first imposed limits on the national and local ownership of broadcast TV stations, Franklin D. Roosevelt was president. Cable and satellite TV didn't exist. The internet was a fantasy. Big Tech was a 2,000-foot-tall radio tower. Yet nine decades later, these rules remain, preventing TV broadcasters from owning more than two outlets in any local market[1] and restricting a broadcaster's national reach at 39 percent of TV households.[2]

These outdated rules unfairly skew today's video and advertising markets. None of the dominant competitors that shape what Americans watch face these limits. Global streaming platforms, Big Tech video services and digital advertising giants can reach every household. Broadcast television alone remains boxed in.

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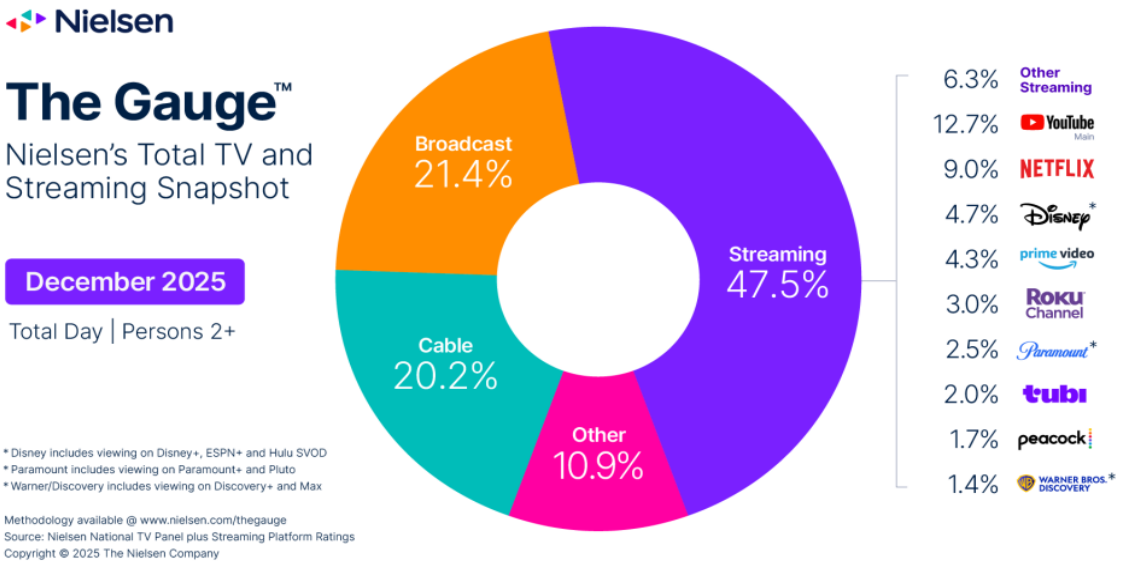
[1] 47 C.F.R. § 73.3555(b). The local TV rule prohibits the common ownership of more than two full-power commercial TV stations in any of the 210 Designated Market Areas (DMAs) in the U.S., regardless of the number of stations or competitive conditions in these widely disparate markets, ranging from New York City to Glendive, MT.

[2] 47 C.F.R. § 73.3555(e). The national TV rule bans the common ownership of full-power commercial TV stations that reach, in the aggregate, more than 39 percent of TV households nationwide. For purposes of calculating "reach," the rule discounts the presumed 100 percent reach of UHF stations by half. *Id.* at § (e)(2).

Digital technologies and the internet have completely transformed the video and advertising markets, making a broadcast-only ownership cap obsolete.[3] Global streaming platforms now account for roughly half of total viewing, yet broadcasters are still restricted from reaching TV households nationwide. This means we cannot effectively compete for audiences, advertising revenues and premiere programming. As a result, local stations' most important public service – offering news, emergency information and valued entertainment and sports programming in local communities at no cost to the public – is in jeopardy.

**Audience Viewing Habits and Advertising Markets Have Changed**

The notion that local broadcasters compete only against one another for audience and programming rights is out of step with the reality of today's media marketplace. According to recent Nielsen data, streaming platforms comprise nearly half of all television viewing, more than double that of all broadcast television outlets combined. And those figures understate streaming's advantage because they do not fully capture mobile viewing on iPhones and tablets.[4]



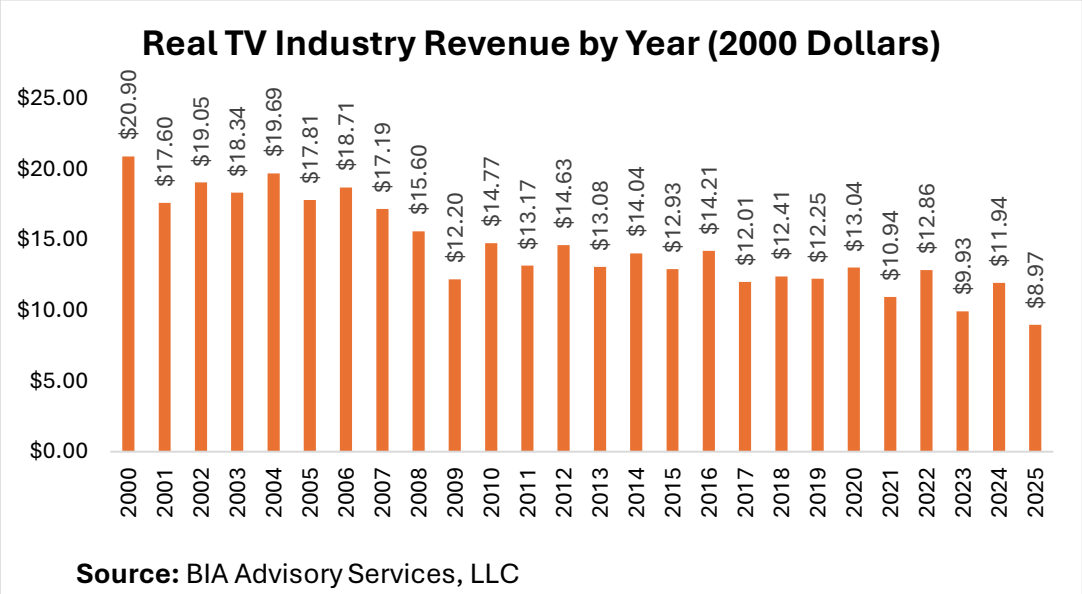

This growth in streaming viewership has been accelerated by the migration of premiere live sports away from broadcast stations to behind these paywalled tech platforms. For example, Amazon Prime Video viewing surged in December due to its streaming of four

[3] *See, e.g.*, Comments of NAB, MB Docket No. 22-459 (Dec. 17, 2025); Comments of NAB, MB Docket No. 17-318 (Aug. 4, 2025); Written Ex Parte Communication of NAB, MB Docket No. 17-318 (Apr. 2, 2025).
[4] The Gauge also does not include viewing of YouTubeTV, the linear virtual multichannel video programming distribution service, in YouTube's streaming share. Yet YouTube alone still garners about 60 percent of the share of total TV usage garnered by all broadcast television. The "Other" category in The Gauge includes video gaming, DVD playback, audio streaming, unmeasured video on demand, etc.

NFL Thursday night games, including on Christmas Day. Netflix also featured back-to-back NFL games on the holiday.[5] And every major sports league, including Major League Baseball, the National Basketball Association, the National Hockey League and the NCAA now distribute significant numbers of in-market and out-of-market games through global streaming platforms. The bottom-line is that while we value the ongoing relationship that these leagues and teams have with local broadcasters and our networks, the games that once anchored free, over-the-air viewing are increasingly balkanized across subscription services to the detriment of local stations, our viewers, and the communities that rely on us. Greater scale is needed to allow our industry to better compete for these rights.

The advertising marketplace has shifted even more. Digital advertising is now the majority of local ad spending, and most of that money does not stay in communities.[6] It flows to digital platforms that do not maintain local newsrooms, weather operations or public safety infrastructure. Meanwhile, broadcast television advertising revenue has declined sharply. These trends are the economic reality behind what many communities are experiencing: fewer reporters, tighter budgets and increasing difficulty sustaining robust local journalism.

As shown in the graphic below, broadcast television station industry advertising revenues have declined by nearly 60 percent over the past 25 years on a real (i.e., inflation adjusted) basis.




**Source:** BIA Advisory Services, LLC

[5] *See* Nielsen, *Streaming Shatters Multiple Records in December 2025 with 47.5% of TV Viewing, according to Nielsen's The Gauge*, nielsen.com (Jan. 20, 2026).

[6] According to Borrell Associates, local digital advertising reached $103 billion in 2024, accounting for about 70 percent of all local ad spending. This report reconfirmed that the "lion's share of digital advertising" leaves local markets and "goes to the pureplay digital companies such as Google, Facebook, and others," with local outlets, including TV and radio stations and newspapers, capturing only about 15 percent of all locally spent digital advertising. Digital platforms' reshaping of the advertising market has radically undercut support for locally-based media and journalism, and these trends will only continue, with Borrell estimating that local digital ad spend will reach nearly $121 billion by 2028. Borrell Associates, *2025 Annual Report Benchmarking Local Digital Media*, at 5-9 (May 15, 2025).

Outside of the largest markets, the advertising marketplace is even more dire. Television stations in mid-sized and small markets earn only a fraction of the ad revenues garnered by stations in the largest markets. In 2024 the average TV station in DMAs 51-100, 101-150 and 151-210 garnered merely 23.5 percent, 17.6 percent and 12.1 percent, respectively, of the ad revenues earned by the average station in the 10 largest DMAs.[7] Steady declines in ad revenue hurt local TV stations' ability to deliver high quality programming, hire and retain talented staff, maintain local newsrooms and serve our communities effectively.

**The National Ownership Cap Doesn't Merely Limit Growth, it Hurts Local Viewers**

The current broadcast ownership restrictions impair our ability to realize important economies of scale, acquire and produce content, attract more viewers, earn necessary ad revenues, obtain needed investment and provide free service to local communities. These rules undermine localism and hurt competition in the video and advertising markets by keeping broadcasters artificially weak and unable to offer robust competition to other content providers and ad platforms.

Streaming, Big Tech and social media platforms operate at a significant competitive advantage without these constraints. They scale, invest, acquire rights, capture advertising and reinvest nationally and globally without regulatory restrictions. As a result, they have tremendous advantages over TV broadcasters in the programming market. Eliminating the national cap would enable TV broadcasters to better compete for advertising, produce or purchase more and better programming (including premiere sporting events), and invest in local journalism. This means increased competition and more and better content, all of which is freely-available to consumers.[8]

**Scale is Not the Enemy of Localism. It is Often What Makes Localism Possible**

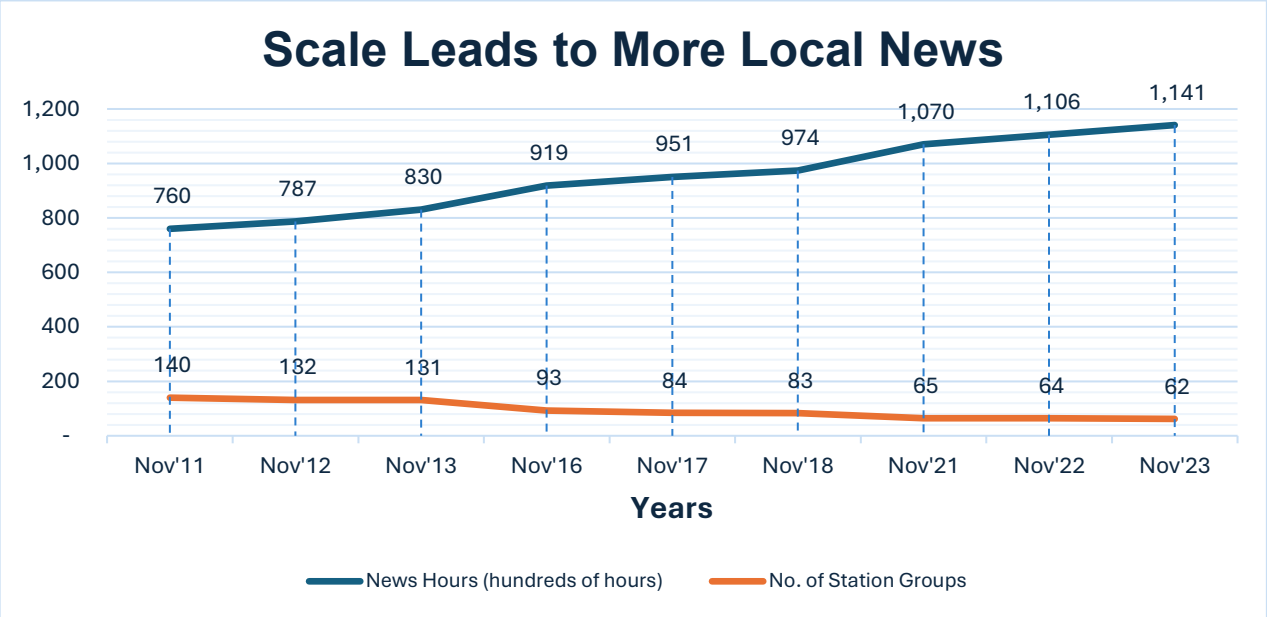
Economists have found that TV broadcasting, and especially local news production, is subject to strong economies of scale and scope. Restricting broadcasters' ability to scale leads to "higher costs, lower revenues, reduced returns on invested capital," resulting in significantly less local news.[9] The FCC itself has concluded that the "efficiencies of

[7] Comments of NAB, MB Docket No. 22-459, at 95 (Dec. 17, 2025) (citing BIA data).
[8] NAB earlier documented the extremely high costs (running into the tens of billions of dollars) of acquiring or producing entertainment programming and the millions local TV stations expend annually on local news programming, made all the more challenging for broadcasters due to ownership rules limiting our audience reach and thus our revenue base. *See, e.g.*, Written Ex Parte Communication of NAB, MB Docket No. 17-318, at 21-26 (Apr. 2, 2025) (documenting programming costs, including local news costs that routinely represent around one third of many stations' total annual expenses).
[9] J.A. Eisenach and K.W. Caves, *The Effects of Regulation on Economies of Scale and Scope in TV Broadcasting*, at 2-3 (June 2011), attached to Reply Comments of NAB, MB Docket No. 10-71 (June 27, 2011) (explaining that economies of scale are, by definition, "associated with falling unit costs of production – that is, with the production of more output," such as programming, "at lower average cost – and hence are *prima facie* welfare enhancing"). *Id*. at 1. *Accord* Decl. of M. Israel and A. Shampine, Comments of NAB, MB

common ownership" enable TV stations to "provide more high-quality local programming, especially in revenue-scarce small and mid-sized markets."[10]

The need is urgent. The Radio Television Digital News Association (RTDNA) reports that fewer than half of TV stations now say their local news operation is profitable, after several years of decline.[11] Facing high and ever-rising news production costs and declining ad revenues, some broadcasters are simply unable to continue maintaining their own separate local news operations.[12] Financial pressures also have led many local stations to decrease their TV news budgets, and the pressure is real across market sizes.[13]

Importantly, data show that when station groups have been able to achieve greater scale, local news output increased materially over time. As shown in the graphic below, from 2011-2023, as TV station groups producing and airing local news grew in size but fell in number (from 140 separate groups to 62, a 55.7 percent decline), the number of local news telecasts and hours of local news increased by 41.7 percent and 49.7 percent, respectively.




Docket No. 10-71, at Appendix B ¶¶ 49-51 (June 26, 2014) (finding that economies of scale and scope exist in TV broadcasting and that both lead to "increased investment in news programming"). These studies remain unrefuted.

[10] *2014 Quadrennial Regulatory Review*, Order on Reconsideration, 32 FCC Rcd 9802, 9834, 9836 (2017).

[11] B. Papper, K. Henderson and T. Mirabito, RTDNA/Syracuse University, *TV news profitability drops to lowest level since 2010*, at 1 (July 28, 2025) (TV News Profitability Report).

[12] The number of TV stations originating local news has dropped by 16 in the past two years, but the number of stations receiving local news from one of the nearly 700 stations originating news has increased by 20 (from 402 to 422) during that time. B. Papper, K. Henderson and T. Mirabito, RTDNA/Syracuse University, *Amount of local news stays steady – for a change*, at 3 (July 21, 2025).

[13] TV News Profitability Report at 3.

Permitting TV station groups to achieve greater scale will further enhance the quantity and quality of local and regional news. Ownership policy should strengthen the services communities value most. The national broadcast ownership cap does the opposite.

**The FCC has Authority to Repeal its National Broadcast Ownership Cap**

The Supreme Court has long recognized that the FCC has broad authority under the Communications Act of 1934 to adopt, modify or eliminate ownership rules as part of its public interest licensing framework.[14] That has never been in doubt. And contrary to the misleading arguments of those who oppose ownership modernization, Congress did not strip that authority by implication in the Telecommunications Act of 1996 or the Consolidated Appropriations Act of 2004.

In 1996, Congress directed the FCC to modify its rules to increase the national audience reach limitation to 35 percent.[15] All agree that directive did not convert the cap into a permanent statutory ceiling. In fact, when the D.C. Circuit Court of Appeals reviewed the FCC's early implementation of the 1996 statute, it confirmed that Congress had not "enshrined" the 35 percent cap into statute.[16]

In 2004, following the FCC amending the cap to 45 percent, Congress stepped in and changed the number to 39 percent through an appropriations rider that again directed the FCC to modify its rules. However, in doing so, Congress never removed the FCC's well-recognized authority to amend or eliminate the national television cap at a later date. Instead, Congress merely removed the FCC's affirmative duty to re-examine the rule on a fixed schedule through the agency's quadrennial review.[17] No one can point to any statutory directive expressly eliminating FCC authority to adjust the cap as it sees fit.

Simply put, as explained in more detail in the Appendix, Congress did not mandate a permanent cap, and nor did it prevent the FCC from revisiting the cap at a later date. As the FCC itself has consistently determined under Republicans and Democrats, the FCC retains authority to modernize or repeal the national TV rule.

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[14] *FCC v. NCCB*, 436 U.S. 775, 793-94 (1978) (upholding adoption of newspaper/broadcast cross-ownership ban pursuant to the FCC's authority under the Act to "issue regulations codifying its view of the public-interest licensing standard"). *Accord NBC v. U.S.*, 319 U.S. 190, 214-18 (1943) (finding that the Act grants the FCC "broad licensing and regulatory powers" and upholding adoption of chain broadcasting rules as permissible exercise of its power to license stations in the public interest); *U.S. v. Storer Broad. Co*. 315 U.S. 192, 201-203 (1956) (concluding that FCC had authority to impose rules limiting the multiple ownership of AM, FM and TV stations under its public interest rulemaking and licensing authority in the Act); *FCC v. Prometheus Radio Project*, 592 U.S. 414, 418 (2021) (while upholding the FCC's 2017 decision to repeal or relax several ownership rules, court stated that the FCC possessed broad authority under the Act to regulate broadcast media and, exercising that authority, it had historically maintained strict ownership rules).

[15] Telecommunications Act of 1996, Section 202(c)(1)(B).

[16] *Fox Television Stations, Inc. v. FCC*, 293 F.3d 537, 540 (D.C. Cir. 2002).

[17] *See* Appendix.

**Opposition to Eliminating the National Cap is Driven by Anti-Competitive Interests**

Many of the loudest opponents of reform are not motivated by protecting local service. They are direct competitors who benefit when broadcasters are held back, especially entities that want to limit broadcast competition while seeking scale for themselves. Others have maintained their decades-old positions on the issue that have remained unchanged even as the marketplace has been transformed by Big Tech and streaming dominance. What they have in common is a lack of credible legal or economic arguments and data to support their position.

The pay TV industry, including cable and satellite TV providers and one national cable programmer, has consistently opposed modernizing ownership rules, and even called for imposition of additional restrictions. All of this aims to keep broadcasters at a competitive disadvantage.[18] NAB has long urged the FCC – and now we urge Congress – to disregard the pay TV industry's advocacy to restrict broadcast TV stations that compete with them for viewers, advertisers and content and that negotiate with them for retransmission consent fees. Keeping TV broadcasters artificially small and weak may be in the pay TV industry's interest, but it is not in the public's interest. After all, pay TV providers and national cable programmers do not provide important local services, including the news and emergency information that only locally-licensed broadcast stations offer, if they have the financial wherewithal to do so. And none are freely-available.

Newsmax, a national pay TV channel, is among the most vociferous opponents of eliminating the national broadcast TV cap.[19] Newsmax does not want any TV station group expanding their national reach because that would provide more robust competition – and free, rather than subscription, competition – to its own news brand. This has nothing to do with safeguarding viewpoint diversity and everything to do with fearing the emergence of other strong, national competitors.

The committee should evaluate arguments based on what strengthens local journalism, preserves free access, improves emergency information and increases competition. Maintaining the national cap fails that test.

**What's at Stake for Your Constituents**

If the FCC's broadcast-only ownership limits remain frozen in time, the harm is not theoretical. It will show up in local communities. It will mean less local journalism and community-focused programming, and diminished access to premiere sporting events.

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[18] *See, e.g.*, Comments of The American Television Alliance, MB Docket No. 17-318 (Aug. 4, 2025); Comments of NCTA – The Internet & Television Association, MB Docket No. 17-318 (Aug. 4, 2025); Ex Parte Letter of DIRECTV, MB Docket No. 17-318 (Sept. 19, 2025); *see also* Comments of NCTA – The Internet & Television Association, MB Docket No. 22-459 (Dec. 17, 2025) (also calling for a stricter local TV rule).

[19] Comments of Newsmax Media, Inc., MB Docket No. 17-318 (July 23, 2025); Comments of Newsmax Media, Inc., MB Docket No. 17-318 (Mar. 19, 2018); *see also* Comments of Newsmax Media, Inc., MB Docket No. 22-459 (Dec. 16, 2025) (also opposing repeal of the local TV ownership rule).

Local journalism does not happen by accident. It takes sustained investment. The national broadcast television cap restricts the revenue base that supports those investments, especially as advertising shifts to digital platforms that do not fund local reporting.

Free, over-the-air access to major live programming is at risk. Live sports is among the most desired content. Its cost continues to rise dramatically, and streaming platforms with unlimited scale are buying more rights and placing them behind subscription paywalls. Broadcasters need a fair chance to compete so that more marquee programming remains available free and over the air.

Local stations must continue upgrading technology to improve emergency alerting, weather reports, accessibility and the overall viewer experience. A regulatory regime that suppresses investment works against these public interest outcomes.

**Conclusion**

Thank you for inviting me to testify today.

Local television broadcasters are proud of the service we provide to your constituents. We deliver our trusted local journalism, critical emergency information and valued programming, free and over the air.

But localism is an expensive value. Analog-era regulations that artificially limit broadcasters' ability to compete for investment, programming, audiences and advertising revenue weaken the very services policymakers say they want to protect.

We urge members of this committee to support the FCC in modernizing its broadcast ownership framework and eliminating the national television ownership cap.

I look forward to answering your questions.

**Appendix: Legal Analysis of FCC Authority to Eliminate the National Cap**

As consistently recognized by the Supreme Court since the 1940s, the Commission has broad authority under the Communications Act of 1934 to adopt, alter or eliminate broadcast ownership rules "codifying its view of the public-interest licensing standard."[20] In neither the 1996 Telecommunications Act (1996 Act) nor the 2004 Consolidated Appropriations Act (2004 Appropriations Act) did Congress remove this long-standing authority, which authorizes the FCC to alter or repeal its current rule capping TV broadcasters' national reach at 39 percent, nor did it enshrine the 39 percent cap into statute.[21]

To "promote competition and reduce regulation,"[22] Congress in various provisions of Section 202 of the 1996 Act directed the FCC to revise or modify several of its long-standing ownership rules, including the national TV ownership cap. Specifically, Section 202(c)(1)(B) did *not* set a statutory cap but only told the FCC to "*modify its rules* for multiple ownership set forth in section 73.3555 of its regulations . . . by increasing the national audience reach limitation for television stations to 35 percent" (up from 25).[23]

"To ensure that the FCC's ownership rules d[id] not remain in place simply through inertia,"[24] Congress in 1996 also adopted Section 202(h), which requires the FCC to review its broadcast ownership rules biennially (now quadrennially) to determine whether they remain "necessary in the public interest as the result of competition" and to "repeal or modify" any rules that are not. Section 202(h) did not give the Commission authority it had lacked to review its rules and to retain, repeal or eliminate them – as the Supreme Court has made clear since 1943, the agency already possessed that authority under the 1934 Act – but only directed the FCC to exercise its existing authority on a periodic basis so that it "keep[s] pace with industry developments" and "regularly reassess[es] how its rules function in the marketplace."[25]

Notably, when reviewing the FCC's initial biennial review of all its ownership rules under Section 202(h), the D.C. Circuit Court of Appeals confirmed that Congress in the 1996 Act had *not* "enshrined the 35% cap in the statute itself"[26] and in fact concluded that the FCC's *retention* of the 35 percent cap was arbitrary and capricious and contrary to Section 202(h).[27] The D.C. Circuit thus affirmed that Congress' direction in Section 202(c)(1)(B) of the 1996 Act for the FCC to "modify its rules" by setting the national cap at 35 percent did

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[20] *See supra* note 14.
[21] For additional context, please *see* Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 5-30 (Aug. 22, 2025) (explaining that the FCC has authority to revise or repeal the national TV cap and refuting at length the error-filled arguments to the contrary by those parties supporting ownership rules that harm broadcasters).
[22] Pub. L. No. 104-104, 110 Stat. 56 (stating the purpose of the 1996 Act).
[23] 1996 Act, § 202(c)(1)(B), 110 Stat. at 111 (emphasis added).
[24] *FCC v. Prometheus*, 592 U.S. at 419.
[25] *FCC v. Prometheus*, 592 U.S. at 419.
[26] *Fox Television Stations, Inc.*, 293 F.3d at 540.
[27] *Fox Television Stations, Inc. v. FCC,* 280 F.3d 1027, 1043-45 (D.C. Cir. 2002) (finding that the FCC had "adduced not a single valid reason to believe" that the national TV ownership rule was in the public interest, "either to safeguard competition or to enhance diversity").

not cement 35 percent into statute and left undisturbed the FCC's authority to change the cap further by setting it at a different percentage or by repealing it.

Responding to the D.C. Circuit's 2002 ruling, the FCC determined in 2003 to increase the cap to 45 percent. This 45 percent cap raised some controversy in the analog era, and in 2004 Congress decided that a different percentage cap was more appropriate. Even in light of the D.C. Circuit's ruling that the 1996 Act had not enshrined the previous 35 percent cap into statute, Congress in Section 629(1) of the 2004 Appropriations Act again merely directed the FCC to amend Section 202(c)(1)(B) of the 1996 Act, this time by inserting "39 percent" in place of "35 percent."[28] This action left untouched Section 202(c)(1)(B)'s original language that had only directed the FCC to modify its rules – rules that the FCC has authority under the 1934 Act to change – and nowhere enshrined "39 percent" into statute.

In Section 629(3) of the 2004 Appropriations Act, Congress also (1) changed the FCC's required periodic reviews of its ownership rules from biennial to quadrennial, and (2) relieved the Commission of its mandatory duty under Section 202(h) of the 1996 Act to review the national TV cap every four years.[29] Textualists take notice: by its clear terms, Section 629(3) does not *prohibit* the FCC from ever reviewing the cap, but only provides that Section 202(h)'s affirmative obligation for the FCC to review *all* its ownership rules quadrennially "does not apply" to any rules relating to the national audience reach limit. In short, the plain language of Section 629(3) merely states that the FCC is not *required* to review the national TV cap every four years but does not *prevent* it from reviewing and altering the rule under its established authority in the 1934 Act, as the Commission has concluded since 2013 in multiple proceedings concerning the national TV rule.[30]

Those supporting retention of FCC rules that disadvantage broadcasters erroneously claim that Section 629(3) prevents the Commission from ever reviewing or altering the 39 percent cap because that subsection removed it from the FCC's Section 202(h) obligation to review all its ownership rules quadrennially. But removing an affirmative duty to review the cap every four years clearly is not the same as prohibiting the FCC from ever

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[28] Section 629(1), Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, 99.

[29] Section 629(3), Consolidated Appropriations Act, 2004, 118 Stat. at 100 (stating that Section 202(h) "does not apply" to any rules relating to the 39 percent national audience reach limitation in Section 202(c)(1)(B)).

[30] The FCC has consistently concluded that the 2004 Appropriations Act only directed it to revise its rules to reflect a 39 percent cap and removed the requirement to review the cap quadrennially. As the FCC explained, the 2004 Act did not impose a statutory cap or prohibit the FCC from evaluating the rule; thus, it retained authority under the 1934 Act to review the national cap but was merely not required to do so as part of its quadrennial reviews. The FCC emphasized that Congress was well aware of the agency's broad authority – indeed, its obligation – under the 1934 Act to reevaluate its rules and revise any that do not serve the public interest and could have foreclosed the FCC from ever revising the national cap by making it a statutory restriction or by otherwise withdrawing FCC authority to modify the cap. Congress, however, did not do so but opted for a limited measure reducing the cap from 45 to 39 percent and relieving the FCC of its duty to reevaluate the cap in the mandated quadrennial reviews. Report and Order, 31 FCC Rcd 10213, 10222-24 (2016). *Accord* Notice of Proposed Rulemaking, 28 FCC Rcd 14324, 14329-30 (2013). *See also* Order on Reconsideration, 32 FCC Rcd 3390, 3398 n.60 (2017) (referring to FCC's previous conclusions about the national cap); Notice of Proposed Rulemaking, 32 FCC Rcd 10785, 10788-89 (2017) (explaining the FCC's earlier conclusions that it had authority to modify or eliminate the national TV cap and noting the consistency of those conclusions with previous decisions by the Third and D.C. Circuit Courts of Appeal).

reviewing it again. Simply put, just because someone isn't required to cook dinner or mow the lawn doesn't mean they aren't allowed to do so. The arguments of those opposing any changes to the 39 percent cap must fail because they are contrary to the text of Section 629(3), which contains nary a hint of any prohibitory language, and "[o]nly the written word is the law."[31]

Those claiming that the FCC lacks authority to reevaluate the 39 percent national cap also cannot explain how Section 629 of the 2004 Appropriations Act removed the FCC's authority – as affirmed multiple times across nine decades by the Supreme Court – to adopt, amend and eliminate ownership rules under its rulemaking and public interest licensing authority in the 1934 Act.[32] Section 629 does not even mention, let alone cut back on or override, the 1934 Act or the FCC's broad authority under it, of which Congress was well aware.[33]

Nor can the opponents of broadcast TV ownership rule reform validly contend that Congress, when passing Section 629, somehow impliedly repealed the FCC's powers under the 1934 Act. The Supreme Court has made clear for 90 years – even calling it a "cardinal rule" – that any repeals by implication are strongly disfavored.[34] "Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute."[35] But in Section 629, Congress did not specifically address the 1934 Act and did not suspend its operations or the FCC's long-standing authority under it to regulate ownership of broadcast stations. "Congress 'does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions,'"[36] and it would not silently hide the elephant of suspending the FCC's broad licensing and rulemaking authority under the agency's foundational statute in any statutory mousehole, let alone one consisting of an ancillary, less than 200-word rider to an approximately 200,000-word appropriations bill.[37]

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[31] *Bostock v. Clayton County*, 590 U.S. 644, 653 (2020). "We do not inquire what the legislature meant; we ask only what the statute means." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). And prohibitions plainly absent from statutory language should not be inferred. *See, e.g., Breuer v. Jim's Concrete of Brevard, Inc*. 538 U.S. 619, 694 (2003).

[32] *See* 1934 Act, 47 U.S.C. §§ 303(r), 307, 308, 309, 310 and 154(i).

[33] *See, e.g.*, H.R. Rep. No. 104-204, at 54 (1995), *reprinted in* 1996 U.S.C.C.A.N. at 18 (recognizing when adopting the 1996 Act that the FCC had regulated broadcast ownership since the 1940s).

[34] *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 189 (1978), quoting *Posadas v. Nat'l City Bank*, 296 U.S. 497, 503 (1936); *accord Me. Cmty. Health Options v. U.S*. 590 U.S. 296, 315 (2020).

[35] *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (citation omitted).

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

[37] Some opponents of ownership rule reform also perfunctorily and erroneously contend that Section 629(2) of the 2004 Appropriations Act shows that Congress intended to permanently remove the national cap from FCC review. This subsection confusingly states that the FCC may not use its authority under Section 10 of the 1934 Act, 47 U.S.C. § 160, to forbear from applying the 39 percent national cap to any entity exceeding that audience reach limitation. But the FCC's forbearance authority under Section 10 applies only to regulation of "telecommunications carriers or telecommunications services," not to broadcasters or broadcasting under Title III of the 1934 Act. In any event, Section 629(2)'s nonsensical prohibition on forbearance does not preclude other types of relief from the cap's restrictions, including relaxation or repeal of the cap itself. The FCC rejected claims a decade ago that Section 629(2) somehow prevented it from reexamining and revising the national TV cap. *See* Report and Order, 31 FCC Rcd 10213, 10222-23 n.77 (2016). NAB agrees with the FCC. Significantly, Section 629(2) refers specifically to the 39 percent limit in Section 202(c)(1)(B) of the 1996 Act, which as discussed above, only directs the FCC to modify its national

Congress' decision to remove the national TV cap from the mandated quadrennial reviews – but not to prohibit the FCC from reevaluating it ever again – is understandable from a practical point of view. After frequent changes to the level of the national cap in the span of a few years, from 25 to 35 to 45 to 39 percent, Congress was reluctant to require the Commission to turn around and reexamine the level of the cap yet again in just a couple of years.[38] Thus, in Section 629 Congress (1) again chose to direct the FCC to modify its rules, instead of enshrining the 39 percent limit into statute (which it easily could have done), and (2) chose to remove the national TV cap from Section 202(h)'s mandated quadrennial reviews but did not prohibit the FCC from reviewing its rule at some point in the future. The "one, cardinal canon" in interpreting a statute is that one "must presume that a legislature says in a statute what it means and means in a statute what it says there."[39]

TV ownership rule, does not enshrine the cap into statute, and does not prohibit the FCC from later changing its rules.

[38] Despite changing the frequency of the required periodic ownership reviews from every two to every four years in the 2004 Appropriations Act, the next mandated quadrennial review was due in 2006, given that the FCC had conducted its last biennial review in 2002.

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