

Broadcast Ownership, Retransmission, and the Case for Comprehensive Reform

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I. Introduction

The Federal Communications Commission (FCC) is revisiting the national broadcast-television ownership cap.¹ Chairman Brendan Carr has argued that ownership rules no longer reflect today’s media marketplace, where local broadcasters face competitive pressures from streaming platforms and social-media companies now capture much of the advertising revenue and audiences once devoted to local television.²

While there is a strong case for deregulating ownership rules, the more important question is how to accomplish this goal.³ Removing outdated ownership caps would almost certainly be preferable to leaving them in place; it would reduce at least one regulatory distortion and allow market forces to play a greater role. But the ownership cap is only one piece of a tightly interconnected system of broadcast and carriage regulation. Ownership restrictions,⁴ Title VI’s retransmission-consent and must-carry rules,⁵ and the FCC’s regulatory authority over bargaining standards⁶ all interact to shape bargaining power and allocate surplus across the industry. Addressing just one element of this framework risks amplifying distortions in others.

Indeed, the broadcast-television market is an unusual case in which the prevailing regulatory distortions are directly interrelated, operate on the same products and players, and fall under the same agency’s control. That presents a unique opportunity for the FCC to approach reform holistically, rather than in a piecemeal fashion.

II. Outdated Rules in a Transformed Market

The FCC’s broadcast-ownership rules reflect outdated market conditions. Congress set the national television-ownership cap at 39% of households in 2004 as a political compromise, rather than an economically grounded metric.⁷ As Justice Clarence Thomas noted in his concurrence in 2009’s *FCC v. Fox Television* decision, the regulatory regime was built on specific “factual assumptions” about

¹ Public Notice, *Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding*, MB Docket No. 17-318, DA 25-530, FED. COMM’N COMM’N (Jun. 8, 2025), available at <https://docs.fcc.gov/public/attachments/DA-25-530A1.pdf>.

² Leland Vittert, *FCC Chair Hopes to Ease Regulations on Broadcast Media*, NEWSNATION (Mar. 6, 2025), available at <https://www.newsnationnow.com/on-balance-with-leland-vittert/fcc-chair-hopes-to-ease-regulations-on-broadcast-media>.

³ Eric Fruits & Kristian Stout, *TL;DR: Deregulating Media Ownership for the Modern Era*, INT’L. CTR. FOR LAW & ECON. (May 8, 2025), <https://laweconcenter.org/resources/deregulating-media-ownership-for-the-modern-era>.

⁴ 47 CFR § 73.3555.

⁵ 47 CFR Part 76 Subpart D.

⁶ 47 U.S. Code § 325.

⁷ Section 629 of the Consolidated Appropriations Act, P.L. 108-199 (2004); see also Eric Fruits, *Video Competition in 2025: It’s Literally on Heebee*, TRUTH ON THE MKT. (Feb. 14, 2025), <https://truthonthemarket.com/2025/02/14/video-competition-in-2025-its-literally-on-heebee>.

spectrum scarcity and market structure that “dramatic technological advances” have since “eviscerated.”⁸

Today’s competitive landscape demonstrates this regulatory mismatch even more starkly. While local stations are capped at reaching 39% of U.S. television households, streaming-video services face no comparable ceiling on their potential reach; they can, in principle, distribute to 100% of the national video-streaming market. Local broadcasters must compete with these services for audiences and advertising revenue, while operating under ownership caps designed for an era in which they were presumed to be dominant media companies. In today’s market, however, broadcasters not only lack market power but face extremely powerful digital competitors whose national scale far exceeds anything broadcasters could legally achieve under the existing limits.

The FCC chairman has observed that the existing ownership rules require modernization, noting the need to “empower those local broadcasters [who] actually serve their local communities.” while acknowledging that “arcane, artificial limits on how many TV stations any one company can own” create disadvantages for broadcasters who must compete against technology companies in advertising markets.⁹

III. The Economic Squeeze Creating Market Bifurcation

This economic squeeze that local broadcasters face, from multiple directions, is reshaping the industry. The collapse of syndicated daytime programming has eliminated cross-subsidies that historically funded local news operations. Shows like “Judge Judy” and “Wheel of Fortune” once provided reliable revenue streams that allowed stations to support their more expensive, less-profitable news departments. As viewers migrate to digital platforms, this financial cushion has largely disappeared.

These economic pressures are creating divergent (albeit still rational) responses across the market:

- **Strong stations doubling down on local content:** Well-positioned stations like Nexstar Media Group’s WOOD-TV in Grand Rapids, Michigan, have drastically reduced syndicated national programming, now airing just two hours of non-news content between 9 a.m. and 8 p.m.¹⁰ The remaining hours feature expanded local-news broadcasts and locally produced lifestyle shows. WOOD-TV recently introduced additional news blocks at 4 p.m. and 7 p.m., reinforcing its commitment to coverage of West Michigan. For market leaders, local news represents “must-have” content that national competitors cannot replicate, providing leverage in fee negotiations and valuable differentiation for local advertisers.

⁸ Concurrence by Justice Clarence Thomas, *FCC v. Fox Television Stations Inc.*, 556 U.S. 502, 533 (2009).

⁹ George Winslow, *FCC’s Carr Calls Station Ownership Caps ‘Arcane’ and ‘Artificial’*, TV TECH (May 7, 2025), <https://www.tvtechnology.com/news/fccs-carr-calls-station-ownership-caps-arcane-and-artificial>.

¹⁰ Luke Bouma, *The End of Syndicated Day Time TV on ABC, CBS, FOX, & NBC*, CORD CUTTERS NEWS (Aug. 24, 2025), <https://cordcuttersnews.com/the-end-of-syndicated-day-time-tv-on-abc-cbs-fox-nbc>.

- **Weak stations retreating from local production:** Poorly positioned stations who cannot afford to compete in expensive local-news production rationally adopt lower-cost business models. WNWO-TV—Sinclair Broadcast Group’s NBC affiliate in Toledo, Ohio—abandoned locally produced news altogether in 2023.¹¹ The station had been a ratings underdog that could not justify funding a money-losing operation. Instead of producing newscasts, WNWO now airs Sinclair’s Washington, D.C.-based “National News Desk” programming, supplemented with network and syndicated content.

Notably, consumer response to WNWO-TV’s changes was minimal, with no significant public outcry reported. The station’s small audience simply substituted to competing local newscasts, suggesting consumer indifference to programming changes at underperforming stations. This seems consistent with Nielsen Holdings data showing that growing numbers of Americans prefer online news sources over television news.¹²

The same profit-maximization logic drives both the expansion and retreat decisions. Stations start from different competitive positions and choose different routes to achieve financial stability. The greatest threat to localism, therefore, may not be rising concentration in mid-sized markets, but the financial collapse of stations that are prevented from adapting to modern competitive realities. Indeed, consolidation may preserve localism rather than threaten it, by creating economies of scale that make local-news production more financially viable. Merged entities can share expensive resources, including investigative teams, weather systems, and production facilities, reducing journalism’s average costs rather than eliminating coverage.

Larger broadcast groups also gain enhanced leverage in negotiating retransmission-consent fees: the payments that cable and satellite providers make to carry broadcast signals. These fees, which now approach the scale of advertising revenues, have become central to how stations fund local news.¹³ As the next section explains, this shift has reshaped both the economics of broadcaster consolidation and the policy tradeoffs around localism.

IV. The Regulatory Complication: Retransmission Consent

A fundamental question that policymakers must ask of the existing retransmission-consent rules is whether they still serve a valid purpose. The regulatory framework was designed to address what was seen as a “cable bottleneck”—that is, the concern that monopoly cable providers could refuse to carry local broadcast stations. As the U.S. Circuit Court of Appeals for the D.C. Circuit noted in its 2009 *Comcast v. FCC* opinion, cable operators “no longer have the bottleneck power over programming

¹¹ Tim Hanlon, *Why Some TV Stations May Start Ditching Local News*, TVREV (Mar. 20, 2025), <https://www.tvrev.com/news/why-some-tv-stations-will-start-to-ditch-local-news>.

¹² *Americans Increasingly Prefer Digital Pathways to Local News*, PEW RES. CTR. (May 7, 2024), https://www.pewresearch.org/journalism/2024/05/07/americans-changing-relationship-with-local-news/pj_2024-05-07_local-news-trends_0-01.

¹³ Eric Fruits, Ben Sperry, Kristian Stout, & Geoffrey A. Manne, *Reply Comments to FCC Re: Customer Blackout Rebates*, INT’L. CTR. FOR LAW & ECON. (Apr. 7, 2024), <https://laweconcenter.org/resources/iclc-reply-comments-to-fcc-re-customer-blackout-rebates>.

that concerned the Congress in 1992.”¹⁴ In today’s market, broadcasters can distribute content through websites, apps, and streaming platforms. Without the bottleneck problem, the economic justification for mandatory-carriage rules collapses.

Since the 1992 Cable Act, broadcasters elect every three years between (1) must-carry, guaranteeing free carriage by cable and satellite providers; or (2) retransmission consent, requiring multichannel video-programming distributors (MVPDs) to negotiate carriage rights, often for substantial fees.¹⁵ Congress subsequently amended the law to add requirements for “good-faith” negotiations, but blackouts and last-minute agreements remain common.¹⁶

This framework already provides broadcasters with significant bargaining advantages that independent networks lack. When broadcasters consolidate, they amplify this leverage, potentially driving up carriage fees and pressuring cable operators to remove smaller networks from lineups in order to control costs.

Recent opposition to proposed broadcaster consolidation from networks like One America News Network (OAN) and NewsMax highlights this legitimate economic concern.¹⁷ Their worry is straightforward: larger broadcast groups can demand higher retransmission fees, which may force MVPDs to drop smaller networks to manage expenses.

V. The Risk of Piecemeal Reform

The interaction of ownership restrictions and retransmission-consent rules all but guarantees that broadcast regulation will reallocate surplus, one way or another; the real question is whether the resulting allocation delivers tangible benefits to consumers in the form of lower prices, better programming, or more reliable service. Ultimately, the system represents a redistribution of bargaining power, rather than an increase in overall welfare.

Research by Eun-A Park, Rob Frieden, and Krishna Jayakar analyzing nearly 400 retransmission agreements from 2011 to 2018 reveals the complexity of these negotiations.¹⁸ The frequency and extent of programming blackouts correlate with multiple factors: larger MVPD customer bases are associated with more and longer blackouts; multi-station broadcaster groups with network affiliations are associated with more but shorter blackouts; and the timing of the National Football League’s (NFL) schedule of games showed no significant relationship with blackout frequency, although blackouts that occur during the NFL season are significantly shorter.

¹⁴ *Comcast Corp. v. FCC*, 579 F. 3d 1, 8 (2009).

¹⁵ H.R. 4850, 102d Cong. (1992), <https://www.congress.gov/bill/102nd-congress/house-bill/4850>.

¹⁶ 47 C.F.R. § 76.65.

¹⁷ Ted Hearn, *OAN Joins Newsmax in Voicing Opposition to Nexstar-TEGNA*, BROADBAND BREAKFAST (Sep. 9, 2025), <https://broadbandbreakfast.com/oan-joins-newsmax-in-voicing-opposition-to-nexstar-tegna>.

¹⁸ *Id.*

The Park, Frieden, and Jayakar analysis could not definitively identify which parties or tactics cause blackouts, suggesting shared responsibility across the system. These complex negotiations might be avoided entirely if the mandatory framework were eliminated, allowing standard commercial relationships to govern carriage.

While the economics of consolidation and retransmission consent make clear that regulation inevitably reallocates bargaining power, we cannot assume that reallocation is harmful. But nor can we assume that it benefits consumers. Effective deregulation, therefore, should be judged not by who gains bargaining leverage but by whether it produces greater choice, lower prices, and improved efficiency.

VI. A Framework for Comprehensive Reform

The ideal deregulatory solution would eliminate outdated ownership restrictions and the retransmission-consent framework, which gives broadcasters regulatory advantages over competitors. Short of that, the FCC should pair ownership reform with carriage reform.¹⁹

The commission's discretion varies across these regulatory areas. The national ownership cap remains controversial, with legal challenges likely regardless of which approach the FCC chooses to take. Some commentators contend that only Congress can change the 39% cap.²⁰ Others note that the commission has long exercised authority to define how "audience reach" is calculated—including through the UHF discount—and thus retains interpretive latitude to revisit how the cap applies in practice.²¹

On the other hand, the FCC's Title VI authority is clearer. While retransmission consent and must-carry are statutory rules, Congress authorized the FCC to define and enforce "good-faith" bargaining standards, establish collective-negotiation mechanisms for small MVPDs, and prevent coercive contract terms. The point is not to sweep away these protections wholesale, but to recognize that they allocate bargaining power based on assumptions about industry structure. As those assumptions evolve, modest recalibrations may be necessary—not solely for the sake of deregulation, but to ensure the retransmission framework continues to serve its original purpose of balancing access, compensation, and consumer interests.

Sunsetting the retransmission-consent/must-carry framework entirely is one option. This approach would treat broadcasters like any other content creators, relying on copyright law and voluntary contracts with distributors. If programming is valuable, distributors will negotiate to carry it. If not,

¹⁹ Eric Fruits, *A Clean Slate Approach to Broadcast Regulation*, TRUTH ON THE MKT. (Oct. 2, 2025), <https://truthonthemarket.com/2025/10/02/a-clean-slate-approach-to-broadcast-regulation>.

²⁰ Press Release, *Free Press Slams Trump FCC's Broadcast Ownership Proceeding as 'Wildly Dangerous' for Democracy*, FREE PRESS (Aug. 5, 2025), <https://www.freepress.net/news/free-press-slams-trump-fccs-broadcast-ownership-proceeding-wildly-dangerous-democracy>.

²¹ *National TV Ownership*, NAT'L. ASS'N. OF BROAD. (Aug. 4, 2025) (PDF), available at https://www.nab.org/documents/newsroom/080425_National_TV_Ownership.pdf.

scarce channel capacity should go to whatever content consumers demonstrate they want. This would eliminate broadcasters' regulatory advantage over independent networks and treat all content symmetrically. While politically challenging, this approach would be the logical endpoint if we were designing the system from scratch today.

Short of complete elimination, incremental reforms could include:

- **Strengthening good-faith negotiation standards:** The current rules under 47 C.F.R. § 76.65 are broad, allowing station groups to delay, posture, or threaten blackouts with limited consequences. Exploiting scale is not inherently harmful; indeed, pooling resources through joint sales agreements or similar arrangements can create efficiencies that strengthen local broadcasters. But when scale is leveraged in ways that reduce the number of distinct voices that MVPDs carry, it conflicts with a longstanding policy commitment to preserve viewpoint diversity. Clarifying what constitutes “bad-faith” negotiating—such as refusing comparable offers to similarly situated MVPDs or bundling local signals with unrelated demands—would therefore target only those uses of scale that undermine this objective, while leaving room for pro-competitive efficiencies.
- **Limiting automatic fee-escalation clauses:** Some retransmission contracts contain “after-acquired station” clauses that automatically escalate fees when broadcasters acquire additional stations.²² These provisions create multiplier effects, whereby each new station acquisition increases baseline rates across an entire portfolio. Limiting such clauses would prevent consolidation from systematically inflating costs, while preserving legitimate negotiation processes.
- **Implementing final-offer (or “baseball-style”) arbitration:** This is a dispute-resolution method where parties present their “best and final” offers to an arbitrator, who must choose one entire offer as the binding decision without modification or compromise. This encourages parties to be reasonable and realistic, as they face an “all-or-nothing” outcome where their offer is either accepted in its entirety or rejected. It’s been argued that such a mechanism encourages each party to present reasonable offers.
- **Implementing targeted arbitration mechanisms:** Arbitration backstops during high-value programming periods would not eliminate retransmission fees but would prevent consumers from being held hostage to timing-based negotiation tactics. MVPDs could negotiate without facing subscriber defection threats over disappeared programming, while broadcasters would still receive compensation without exploiting amplified leverage from larger footprints.

The regulatory task is not to choose wholesale between consolidation and preserving localism, but to determine which combination of ownership limits, retransmission rules, and bargaining standards best advances the purposes of the retransmission regime with the least market distortion in a world where the 39% cap no longer reflects industry realities. We cannot know the precise balance *ex ante*, but this is the question policymakers should be asking. What is clear is that clinging to ownership

²² Reply Comments of the American Television Alliance, FCC ECFS Docket No. MB Docket No. 17-318, AM. TELEVISION ALL. (Aug. 22, 2025), available at <https://www.fcc.gov/ecfs/document/108222663308756/1>.

rules built on outdated technological assumptions ensures only managed decline, whereas recalibrating the framework to today's competitive conditions offers a chance for local broadcasting to adapt and remain relevant.

VII. Conclusion

Broadcast-ownership rules require modernization, and the FCC leadership is right to press that case. But deregulation should not proceed piecemeal. The interaction of ownership restrictions and Title VI demonstrates that every regulatory intervention reshuffles bargaining power somewhere in the system. Everyone in the sector is rent seeking, and each camp can defend its preferred intervention. Yet the larger point is that these interventions are interdependent. Removing just one may reduce distortion in one place while exacerbating it elsewhere.

That reality sets the FCC's task. The commission should determine which combination of ownership limits, retransmission rules, and bargaining standards best advances the policy purposes Congress has set with the least distortion. We cannot know *ex ante* the precise allocation of bargaining leverage, but we do know that comprehensive reform is more likely than piecemeal reform to yield an environment where resources flow according to consumer demand, rather than regulatory accident.

The most coherent approach would eliminate the retransmission-consent framework entirely, treating broadcasters like any other content creator and allowing copyright law and voluntary contracts to govern distributor relationships. This would end the regulatory asymmetry between broadcasters and streaming competitors, while removing the advantages broadcasters hold over independent networks.

If complete elimination proves politically infeasible, the FCC should, at minimum, pair ownership deregulation with substantial retransmission reforms to prevent consolidation from amplifying existing distortions. In this rare case, the relevant rules are all within the FCC's jurisdiction; they all concern closely related products and providers; and they can all be adjusted in tandem. That makes it possible to pursue comprehensive reform that reduces multiple distortions simultaneously.