

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

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

OPPOSITION OF THE NATIONAL ASSOCIATION OF BROADCASTERS
TO PETITION FOR STAY AND INJUNCTION PENDING JUDICIAL REVIEW OF BROADBAND
COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA; BROADBAND COMMUNICATIONS
ASSOCIATION OF WASHINGTON; COLORADO CABLE TELECOMMUNICATIONS ASSOCIATION;
FLORIDA INTERNET AND TELEVISION ASSOCIATION; INDIANA CABLE AND BROADBAND
ASSOCIATION; MICHIGAN CABLE TELECOMMUNICATIONS ASSOCIATION; MINNESOTA CABLE
COMMUNICATIONS ASSOCIATION; MISSISSIPPI INTERNET & TELEVISION; NEW ENGLAND
CONNECTIVITY AND TELECOMMUNICATIONS ASSOCIATION; AND VCTA – BROADBAND
ASSOCIATION OF VIRGINIA

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TO PETITION FOR STAY PENDING JUDICIAL REVIEW**

Pursuant to Section 1.45(d) of the FCC's Rules, 47 C.F.R. § 1.45(d), the National Association of Broadcasters (NAB)¹ respectfully submits this Opposition to Petition for Stay and Injunction Pending Judicial Review of Broadband Communications Association of Pennsylvania; Broadband Communications Association of Washington; Colorado Cable Telecommunications Association; Florida Internet and Television Association; Indiana Cable and Broadband Association; Michigan Cable Telecommunications Association; Minnesota Cable Communications Association; Mississippi Internet & Television; New England Connectivity and Telecommunications Association; and VCTA – Broadband Association of Virginia.² The Petition requests that the Commission stay the effective date of its repeal of

¹ NAB is a nonprofit trade association that advocates on behalf of local radio and television stations and broadcast networks before Congress, the Federal Communications Commission and other federal agencies, and the courts.

² See Petition for Stay and Injunction Pending Judicial Review, *Amendment of Section 73.5555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Broadband Communications Association of Pennsylvania; Broadband Communications Association of Washington; Colorado Cable Telecommunications Association; Florida Internet and Television Association; Indiana Cable and Broadband Association; Michigan Cable Telecommunications Association; Minnesota Cable Communications Association; Mississippi Internet & Television; New England Connectivity and Telecommunications Association; and VCTA – Broadband Association of Virginia, MB Docket No. 17-318 (Oct. 2, 2026) ("Petition").

the *ex ante* national television ownership rule pending appeal.³ The FCC must deny the Petition for failing to meet the strict criteria required for a stay.

I. BACKGROUND AND SUMMARY

As the D.C. Circuit has noted, “[a] stay pending appeal is an extraordinary remedy.”⁴ The moving party bears the burden of showing that the circumstances justify a court’s exercise of its discretion to grant such “exceptional relief.”⁵

Under the well established four-factor standard, stay applicants must (1) make a “strong showing” that they are “likely to succeed on the merits”; (2) demonstrate that they “will be irreparably injured absent a stay”; (3) show that issuing a stay will not “substantially injure the other parties interested in the proceeding”; and (4) establish that the “public interest” favors a stay.⁶ The first two factors of this standard “are the most critical,”⁷ and an applicant’s failure to show it will be irreparably harmed is “fatal” to a stay request.⁸

The Petitioners have not come close to demonstrating they will suffer tangible – let alone irreparable – harm without the FCC granting a stay of the National TV Cap Order. Courts have set a “high standard for irreparable injury,” and the speculative harms that Petitioners allege – rather than substantiate – are not imminent, certain, actual, and great,

³ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, Report and Order, MB Docket No. 17-318, FCC No. 26-53 (rel. Oct. 1, 2026) (National TV Cap Order or Order).

⁴ *Kalshiex LLC v. CFTC*, 119 F.4th 58, 63 (D.C. Cir. 2024).

⁵ *Id.*; see also *Nken v. Holder*, 556 U.S. 418, 433-34 (2009).

⁶ *Nken*, 556 U.S. at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987)). These factors and the factors governing grant of preliminary injunctions are substantially similar. *Id.*

⁷ *Nken*, 556 U.S. at 434.

⁸ *Kalshiex*, 119 F.4th at 64.

as required.⁹ The Petitioners fail to explain how eliminating the cap in itself creates imminent harm – let alone how that harm may materialize any time soon (if at all) given the long timelines for transaction review and for the impacts of a transaction to become fully realized.

Petitioners also fail to make a “strong” showing that they would likely prevail on the merits. The Petition largely rehashes the same arguments the Commission already has rejected on well-reasoned and fully explained grounds in the National TV Cap Order.¹⁰ Petitioners repeat their claim – central to the FCC’s consideration of the matter – that the Commission lacks authority to alter or repeal the 39 percent national TV cap.¹¹ As the FCC noted in the Order, this position is at odds with more than a decade of FCC precedent consistently finding, under both Republican and Democratic Chairs, that the Commission has authority to alter both the national audience reach cap and the UHF discount.¹² Moreover, the FCC’s conclusions as to its authority are consistent with existing court precedent.

If an applicant satisfies the first two factors, the stay inquiry calls for assessing harm to other parties interested in the proceeding and weighing the public interest.¹³ Of course, Petitioners do not satisfy the critical two initial factors. In any event, in making its argument on this score, the Petition conveniently ignores the significant harm that the asymmetric and anti-competitive national TV cap has caused – and would continue to cause in the event of a stay – to television broadcasters, and in turn viewers. Notably, Petitioners do not mention

⁹ *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

¹⁰ Petition at 6-15.

¹¹ Petition at 6-11,

¹² National TV Cap Order ¶ 92.

¹³ *Nken*, 556 U.S. at 435.

that they are under no such restriction (covering only up to 39 percent of TV households). Nor do Petitioners adequately refute the FCC's finding that its earlier conclusion that the national cap is not needed to promote competition and diversity is "even more incontrovertible" in today's marketplace.¹⁴ The public, moreover, does not benefit from outmoded rules that impair broadcast TV stations and their free, over-the-air programming, including news, weather, emergency information, and live sports, offered in communities across the country. Given that the Commission concluded, based on evidence ignored by Petitioners here, that the cap is not only unnecessary to promote localism but is likely undermining that goal, imposition of a stay here will not serve the public interest.¹⁵

II. PETITIONERS FAIL TO MEET THEIR BURDEN OF SHOWING THEY QUALIFY FOR A STAY

The Petition does not establish that the "extraordinary remedy" of a stay is warranted.¹⁶ In particular, the Petitioners' failure to demonstrate they will suffer any harm even remotely approaching "irreparable" dooms their request, which, under court precedent, obviates the need for the Commission even to address the other factors.¹⁷

¹⁴ National TV Cap Order ¶ 27.

¹⁵ National TV Cap Order ¶ 54.

¹⁶ *Kalshiex*, 119 F.4th at 63.

¹⁷ *Id.* at 64 ("showing of irreparable harm is a necessary prerequisite for a stay" and failure to establish such harm is "fatal" to a stay request); *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674, 676 (D.C. Cir. 1985) (finding that stay petitioners had not demonstrated they would suffer irreparable harm and denying the stay requests without addressing the other factors); *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (asserting that movant's failure to show irreparable harm is grounds for refusing to issue preliminary injunction, "even if the other three factors entering the calculus merit such relief"); *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 746-47 (D.C. Cir. 1995) (explaining that movant's failure to show irreparable injury was sufficient to uphold district court's denial of preliminary injunction without the appeals court considering the remaining relevant factors).

A. Petitioners Cannot and Do Not Demonstrate They Will Suffer Tangible, Let Alone Irreparable, Harm Absent a Stay

The Petitioners do not meet the “high standard for irreparable injury.”¹⁸ Such “injury must be both certain and great; it must be actual and not theoretical,” as well as “*imminen[t]*” and “substantiate[d].”¹⁹ “Bare allegations” of harm “are of no value,” and the applicant must show that its claimed harms will “directly result from the action” it seeks to stay.²⁰ The Petition here falls far short from satisfying this standard. As an initial matter, NAB notes that several station owners already exceed 39 percent – and have done so for years – as already permitted by the Commission’s UHF discount.²¹ The record shows that the ability to reach broader national audiences does not harm viewers but instead has created material public benefits.²²

Petitioners contend, however, that they will be irreparably harmed in the absence of a stay because somehow the elimination of the national TV ownership cap will necessarily lead to them having to pay broadcasters higher retransmission consent-related costs.²³ This claim fails for a few reasons.

First, the Order’s mere replacement of the *ex ante* 39 percent limit with a case-by-case review of proposed TV station transactions does not cause *imminent* injury to Petitioners. Petitioners do not explain how the elimination of the rule will directly result in

¹⁸ *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297.

¹⁹ *Wisconsin Gas*, 758 F.2d at 674 (emphasis in original); accord *Chaplaincy of Full Gospel Churches*, 454 F.3d at 297; *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555-57 (D.C. Cir. 2015).

²⁰ *Wisconsin Gas*, 758 F.2d at 674.

²¹ 47 C.F.R. § 73.3555(e)(2).

²² See, e.g., Comments of Univision Communications, Inc., MB Docket No. 17-318, at 3-4 (Aug. 4, 2025).

²³ Petition at 15-16.

higher retransmission costs. Presumably, their argument is that, with the cap lifted, some broadcasters will consider combining to achieve greater scale. With those hypothetical deals down the road, the new combinations will give the station groups more bargaining leverage in negotiations for carriage with pay TV operators. The argument also assumes that the pay TV operators – who do not have limitations on their scale – will be forced to fold at the new broadcast combinations’ demands, thereby harming their businesses. Even if somehow true – which it is not – what part of this description makes the harm imminent?

In reality, TV broadcasters in the future likely will propose widely varying TV station transactions (the size, geographic markets, competitiveness of the stations involved, and other vital details of such transactions as yet unknown), which the Commission must review under Section 310(d) of the Communications Act of 1934 to ensure that they serve the public interest. Various outcomes from this FCC review are possible, as transactions may be approved, approved with conditions, or not approved. And larger transactions or transactions implicating significant geographic overlap will undergo review by federal and potentially state antitrust authorities as well. Interested parties, including Petitioners, will be able to comment upon, oppose, or propose conditions on these TV station transactions before the Commission makes any decision. Thus, even if Petitioners had shown that any harms could result from the elimination of the *ex ante* cap, they certainly have not demonstrated that they face an “imminent” injury, which is required for the extraordinary relief sought. All these processes will occur before any transaction that would be permitted by the elimination of the cap can occur. In the absence of any imminent activity – let alone harm – a stay is totally unwarranted.

Putting aside the process-related timing considerations, the purported harms alleged by the Petitioners would not materialize for months – maybe years – after a transaction

occurred. For instance, any potential retransmission consent-related rate changes typically occur during the next contract negotiation. These contracts are often multi-year agreements. Even if a transaction were to close, many of the rate changes would not occur until the next contract negotiation, which could be years away. Of course, these supposed fee changes are hypothetical, and they would not occur until a transaction was proposed, approved through the appropriate regulatory processes, and resulted in actions by the merged company that created these hypothesized harms.

Moreover, the Commission's rules will not take effect until sixty days after publication in the *Federal Register*, and publication has not yet occurred.²⁴ As a result, there is no plausible basis to claim irreparable harm now, when the rule is not even operative.

The Petition also fails to substantiate how broadcast TV station groups buying more stations so they exceed the previous bright-line audience reach limit will cause Petitioners, or anyone, to suffer measurable, irreparable harm. Petitioners do not, because they cannot, point to any specific harm suffered as a result of these groups owning stations that (without the discount) exceed the now-removed *ex ante* 39 percent limit. These alleged harms are highly speculative and attenuated rather than actual, certain, and great. As the Order explains, the purported evidence regarding higher retransmission consent rates is conflicting and ultimately confounded by several factors, including the market value of broadcaster content as well as other factors that impact retransmission fees.²⁵

Finally, Petitioners' reliance on economic harms to support a stay fails to meet the standard for irreparable harm. After all, "[i]t is also well settled that economic loss does not,

²⁴ National TV Cap Order ¶¶ 106-107.

²⁵ National TV Cap Order ¶¶ 71-74.

in and of itself, constitute irreparable harm.”²⁶ Indeed, economic losses are typically recoverable at a later date if warranted. “Financial injury is only irreparable where no ‘adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation.’”²⁷ Other courts note that for economic or financial loss to be irrecoverable harm, there must be a showing of extraordinary loss – such as a loss of a business or significant damage to the business.²⁸ The Petitioners’ only alleged harm is the expectation of higher payments if a transaction were proposed, reviewed, and cleared after the elimination of the cap (which again, won’t be operative until sixty days after publication in the Federal Register). Nowhere do Petitioners explain how their expectation of economic loss is irrecoverable and therefore warrants a stay. Indeed, to support such an allegation, “facts and affidavits” supporting their assertion of irreparable injury are required, and Petitioners fail to provide any such substantiation here.²⁹ For all these reasons, Petitioners fail to show how they would be irreparably harmed without a stay in the implementation of the rule.

B. Petitioners Fail to Make the Requisite Showing That They Are Likely to Succeed on the Merits

²⁶ *Wisconsin Gas Co. v. Federal Energy Regulatory Com.*, 758 F.2d 669, 674 (D.C. Cir. 1985).

²⁷ *Mexichem Specialty Resins, Inc. v. EPA*, 787 F.3d 544, 555 (D.C. Cir. 2015).

²⁸ See, e.g., *Mylan Pharmacy, Inc. v. Shalala*, 81 F. Supp. 2d 30, 42-43 (D.D.C. 2000) (rejecting a \$3 million estimated loss in revenues as sufficient to show irreparable harm); *Omni Elevator Corp. v. Int’l Union of Elevator Constructors*, 2021 U.S. Dist. LEXIS 161991, at *31-32 (W.D.N.Y. 2021) (explaining that the “loss of a business, and not simply ‘loss of business,’ constitutes irreparable harm”).

²⁹ *Ohio ex rel. Celebrezze v. NRC*, 812 F.2d 288, 289-90 (6th Cir. 1987) (also agreeing with *Wisconsin Gas* that economic loss doesn’t constitute irreparable harm, in and of itself).

Petitioners also do not present the required “strong” showing that they would likely prevail on the merits.³⁰ The Petition largely rehashes the same arguments the Commission already has rejected on well-reasoned and fully explained grounds in the National TV Cap Order.

1. The Commission Has Ample Authority to Alter or Repeal the National Cap

Petitioners repeat their claim that the Commission lacks authority to alter or repeal the 39 percent national TV cap, a position at odds with more than a decade of FCC precedent consistently finding, under both Republican and Democratic Chairs, that the Commission has authority to alter both the national audience reach cap and the UHF discount. The FCC’s conclusions as to its authority also are consistent with existing court precedent.

Petitioners argue that, under the Consolidated Appropriations Act of 2004 (2004 CAA), Congress set the national cap at 39 percent in statute and affirmatively removed the FCC’s well-recognized authority to set or alter the cap in any manner. They also claim that Congress demonstrated its intention to set the cap in stone through the divestiture provision in the 2004 CAA and through its apparent removal of the Commission’s forbearance authority.³¹ Petitioners’ arguments, however, are more of a wish list and instead badly misread the statute’s text and the legislative activity around the 2004 CAA.

As an initial matter, every party acknowledges – either explicitly or implicitly – that the Commission had the authority to modify the national TV ownership cap prior to the 2004 CAA. Thus, for Petitioners’ claim that the 2004 CAA changed the game to be accurate, Congress would have had to affirmatively (and expressly) remove that authority from the

³⁰ *Nken*, 556 U.S. at 434.

³¹ Petition at 6-8.

Commission in that Act. However, Petitioners do not point to a single provision where Congress actually removes that well-understood authority. Instead, Petitioners feebly scramble around to piece together a series of passages to claim that is what Congress really, truly meant.³² But none of those provisions say anything about the Commission's authority being removed going forward.

Second, as the Commission's Order correctly observed, Congress never preserved the national TV ownership cap in the statute.³³ Neither the 1996 Act nor the 2004 CAA prevent the Commission from modifying or repealing the current 39 percent cap or its method of calculating compliance with the cap. Congress in Section 202(c)(1)(B) of the 1996 Act did not set a statutory cap; instead, it instructed the Commission 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."³⁴ Section 202 of the 1996 Act directed the Commission to revise various ownership rules (including the national TV rule) and then required the Commission to review, and potentially "repeal or modify," all those rules every two (now four) years going forward.³⁵ Had Congress wanted to fix the cap in stone and prevent the Commission from ever changing the cap, it would hardly instruct the Commission to modify its rules – it would simply set the cap and remove the

³² See, e.g., Petition at 7.

³³ National TV Cap Order ¶¶ 15, 15 n.41, 16 (explaining that Congress struck 35%, inserted 39%, but otherwise left the same language in place and the Commission at that time concluded that the CAA was simply directing it to revise its rules while eliminating the quadrennial review requirement).

³⁴ 1996 Act, Pub. L. No. 104-104, § 202(c)(1)(B), 110 Stat. 56, 111 (emphasis added).

³⁵ 1996 Act, § 202(h) (directing the FCC to review its rules adopted pursuant to Section 202 and all its ownership rules biennially, determine whether any of them remain necessary in the public interest as the result of competition, and "repeal or modify any regulation it determines to be no longer in the public interest").

Commission’s authority to change the cap. The Commission therefore had clear authority to repeal or modify the 35 percent cap under the “original” Section 202(c)(1)(B).

The Commission correctly noted that D.C. Circuit agreed with this interpretation of Section 202.³⁶ In 2002, the D.C. Circuit concluded that the 1996 Act had not “enshrined the 35% cap in the statute itself” and that the FCC’s retention of the 35 percent cap in the 1998 biennial review was arbitrary and capricious.³⁷ When Congress revisited the national cap in 2004 after the Commission had raised it to 45 percent in its 2002 biennial review, Congress did not question the FCC’s authority to change the cap. All Congress did in Section 629(1) of the CAA was amend Section 202(c)(1)(B) of the 1996 Act by directing the Commission to insert “39 percent” in place of “35 percent.”³⁸ Put differently, Section 629(1) directed the Commission to *modify its rules* for multiple ownership by increasing the national audience reach limitation for television stations, this time to 39 percent. Congress didn’t change the original language of Section 202(c)(1)(B) that had only directed the Commission to amend its regulation. Had Congress wanted to change the statute to prohibit the Commission from modifying the cap, it has many ways to clearly make such changes – ways that Congress has used in the past.³⁹

Petitioners’ reliance on removal of the national cap from the quadrennial review process in Section 629(3) also is misplaced. If anything, it demonstrates the major flaw in

³⁶ National TV Cap Order ¶ 13.

³⁷ *Written Ex Parte Communication of NAB*, MB Docket No. 17-318 at 44 (Apr. 2, 2025) (quoting *Fox Television Stations, Inc. v. FCC*, 293 F.3d 537, 540 (D.C. Cir. 2002)).

³⁸ CAA, Pub. L. No. 108-199, § 629(1), 118 Stat. 3, 99 (Jan. 23, 2004).

³⁹ See, e.g., National TV Cap Order ¶ 85, n. 283 (quoting the *Ex Parte* Letter of Thomas M. Johnson, Jr., MB Docket No. 17-318, at 5 (Dec. 15, 2015)) (describing how Congress directed the FCC to modify rules regarding low-power FM stations while directing the Commission not to eliminate or reduce minimum distance separations).

Petitioners’ argument. Section 629(3) of the CAA does not strip the Commission’s authority to modify or repeal the 39 percent national audience reach limit. Rather, in addition to changing the required periodic reviews of all the ownership rules from biennially to quadrennially, it merely relieves the FCC of its prior duty under Section 202(h) of the 1996 Act to review the national TV cap *every four years*. Section 629(3) in no way prohibits the Commission from reviewing the cap.⁴⁰

Petitioners also fuss about Congress’s decision not to extend forbearance authority to the Commission’s ability to modify the national cap. But as the Commission’s Order recognizes: “[t]he Commission’s ability to forbear from enforcement of its rules is distinct from its power to alter or eliminate those rules”⁴¹ Forbearance authority applies to regulation of telecommunications carriers, not to broadcasters under Title III of the Act. Congress’s prohibition on forbearance does not preclude other types of relief from the cap’s restrictions, including relaxation or repeal of the cap itself.

Finally, Petitioners claim that under the major questions doctrine, the Commission shouldn’t have authority to modify the national cap. This argument is nonsensical and may indeed be an AI hallucination. The major questions doctrine applies to instances in which an agency claims “extravagant statutory power over the national economy” in the absence of clear authority from Congress.⁴² That is not the case here. The FCC has exercised its general licensing and rulemaking authority over broadcasters’ national reach with judicial approval since the 1940s. When Congress legislated in 1996 and 2004 on the national TV rule, it

⁴⁰ CAA, § 629(3) (providing that subsection 202(h) “does not apply to any rules relating to the 39 percent national audience reach limitation in subsection (c)(1)(B)”); see *also* Comments of Nexstar Media Inc., MB Docket No. 17-318, at 21-22 (Aug. 4, 2025); Reply Comments of NAB, MB Docket No. 17-318, at 8 (Apr. 18, 2018).

⁴¹ National TV Cap Order ¶ 96.

⁴² *Utility Air Regulatory Group v. EPA*, 573 U.S. 302, 324 (2014).

directed the Commission each time to modify its audience reach cap to change the percentage. By directing a modification to an existing FCC rule, rather than passing a statute that removed the FCC’s authority to regulate the ownership of broadcast stations, Congress recognized the FCC’s long-standing regulatory authority in this area.

Moreover, the Court has invoked the doctrine when an agency claims to newly “discover in a long-extant statute an unheralded power’ representing a ‘transformative expansion in [its] regulatory authority,’”⁴³ “regulates outside its wheelhouse,”⁴⁴ or in cases of “mismatches” between broad invocations of power by agencies and the narrow statutes that purport to delegate that power.⁴⁵ But the FCC’s power over broadcast ownership regulation has been regularly exercised by the Commission and approved by the Supreme Court since the 1940s. That authority is not newly discovered in a hidden corner of the 1934 Act or vastly expanded upon in this proceeding. And the Commission is not regulating outside its area of expertise, nor is it invoking expansive power from a narrow statute, as the 1934 Act gives the Commission “broad statutory authority to regulate broadcast media.”⁴⁶

2. Contrary to Petitioners’ Claims, the Commission Provided Sound and Well-Reasoned Explanations for its Elimination of the National Cap

⁴³ *West Virginia v. EPA*, 597 U.S. 697, 724 (2022) (quoting *Utility Air*, 573 U.S. at 324); see *Biden v. Nebraska*, 600 U.S. 477, 519 (2023) (citing additional cases).

⁴⁴ *Biden v. Nebraska*, 600 U.S. at 518, *citing*, among other cases, *King v. Burwell*, 576 U.S. 473, 486 (2015), in which the IRS – not known for its “expertise in crafting health insurance policy” – had asserted authority to make key decisions about a central part of the Affordable Care Act, which involved billions of dollars in annual spending and affected the price of healthcare insurance for millions of people.

⁴⁵ *Biden v. Nebraska*, 600 U.S. at 517-18, *citing*, among other cases, *West Virginia v. EPA*, 597 U.S. at 730, in which the EPA had relied on a “previously little-used backwater” provision in the Clean Air Act to justify its rule that would restructure the entire country’s mix of electricity generation.

⁴⁶ *FCC v. Prometheus Radio Project*, 592 U.S. 414, 418 (2021).

Petitioners also contend that they are likely to succeed on the merits because the Order is arbitrary and capricious in violation of the Administrative Procedure Act (APA).⁴⁷ However, the Petition fails to provide a legal or factual basis for this contention. Petitioners assert that the Commission did not “properly engage” with evidence in the record, particularly with respect to retransmission consent issues.⁴⁸ On the contrary, the Commission carefully considered the retransmission consent-related and other claims raised by Petitioners and other commenters in this proceeding (no matter how frivolous).⁴⁹ Petitioners are simply disappointed that the Commission did not agree with their positions. This does not support grant of a stay.

The Order thoroughly explained why retransmission consent concerns do not justify retaining the national cap, focusing primarily on three points: (1) retransmission consent-related concerns are better addressed through the retransmission consent rules and individual transaction reviews; (2) economic evidence in the record does not support an *ex ante* prohibition on national audience reach; and (3) changes to broadcaster bargaining leverage and/or retransmission consent fees do not necessarily establish a public interest harm.

First, the Order explained that retransmission consent is governed by statutory provisions and good faith negotiation rules designed to ensure that marketplace mechanisms, rather than government action, dictate negotiating outcomes.⁵⁰ Parties

⁴⁷ Petition at 11-15.

⁴⁸ Petition at 11-13.

⁴⁹ National TV Cap Order ¶¶ 67-79.

⁵⁰ National TV Cap Order ¶¶ 67-68.

seeking additional protections may request clarification or modification of those rules.⁵¹

Given this existing regulatory framework, as well as the fact that the national cap was never intended to address retransmission consent concerns, the Commission reasonably concluded that such concerns are best addressed in a proceeding concerning the retransmission consent rules.⁵² Concerns about the effects of a particular broadcast transaction also remain subject to Commission review and approval.⁵³ These reasons alone provide a sound basis for declining to retain the cap to preserve a particular balance of negotiating power between broadcasters and MVPDs.

Second, the Order directly addressed the economic claims that Petitioners repeat.⁵⁴ It considered MVPD arguments that an alleged correlation between station group size and

⁵¹ National TV Cap Order ¶ 68 & n. 233 (citing proposals by MVPDs and others that are “beyond the scope of this proceeding”).

⁵² National TV Cap Order ¶ 68. Relatedly, the Order noted that the Commission has never previously defined a non-local (e.g., regional or national) market for retransmission consent; it has focused only on the individual local markets to which stations are licensed. *Id.* ¶ 69.

⁵³ National TV Cap Order ¶ 69. See also *id.* ¶¶ 76-79 (providing guidance for consideration of retransmission consent-related concerns in individual transaction reviews). Petitioners claim that, because some MVPD oppositions to individual transactions have not resulted in transaction denials or conditions, the FCC is playing a “shell game” where MVPDs are merely being redirected to different fora without resolution of their concerns. Petition at 12-13. However, the fact that MVPD transaction oppositions were unsuccessful does not mean their concerns were not carefully considered. Often allegations of potential harm are not sufficiently transaction-specific, are not adequately supported by the record, or are outweighed by a transaction’s potential public interest benefits. Moreover, neither the Order nor any of the Media Bureau decisions cited by Petitioners suggested that a proceeding concerning *broadcast ownership* rules, rather than *retransmission consent* rules, was an appropriate forum for seeking changes to the system of retransmission consent. Even then, some retransmission consent-related proposals simply are not appropriate for Commission consideration. As NAB and other broadcasters have observed on multiple occasions, many MVPD concerns about retransmission consent and other broadcast signal carriage issues are beyond the scope of the Commission’s authority and cannot lawfully be adopted absent statutory changes. See, e.g. NAB Reply Comments, GN Docket No. 25-133 (Apr. 28, 2025) at 3-18.

⁵⁴ National TV Cap Order ¶¶ 70-75.

retransmission consent fees warranted retaining the cap because station group growth would increase programming costs and subscriber bills.⁵⁵ It also considered broadcasters' responses that retransmission consent fees reflect market conditions and programming value, are more affordable than cable programming, and are slowing in growth.⁵⁶ The Commission examined competing economic analyses submitted by DIRECTV and NAB concerning the relationship between station group size and retransmission consent fees.⁵⁷ Given the conflicting evidence regarding whether, and to what extent, greater potential audience reach would affect those fees, the Commission reasonably concluded that the record did not justify an *ex ante* limitation on national reach.⁵⁸

Third, the Order explained why even evidence of higher fees would not necessarily establish a public interest harm or justify retaining the cap.⁵⁹ Among other things, the Order observed that larger MVPDs face no comparable national reach limits and can use their scale to negotiate lower programming prices.⁶⁰ Allowing broadcasters to grow may therefore bring the parties' negotiating leverage into closer balance.⁶¹ Smaller MVPDs, meanwhile, have a statutory right to designate qualified buying groups to negotiate collectively with large station groups.⁶² The Commission also has previously held that different—and even higher—

⁵⁵ National TV Cap Order ¶ 70.

⁵⁶ *Id.*

⁵⁷ National TV Cap Order ¶¶ 71-72.

⁵⁸ National TV Cap Order ¶ 73.

⁵⁹ National TV Cap Order ¶ 74.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

retransmission consent prices are not inherently contrary to the public interest when they reflect competitive marketplace conditions.⁶³

The Order further explained that retaining the cap to constrain retransmission consent bargaining would be overbroad: it restricts all station groups, including those that elect must-carry and seek no retransmission consent compensation.⁶⁴ And contrary to Petitioners' effort to attribute higher subscriber bills to increased potential audience reach, the Commission observed that "ultimately, it is MVPDs that set the prices for their subscribers."⁶⁵ Taken together, these findings demonstrate that the Commission considered and reasonably rejected the retransmission consent arguments advanced by Petitioners.

Petitioners also repeatedly disregard the Order's careful consideration of other issues they wish were decided differently. For example, the Petition suggests that the Order's only analysis of commenter claims that elimination of the cap would reduce viewpoint diversity is a footnote explaining the difference between viewpoint diversity and source diversity.⁶⁶ This is patently inaccurate. As the Order discussed at length, viewpoint diversity has not been a public interest rationale for the national television ownership cap in more than 40 years, nor could the rule be justified on viewpoint diversity grounds in today's media marketplace.⁶⁷ Similarly, the Petition cites *nine paragraphs* of the Order in which the Commission purportedly "dismissed" arguments by MVPDs and others that eliminating the cap would harm localism and agreed with commenters who demonstrated that *retaining* the cap would

⁶³ National TV Cap Order ¶ 75.

⁶⁴ National TV Cap Order ¶ 73.

⁶⁵ National TV Cap Order ¶ 73.

⁶⁶ Petition at 3, 13, n. 54.

⁶⁷ National TV Cap Order ¶¶ 10-11, 25-29.

harm localism.⁶⁸ Dismissing concerns out of hand without careful analysis does not require such a lengthy, detailed discussion of studies, data and other record evidence, including studies submitted by proponents of the cap.⁶⁹

Like the parties opposing the Commission’s elimination of its cross-ownership rules in *FCC v. Prometheus Radio Project*, Petitioners here will ultimately face the reality that the FCC “did not ignore” evidence submitted in the record, but simply “interpreted [it] differently” than Petitioners, which is entirely acceptable under the APA.⁷⁰ The Commission provided multiple sound and well-explained reasons for rejecting the very arguments again raised in the Petition. Rehashing the very same issues that the Commission already carefully considered and addressed does not merit a stay of the Order.

C. Issuance of a Stay Will Injure Television Broadcasters, and the Public Interest Does Not Favor Grant of a Stay

The traditional stay inquiry calls for assessing harm to other parties interested in the proceeding and weighing the public interest, “[o]nce an applicant satisfies the first two factors.”⁷¹ But as shown above, Petitioners do not satisfy those “most critical” initial factors.⁷² In any event, Petitioners also have not met the remaining stay factors either.

⁶⁸ Petition at 13-14, *citing* National TV Cap Order ¶¶ 55-57, 60-63. See *also* Petition at 13, *citing* National TV Cap Order ¶¶ 47-51 (contending that the Commission failed to seriously engage with arguments that the national cap is necessary to promote competition, but disregarding extensive evidence of decades of precipitous declines in both broadcast television viewership and advertising revenue cited in the Order).

⁶⁹ See, e.g., National TV Cap Order ¶ 61 (discussing a 2018 study by Gregory J. Martin and Josh McCrain submitted by two proponents of retaining the cap and comparing it with another study by the same authors (and others) in 2024).

⁷⁰ *FCC v. Prometheus Radio Project*, 592 U.S. 414, 423–27 (2021).

⁷¹ *Nken*, 556 U.S. at 435.

⁷² *Id.* at 434.

Petitioners assert that broadcasters cannot claim harm from a stay that “merely requires the Commission to abide for a few more months a rule that went twenty years without question.”⁷³ However, this position entirely discounts the harm that the asymmetric national TV ownership rule has caused over the last twenty years to television broadcasters specifically and to competition in the video marketplace more generally, which would only continue in the event of a stay.⁷⁴ In the order, the Commission acknowledged how, rather than “promoting localism, the national cap may be undermining it by preventing the Commission from approving specific transactions that,” for example, “would improve the ability of local television stations to access additional capital and advertising revenue needed to invest in local programming,”⁷⁵ and by “hindering, rather than promoting, investment in innovative developments by limiting broadcasters’ ability to expand their operations and achieve economies of scale in the deployment of new technologies.”⁷⁶ The Commission also affirmed its earlier conclusion that the national cap is not needed to promote competition or diversity, and Petitioners cannot seriously dispute those conclusions given current marketplace realities.⁷⁷ And the Commission recognized that the broadcast TV

⁷³ Petition at 16.

⁷⁴ As NAB previously explained, Petitioners’ claim that the “station groups themselves” have somehow “acknowledge[d] that the asymmetric national TV ownership rule “has not been an impediment to their growth” is unfounded and based on an analysis of the five largest TV station groups’ financial performances that improperly cherry-picks time periods and conflates growth from mergers and acquisition with actual growth in the industry. Petition at 16; see Reply Comments of the Joint Broadcasters, MB Docket No. 17-318, at 45 n.136 (Aug. 22, 2025).

⁷⁵ National TV Cap Order ¶ 47.

⁷⁶ National TV Cap Order ¶ 59.

⁷⁷ National TV Cap Order ¶ 27; see also *id.* ¶ 28 (“[T]oday, broadcasters are competing in a much larger, broader, and competitive environment’ with digital advertisers and various technology platforms, including streaming services and podcasters.” (quoting Applications for Consent to the Transfer of Control of TEGNA Inc. to Nexstar Media Inc., MB Docket No.

industry has suffered declines in advertising revenue and viewership “for decades,”⁷⁸ harms that the national cap’s restrictions on TV broadcasters’ scale only worsen. The Petition presents no basis for imposing a stay that would continue to exacerbate those proven harms.

Contrary to Petitioners’ contention, “maintaining the status quo” for even a “few more months” would cause harm to television broadcasters.⁷⁹ For one, broadcasters would be prevented from seeking prompt approval from the Commission on, and entering into, transactions that would be in the public interest.⁸⁰ And a stay would only serve to inject more uncertainty in the marketplace about the ability of television broadcasters to scale, thereby discouraging necessary investment into broadcasting and undermining station values by reducing the amount of resources broadcasters in turn are able to put into local programming.⁸¹

Petitioners also claim that the “public interest favors a stay,” asserting that “the Cap prevents the type of broadcast consolidation that leads to job cuts, a reduction in local news, reduced competition, and decreased viewpoint diversity.”⁸² Even assuming Petitioners could demonstrate that the future consolidation they anticipate will cause real harm to the public interest, the removal of the *ex ante* national television ownership rule

25- 331, LMS File Nos. 0000280940 et al., Memorandum Opinion and Order ¶ 25 (Mar. 19, 2026))).

⁷⁸ National TV Cap Order ¶ 51.

⁷⁹ Petition at 16-17.

⁸⁰ Petitioners’ contention that there would be no harm to “recent mergers that would exceed the Cap” that are currently in litigation has no bearing on the harm of a stay on the countless other broadcasters who otherwise would be able to proceed with transactions that would be in the public interest. Petition at 16.

⁸¹ See National TV Cap Order ¶ 47.

⁸² Petition at 15-16.

does not automatically result in a flood of approved transactions, let alone greater consolidation, and, other avenues exist for challenging transactions.⁸³ Further, Petitioners' claims of public interest harm are contrary to the Commission's specific conclusions in the order supported by evidence that eliminating the national cap and allowing broadcasters to scale can "improve long-term employment prospects for workers;"⁸⁴ the national cap is unnecessary to promote localism and may in fact be undermining that goal;⁸⁵ and the national cap is not necessary to promote competition or viewpoint diversity in local markets.⁸⁶ To the extent Petitioners suggest that, without a stay, there would be an increase in retransmission consent fees "resulting from an exercise of market power" by station groups,⁸⁷ the Commission found that it was not "reasonable to conclude that larger group owner reach automatically results in retransmission consent fee increases across all broadcasters."⁸⁸

The public, moreover, does not benefit from the continuance of outmoded rules that impair overall marketplace competition generally and broadcast TV stations specifically. Viewers directly benefit from competitive local stations and their free, over-the-air programming, including news, weather, emergency information, and live sports, offered in communities across the country. While undue restrictions on broadcasters' scale and

⁸³ See National TV Cap Order ¶¶ 65-66, 76-79, 82-83 (providing guidance on what information to include in an opposition to a proposed transaction under the Commission's case-by case approach).

⁸⁴ National TV Cap Order ¶ 81.

⁸⁵ National TV Cap Order ¶ 47; see also *id.* ¶¶ 55-57 (explaining how allowing broadcasters to expand their audience reach can promote localism by "enabl[ing] them to produce a higher quality and quantity of local content").

⁸⁶ National TV Cap Order ¶ 27.

⁸⁷ Petition at 16.

⁸⁸ National TV Cap Order ¶ 73.

competitiveness may be in the pay TV industry's interest, they are not in the public's interest. Ultimately, the public interest weighs in favor of denying a stay and allowing repeal of the *ex ante* national television ownership rule to take effect.

III. CONCLUSION

For the reasons set forth above, Petitioners have failed to meet their burden of showing they qualify for a stay of the effective date of the order repealing the national TV ownership rule pending judicial review. NAB therefore urges the Commission to deny the Petition.

Respectfully submitted,

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October 9, 2026

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