

Comments of the International Center for Law & Economics

*RE: 2022 Quadrennial Regulatory Review (MB Docket No.
22-459)*

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Executive Summary

The International Center for Law & Economics (ICLE) urges the Federal Communications Commission (FCC) to repeal the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. Section 202(h) of the Telecommunications Act of 1996 requires the FCC to review its ownership rules every four years and to repeal or modify regulations no longer in the public interest. The 8th U.S. Circuit Court of Appeals held in *Zimmer Radio* that the statute permits the FCC only to loosen regulations, not to tighten them, and creates a presumption favoring deregulation.

The Commission must justify retaining rules against evidence of increased competition—a burden the record cannot support. These regulations, conceived when spectrum scarcity limited media choices, now harm the public interest by preventing local broadcasters from achieving the scale necessary to compete with largely unregulated digital platforms.

Defining relevant markets too narrowly and treating broadcast radio and television as isolated from digital competitors has proven a fundamental error. Consumers substitute freely between broadcast stations, streaming services, podcasts, and social media for both entertainment and advertising exposure. From 2018 to 2025, terrestrial radio's share of audio listening time fell from 46% to 34%, while streaming audio rose from 14% to 23%, and podcasts climbed from 3% to 10%. Nielsen data show that streaming now accounts for 46% of television viewing time, compared to broadcast's 19% share. Defining markets as “local broadcast radio” or “local broadcast television” ignores how consumers experience media and how advertisers allocate budgets across platforms.

The current ownership caps prevent broadcasters from achieving economies of scale that would enable them to invest in costly local-news operations and community programming. The Local Radio Ownership Rule's numerical caps and AM/FM subcaps create portfolios of financially weak stations, rather than allowing consolidation that could cross-subsidize quality content. The Local Television Ownership Rule limits entities to two stations per market, preventing the shared newsgathering resources and infrastructure that could support expanded local journalism. The Dual Network Rule dates to 1941 and prohibits local stations from affiliating with entities owning multiple major networks. It reflects concerns about spectrum scarcity that have largely vanished, as digital platforms have built global distribution without owning a single broadcast affiliate.

Adopting a clean-slate approach and repealing all three rules would not leave a regulatory void. The U.S. Justice Department (DOJ) and Federal Trade Commission (FTC) remain empowered to review media mergers under general antitrust law, conducting fact-specific analyses that define relevant markets to include all competitive platforms and that would assess actual effects on advertising rates and consumer welfare. Case-by-case antitrust review is superior to the FCC's prophylactic structural prohibitions, which apply the same restrictions to every market, regardless of the competitive local conditions. Repealing these outdated rules would allow broadcasters to compete effectively, increase their investment in local content, and better serve the public interest in an era of media abundance.

I. Introduction and Overview

The International Center for Law & Economics (ICLE) submits these comments in response to the Federal Communications Commission’s (FCC or “the Commission”) notice of proposed rulemaking (NPRM) regarding review of its broadcast-ownership rules.¹ ICLE is a nonprofit, nonpartisan research center that promotes the use of law & economics methodologies to inform public policy. ICLE’s work is intended to ensure that competition policy and regulation are grounded in sound economic analysis and promote consumer welfare, particularly in dynamic, technology-driven markets such as media and telecommunications.³

The Commission’s quadrennial review, mandated by Section 202(h) of the Telecommunications Act of 1996 (“1996 Act”), leads to the conclusion that the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule are no longer “necessary in the public interest as the result of competition.”² Conceived in an era of spectrum scarcity and limited media choice, these rules now produce consequences that are contrary to the public interest. They function as asymmetrical regulatory restraints, preventing local broadcasters from achieving the scale and efficiency needed to compete with the largely unregulated digital firms that now operate in the modern media landscape. By constraining broadcasters, the Commission’s rules reduce investment in local news, limit innovation, and reduce the diversity of high-quality content available to the U.S. public.

The NPRM, framed by the deregulatory language of Section 202(h) and the opinion of the 8th U.S. Circuit Court of Appeals in *Zimmer Radio of Mid-Missouri Inc. v. FCC*, creates a presumption against retaining the rules.³ The FCC is statutorily directed to justify their continued existence in the face of new competition, a burden the record cannot support. The NPRM notes that the *Zimmer* court held that the term “modify” in Section 202(h) permits the Commission only to “loosen”

¹ 2022 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to the Telecommunications Act of 1996, 90 FED. REG. 51, 291 (Nov. 17, 2025), (to be codified at 47 C.F.R. pt. 73) [hereinafter “NPRM”]; see also 2022 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996 (Notice of Proposed Rulemaking, FCC 25-64, MB Docket No. 22-459, Sep. 30, 2025), available at <https://docs.fcc.gov/public/attachments/FCC-25-64A1.pdf> [hereinafter “Draft NPRM”]. The Commission’s publicly released NPRM (FCC 25-64) includes statements not reproduced in the Federal Register publication. While the Federal Register version is the operative text for notice and comment, these comments refer to the FCC-released version, where necessary, to reflect the Commission’s articulated reasoning and to respond to questions that appear only in that version.

² Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996) (1996 Act); Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 3, 99-100 (2004) (Appropriations Act) (amending Sections 202(c) and 202(h) of the 1996 Act). In 2004, Congress revised the then-biennial review requirement to require such reviews quadrennially. See Appropriations Act § 629, 118 Stat. at 100.

³ *Zimmer Radio of Mid-Missouri Inc. v. FCC*, 145 F.4th 828 (8th Cir. 2025).

regulations,⁴ and it interprets the quadrennial review as a mandate for deregulation.⁵ Retaining these rules is not only poor policy but would be inconsistent with the statute as interpreted by the 8th Circuit.

ICLE urges the FCC to adopt a “clean slate” approach to broadcast regulation. Rather than modify outdated and harmful regulations, the Commission should fulfill its statutory duty by repealing these three rules in their entirety. This action would not leave a regulatory void. Instead, it would shift the oversight of media consolidation to the U.S. Justice Department (DOJ) and the Federal Trade Commission (FTC). Their case-by-case analysis under general competition law is better suited to protect competition in today’s complex, multiplatform marketplace than the FCC’s prescriptive structural prohibitions. The public interest is no longer served by rules that treat broadcasters as dominant gatekeepers in a world of abundant media choices.

A. Section 202(h)’s Deregulatory Mandate and *Zimmer v FCC*

Section 202(h) of the Telecommunications Act of 1996 requires the FCC to review its ownership rules every four years and to “repeal or modify any regulation it determines to be no longer in the public interest.”⁶ The 8th Circuit’s decision in *Zimmer v. FCC* identified a key flaw in the FCC’s 2018 review was a failure to grapple with the modern competitive landscape, which led the court to find the agency’s retention of the Top-Four Prohibition arbitrary and capricious.⁷

The court’s holding that Section 202(h) is a deregulatory statute that does not permit the FCC to tighten rules provides a clear directive for this proceeding. The court’s finding that the statute only allows the FCC to loosen these regulations was a direct repudiation of the 3rd U.S. Circuit Court of Appeals’ earlier interpretation in *Prometheus I*:

We recognize that our decision appears to put us in tension with the Third Circuit’s decision in *Prometheus I*, 373 F.3d at 394-95, in which the court declined to read the “repeal or modify” provision of Section 202(h) as a “one-way ratchet.” But the Third Circuit’s brief analysis on this point improperly suggested that such a reading “ignores both ‘modify’ and the requirement that the Commission act ‘in the public interest.’” *Id.* at 394. The narrow reading of “modify” we adopt does neither. It still allows the Commission to tweak its regulations so long as it does not *tighten* them, and it still requires the Commission to act “in the public interest” as it does so.⁸

⁴ NPRM, *supra* note 1, at para. 5 (“Regarding 202(h)’s grant of statutory authority, the court held that the statute allows the Commission to loosen regulations but not tighten them.”).

⁵ Draft NPRM, *supra* note 1, at para. 2, n. 4 (“Section 202(h) of the 1996 Act further *requires* the Commission to ‘repeal or modify any regulation it determines to be no longer in the public interest.’”) [emphasis added].

⁶ Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(h), 110 Stat. 56, 111-12 (1996).

⁷ *Zimmer*, *supra* note 3, at 854 (“Because the FCC’s justifications for the Top-Four Prohibition ‘run[] counter to the evidence before the agency,’ we find the Commission’s decision to retain the rule arbitrary and capricious.”) (quoting *Motor Vehicle Manufacturers Ass’n of the U.S. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 43 (1983)).

⁸ *Id.* at 861-62.

The *Zimmer* decision established a legal framework under which the FCC's discretion may be channeled in only one direction. Any proposal to retain the rules as-is, or to modify them in any way that is not a clear loosening, faces a high legal hurdle. The statute places the burden of proof on those who wish to *retain* regulations and requires a demonstration that the rules remain "necessary" specifically "as the result of competition." Given the growth of competition from digital media, this burden is now insurmountable.

B. Redefining 'Public Interest' for the Digital Age

The NPRM notes that the FCC has historically evaluated the public interest through three policy goals: competition, localism, and viewpoint diversity.⁹ However, the Commission's application of these goals has not evolved with the marketplace. In an environment of digital abundance, these goals are best served not by preserving a set number of broadcast licensees, but by ensuring that broadcasters are sufficiently viable financially to produce high-quality local content and compete against their scaled, global, and unregulated rivals.¹⁰

A regulatory framework that weakens broadcasters in the name of preserving viewpoint diversity—as measured by counting the number of local owners—while ceding the media market to a handful of global tech platforms is counterproductive to the public interest. Localism requires capital investment in newsgathering and producing local content. Viewpoint diversity requires a multiplicity of financially healthy voices, not a larger number of struggling ones.

The FCC's framework implicitly creates a false choice between the number of broadcast owners and the quality of local content. In the current economic reality, the ownership rules result in more owners of financially weaker stations, leading to a net decrease in the quantity and quality of local-news production. This prioritization of a metric (number of owners) that has become detached from the desired outcome (robust local service) should be abandoned. The public interest now requires that the FCC remove the regulatory constraints that prevent broadcasters from competing.

II. The Centrality of Correct Market Definition

The error that has affected the FCC's past analyses, and which must be corrected in this proceeding, has been the Commission's persistent reliance on narrow, backward-looking market definitions that treat broadcast radio and television as isolated silos.¹¹ This approach is inconsistent with modern

⁹ NPRM, *supra* note 1, at para. 3.

¹⁰ Eric Fruits, *Your Local News Anchors Might Welcome Their New Corporate Overlords*, TRUTH ON THE MKT. (Sep. 25, 2025), <https://truthonthemarket.com/2025/09/25/your-local-news-anchors-might-welcome-their-new-corporate-overlords> ("The greatest threat to localism may not be concentration in a mid-sized market, but the financial collapse of stations forbidden from adapting to competitive reality.").

¹¹ Dissenting Statement of Commissioner Brendan Carr, Report and Order, *In the Matter of 2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the*

antitrust economics. Sound economic analysis, as practiced by the DOJ and FTC and advocated by ICLE, demands a functional approach based on substitutability from the perspective of both consumers and advertisers. For example, as ICLE President Geoffrey Manne reported in 2019:

That television broadcasters and cable networks compete with digital services is by now broadly well-understood. And they do so on virtually all dimensions: for user attention, for labor, for content and other inputs—and for advertising. The same is true for competition among both television/cable and digital platforms and newspapers, radio, magazines, video games, etc. This competition was not always apparent, of course.¹²

From the consumer's perspective, the platform through which media content is conveyed has grown increasingly irrelevant; what matters are content and convenience. Consumers substitute between broadcast television, cable, and an array of on-demand and linear streaming services for video content.¹³ Many do not perceive NBC as existing in a separate market from Peacock (NBC's streaming service), YouTube TV (which streams NBC affiliates), or streaming services that distribute popular NBC shows such as *Friends*. In the FCC's request for comments regarding affiliate arrangements, the agency suggests that both providers and consumers view broadcast and streaming as substitutes:

For instance, the national programming networks have moved some popular programming from broadcast television to their streaming platforms, and sometimes simulcast marquee network sports programming, such as the Super Bowl and the Olympics, on their streaming platforms.¹⁴

Similarly, in the audio space, a listener may choose among a local FM station, SiriusXM satellite radio, a Spotify playlist, or a podcast, all delivered through the same car speakers. Defining the market as “local broadcast radio” ignores the consumer experience.

Nielsen data from 2025 show that streaming accounts for 46% of household television viewing time, more than double the 19% share of broadcast television.¹⁵ Ad-supported audio accounts for only

Telecommunications Act of 1996, MB Docket No. 18-349 (Dec. 22, 2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-117A3.pdf> (“[D]espite a record bursting with evidence of a vibrant media marketplace, the Commission continues to advance the fiction that broadcast radio and broadcast television stations exist in markets unto themselves.”).

¹² Geoffrey A. Manne, *Comments of the International Center for Law & Economics* (Department of Justice Workshop on Competition in Television and Digital Advertising, Jun. 15, 2019), at 3

<https://www.justice.gov/atr/page/file/1201476/dl?inline>.

¹³ 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>.

¹⁴ Public Notice, *Empowering Local Broadcast TV Stations to Meet Their Public Interest Obligations: Exploring Market Dynamics Between National Programmers and Their Affiliates* (MB Docket No. 25-322, DA 25-961, Nov. 19, 2025), available at <https://docs.fcc.gov/public/attachments/DA-25-961A1.pdf>.

¹⁵ *The Gauge*, NIELSEN MEDIA RES. (Aug. 2025), <https://www.nielsen.com/data-center/the-gauge>.

64% of listening time, and radio accounts for only 64% of that.¹⁶ That means radio itself accounts for just 41% of consumer-listening time.

From the advertiser’s perspective, the market is the audience. Advertisers allocate their budgets across a wide array of platforms—broadcast, cable, digital, and social media—based on reach, targeting capabilities, and return on investment. To pretend that a local television station does not compete with YouTube, Google Search, Facebook, Instagram, or Netflix for local advertising dollars is to ignore the commercial reality of the modern advertising market.

Netflix reports that more than half of new subscribers sign up for the service’s ad-supported tier.¹⁷ Digital platforms now offer the same, and often superior, geo-targeting capabilities that were once the exclusive domain of local broadcasters. The FCC’s narrow market definitions create a cycle in which the rules weaken broadcasters, making them appear less competitive within their regulatory silos, which the Commission then uses as a justification to “protect” the weakened industry with the very rules that caused the harm. Breaking this cycle requires a shift in the analytical starting point—the market definition itself.

The competitive disparity is quantifiable. The FCC’s rules subject local broadcasters to ownership constraints that are entirely alien to their primary competitors. The market capitalizations of the major tech companies are measured in the trillions, while those of the largest broadcast groups are in the single-digit billions. The business models also highlight the competitive threat. For tech companies, media content often acts as a component of a larger business in e-commerce, hardware sales, or data collection—a strategy unavailable to broadcasters, whose survival depends directly on advertising and retransmission-consent revenues.

Under the Administrative Procedure Act, courts must “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”¹⁸ To maintain ownership rules for broadcasters under the fiction that they do not compete with streamers is likely to run afoul of the Administrative Procedure Act.

III. Local Radio Ownership Rule Unnecessarily Restrains Competition

The Local Radio Ownership Rule,¹⁹ with its sliding scale of numerical caps and AM/FM subcaps, is a product of an earlier technological era that bears no resemblance to the modern audio marketplace. Its continued existence stifles investment, prevents efficiencies, and harms listeners by weakening

¹⁶ *The Record: Q2 U.S. Audio Listening Trends*, NIELSEN MEDIA RES. (Jul. 2025), <https://www.nielsen.com/insights/2025/the-record-q2-audio-listening-trends-2>.

¹⁷ Alyssa Boyle, *More Than Half of Netflix Subscribers Now Sign up for Ads*, ADEXCHANGER (Jan. 21, 2025), <https://www.adexchanger.com/tv/more-than-half-of-netflix-subscribers-now-sign-up-for-ads>.

¹⁸ 5 U.S.C. § 706(2)(A).

¹⁹ 47 CFR § 73.3555(a).

local radio stations' ability to serve their communities. The rule is no longer necessary in the public interest and must be repealed.

A. Relevant Audio Market Is Broad and Dynamic

The NPRM's question regarding the Local Radio Ownership Rule—whether the FCC should revise its product-market definition to include non-broadcast audio sources—must receive an affirmative answer. The Commission's past practice of defining the relevant market as the “radio listening market” and excluding satellite and internet-based services is inconsistent with economic analysis of the market.

The modern audio marketplace is a dynamic and integrated ecosystem. From the perspective of a consumer, broadcast radio competes directly with a plethora of alternatives:

- **Satellite Radio:** SiriusXM offers hundreds of channels of curated music, news, sports, and talk programming with nationwide coverage.
- **Interactive Streaming Services:** Spotify, Apple Music, Amazon Music, and YouTube Music provide on-demand access to tens of millions of songs, allowing users to create personalized playlists.
- **Non-Interactive Streaming:** Services like Pandora offer customized “radio stations” based on user preferences.
- **Podcasts:** The growth in podcasting has created a vast new universe of on-demand spoken-word content, competing directly with news/talk and personality-driven radio formats.
- **Other Digital Audio:** Audiobooks, webcasting, and other platforms further fragment the listener's attention and the advertiser's dollar.

Edison Research reports that, since 2018, terrestrial radio's share of audio-listening time has fallen by 12%, while streaming audio's share has grown by 9% and the share devoted to podcasts has risen by 7%, demonstrating that consumers view streaming audio and podcasts as competitive substitutes for AM/FM radio broadcasts. The company reports that one-third of adults use either Apple CarPlay or Android Auto in their vehicles, where alternatives to AM/FM radio are available literally at the touch of a button.²⁰

Additionally, consumers often use audiovisual media solely for the audio component, disregarding the video component entirely. For example, video essays are generally long-form video content that covers a wide range of topics, including video-game lore, fan theories, historical studies, and social

²⁰ *The Infinite Dial 2025*, EDISON RES. (Mar. 2025), available at <https://www.edisonresearch.com/wp-content/uploads/2025/03/The-Infinite-Dial-2025-Presentation.pdf>.

critiques.²¹ These types of long-form content take up 73% of the average viewing time spent by U.S. YouTube users,²² largely in part because individuals can put the video on in the background or while on long drive. But even shorter-form videos can serve the same function, allowing the user to listen to just the audio portion of a video on the latest episode of *Survivor* or a top 10 list of the greatest moments in NFL history. While this type of content may appear on its face to be radically different from traditional radio, in a practical sense, many consumers do use these kinds of audiovisual content as a direct substitute for radio on long drives or while going to sleep.

Consumers do not distinguish between these platforms based on their regulatory classification or their technological features. They choose among their options based on content, convenience, cost, and the listening context. The idea that these services are not substitutes for broadcast radio defies economic reality. They compete for the same finite resource: the listener’s time. They also compete for the same advertising revenue, as digital-audio platforms now offer sophisticated targeting capabilities that rival and often exceed those of broadcast radio. Retaining ownership limits based on an arbitrary and archaic market definition that includes only broadcast stations would ignore or dismiss actual consumer behavior.

Table I: Share of Time Spent Listening to Audio Sources

SOURCE	2018	2025	CHANGE
Terrestrial radio	46%	34%	-12%
Streaming audio	14%	23%	+9%
Owned music	12%	6%	-6%
YouTube	11%	14%	+3%
SiriusXM	5%	7%	+2%
TV Music	3%	2%	-1%
Podcasts	3%	10%	+7%
Audio books	n/a	3%	n/a
Other	2%	1%	-1%

SOURCE: 2018 Quadrennial Review; Edison Research²³

²¹ Kristy Major, *Conspiracies, Costume Changes, and Three-Hour Deep Dives: Inside the Wild West of YouTube Video Essays*, THE GUARDIAN (Sep. 4, 2025), <https://www.theguardian.com/tv-and-radio/2025/sep/04/youtube-video-essays-leftist-cooks-conspiracy-folding-ideas-angry-video-game-nerd>.

²² Press Release, *Digital I Launches YouTube Measurement*, DIGITAL I (Feb. 12, 2025), <https://www.digital-i.com/news-articles/press-release-digital-i-youtube-measurement>.

²³ Report and Order, *In the Matter of 2018 Quadrennial Regulatory Review—Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 18-349, at para. 37, Dec. 22, 2023), available at <https://docs.fcc.gov/public/attachments/FCC-23-117A1.pdf> [hereinafter “2018 Quadrennial Review”]; *How Do Americans Spend Their Day with Audio?*, EDISON RES. (Jul. 23, 2025), <https://www.edisonresearch.com/how-do-americans-spend-their-day-with-audio>.

B. Arbitrary Caps Stifle Investment and Efficiency

The rule's rigid numerical ownership caps and its AM/FM subcaps also have negative consequences. They prevent radio operators from achieving the necessary economies of scale and scope, which has direct negative consequences for the public interest.

The caps inhibit investment in localism. High-quality local news, community-affairs programming, and the employment of local on-air talent are expensive fixed costs. For context, the Knight Foundation reports that Oregon Public Broadcasting (OPB), considered a "jewel of the public media system," spent \$7.2 million on local content in fiscal year 2017, which was "dwarfed by the \$25 million spent on everything else," noting that OPB's spending is "very impressive in a system where there are still small stations that spend virtually nothing on local content."²⁴ The report emphasizes:

[B]roadcasting is incredibly expensive. You need big buildings, studios, master control centers and towers, highly-skilled people to operate and maintain all those facilities and a leadership team to administer them. And, of course, you need an army of fundraisers and underwriting sales reps to bring in the money that pays for all of the above. Broadcasting is expensive.²⁵

Rural stations face particular challenges, as "broadcasting and engineering costs are higher at rural stations than at urban ones, and represent 19 percent of the average station's total expenses, versus 14 percent for non-rural stations."²⁶

The National Association of Broadcasters (NAB) has argued that current ownership rules harm investment and threaten the future of local news and community programming.²⁷ By preventing station groups from spreading these fixed costs across a larger number of outlets in a single market, the ownership rules make it economically challenging to provide robust local service. Consolidation would enable efficiencies through shared resources—such as sales staff, administrative functions, and studio space—which would free up capital to invest in programming.

As the NAB has stated, owning more stations locally enables broadcasters to program each outlet differently, attracting distinct audiences and expanding program diversity, which in turn would make a station group more attractive to advertisers who support its operations.²⁸ If every radio station in

²⁴ Adam Ragusea, *Topple the Towers*, KNIGHT FOUND. (Dec. 2017), at 11, available at https://kf-site-production.s3.amazonaws.com/media_elements/files/000/000/111/original/Topos_KF_White-Paper_Adam-Ragusea_V2.pdf.

²⁵ *Id.*

²⁶ CPB Support for Rural Stations, CORP. FOR PUB. BROAD., <https://cpb.org/aboutpb/rural> (last accessed Oct. 7, 2025).

²⁷ Press Release, NAB Statement on FCC Broadcast Ownership NPRM, NAT'L ASS'N OF BROADCASTERS (Sep. 30, 2025), <https://www.nab.org/documents/newsRoom/pressRelease.asp?id=7331>.

²⁸ See, e.g., Reply Comments of NAB, *In the Matter of 2024 Communications Marketplace Report* (GN Docket No. 24-119, at 19, Jul. 8, 2024), available at

a market is owned by an independent firm, the stations may attempt to reach the same audience with similar programming and coverage, aiming to target the most valuable demographics for advertisers. If a firm owns multiple stations, however, it can better focus each station on a different audience, producing and disseminating content that better serves the specific needs of each audience base.

By increasing the total number of listeners to their radio networks, a broadcast firm can offer more valuable advertising and better compete with the numerous types of content vying for consumers' time and attention. This, in turn, would provide both more diversity in the type of content delivered and competition for the attention of different demographics.

The AM/FM subcaps create additional distorted incentives and are particularly detrimental. FM stations generally have technical and, consequently, commercial advantages over AM stations.²⁹ The argument that subcaps are needed to protect the viability of AM radio is flawed. For example, Salem Communications claims that deregulating subcap limits would result in the “migration of leading radio brands to the FM Band [that] could accelerate the departure of the AM audience.”³⁰ To illustrate their point, Salem provided examples of AM stations in several markets that began simulcasting their content on FM bands, with one market seeing listeners migrate from the AM broadcast to the FM broadcast.³¹ Looked at another way, Salem's example suggests that, when given a choice, consumers prefer receiving broadcasts via FM over AM. In many markets, the subcap limits deprive consumers of exercising that choice.

The financial instability of the AM band is widely acknowledged, as belied by the FCC's interest a decade ago in “revitalizing” AM service in MB Docket No. 13-249. The subcaps, however, create a distorted incentive structure. By limiting the number of more desirable FM stations an owner can acquire, the rule may force consolidation among less-viable AM stations. This creates portfolios of struggling assets rather than allowing for the creation of robust, mixed-signal groups that can cross-

https://www.nab.org/documents/filings/Communications_Marketplace_Reply_Comments_July_2024.pdf (citing Peter Steiner, *Program Patterns and Preferences, and the Workability of Competition in Radio Broadcasting*, 66 Q. J. ECON. 194 (1952)); *Schurz Commc'n Inc. v. FCC*, 982 F.2d 1043, 1054 (7th Cir. 1992); see also Reply Comments of NAB, *In the Matter of 2020 Communications Marketplace Report* (GN Docket No. 20-60, at 13-14, May 28, 2020); Reply Comments of NAB, *In the Matter of 2018 Quadrennial Regulatory Review—Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket No. 18-349, at 45-46, May 29, 2019).

²⁹ First Report and Order, Further Notice of Proposed Rule Making, and Notice of Inquiry, *In the Matter of Revitalization of the AM Radio Service* (MB Docket No. 13-249, 30 FCC Rcd 12145, at para. 3, 2015), (“AM listenership has nevertheless declined with the rise of newer, higher fidelity media alternatives, as well as the rise in environmental noise and interference from man-made sources.”); see also *AM vs. FM: How Radio Advertising Rates Differ Across Stations*, NAT'L MEDIA SPOTS (Apr. 18, 2025), <https://nationalmediaspots.com/am-vs-fm-radio-advertising-rates> (“FM stations often command higher Radio Advertising Rates because they reach larger, more diverse, and younger audiences, especially during peak listening hours like morning and evening commutes.”).

³⁰ Comments of Salem Media Group, Inc., *In the matter of 2022 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996* (MB Docket 22-459, at 4, Mar. 3, 2023), <https://www.fcc.gov/ecfs/document/10303297027747/1>.

³¹ *Id.*

subsidize and innovate. Thus, the rule initially intended to promote diversity might instead promote fragility across the AM band. A more effective path to AM revitalization would be to allow operators to build sustainable business models through consolidation and investment. Eliminating the subcaps would allow the market to determine the most efficient and sustainable combinations of assets.

C. Public Safety Best Served by Financially Viable Broadcasters

The NPRM notes that commenters have emphasized the role of broadcast media in disseminating information during emergencies.³² The Communications Act itself establishes the FCC for the purposes of “national defense” and “promoting the safety of life and property.”³³

Furthermore, fears that relaxing ownership caps would compromise the availability of emergency information are unfounded, given the existing structure of local radio markets. As the FCC’s 2024 Communications Marketplace Report indicates, the vast majority of local radio markets are served by more than 10 terrestrial radio stations, with many served by several dozen.³⁴ This large number of independent outlets creates a robust and resilient system for disseminating emergency alerts.

The key to a reliable emergency broadcast system is redundancy, a point the NAB has emphasized in its filings on the Emergency Alert System. In such a saturated environment, the consolidation of a few stations, or even the potential for a struggling station to go silent, would not materially diminish the overall capacity of the system to inform the public during a crisis. It is unlikely that provision of emergency information to the public would suffer significantly, even if the number of stations in a market were to decline. The sheer number of remaining broadcast voices would ensure that critical information would continue to reach affected communities.

Increased consolidation in local radio markets could, in fact, increase the reach of public-safety messages over radio. If consolidation allowed stations to better target different demographics and diversify their content delivery, the total number of radio listeners could increase, or not decrease at the same rate as under current rules.³⁵ While there are other means of reaching these consumers, a more robust radio marketplace would also enhance the benefits of public-safety messaging.

A broadcaster’s ability to provide service during an emergency depends on its financial health and operational resilience. Providing reliable service during a crisis requires investment in hardened infrastructure, backup power generation, robust transmission facilities, and skilled local journalists and engineers. The current ownership rules inhibit these investments by preventing broadcasters from achieving necessary economies of scale. Stations with limited financial resources are less able

³² NPRM, *supra* note 1, at para. 10.

³³ 47 U.S.C. § 151.

³⁴ 2024 Communications Marketplace Report, *In the Matter of Communications Marketplace Report* (GN Docket No. 24-119, Fig. II.F.4, Dec. 30, 2024).

³⁵ Reply comments of NAB, *supra* note 28, at 36.

to make the capital improvements and maintain the staffing levels required to ensure they stay on the air when their communities need them most.

Repealing the ownership rules would permit broadcasters to achieve efficiencies that could support investment in public-safety infrastructure. A regulatory framework that enhances broadcasters' financial viability is one that supports public safety.

D. Recommendation: Full Repeal

The FCC should eliminate the Local Radio Ownership Rule in its entirety. The rule is premised on a narrow market definition and undermines the public-interest goals of localism, diversity, competition, and innovation. Concerns that repealing this rule could lead to excessive concentration in a specific local-advertising market are misplaced. Such concerns are properly and more precisely handled by the DOJ and FTC under general antitrust laws. Antitrust enforcers can conduct a fact-specific analysis of proposed transactions, defining the relevant market as including all competitive audio platforms and assessing the likely effects on advertising rates. This case-by-case approach is preferable to the FCC's one-size-fits-all prophylactic rule.

Full repeal of the Local Radio Ownership Rule is not only within the FCC's discretion but is compelled by the statutory framework of Section 202(h). The statute directs the Commission to repeal any rule it determines is "no longer in the public interest as the result of competition." As demonstrated above, the growth of competition from satellite radio, streaming services, podcasts, and other audiovisual media has rendered the rule's narrow focus on broadcast-only competition obsolete and counterproductive. A determination that the rule is no longer needed is therefore a straightforward exercise of the FCC's analytical duty.

Moreover, the 8th Circuit's decision in *Zimmer* confirms that Section 202(h) is a deregulatory statute under which the FCC's authority to "modify" is limited to loosening, not tightening, its rules. Repeal is the ultimate loosening of a regulation and thus both fall squarely within the Commission's statutory authority and align with judicial precedent.

IV. Local Television Ownership Rule Undermines Localism by Weakening Local Broadcasters

The Local Television Ownership Rule,³⁶ which generally limits an entity to owning two television stations in a single designated market area (DMA), is another regulation that has been rendered obsolete by changes in the video marketplace. The rule undermines the FCC's goal of localism by preventing local broadcasters from achieving the scale necessary to survive in a competitive environment. Its repeal is necessary to ensure the continued provision of high-quality, locally focused news and public-affairs programming.

³⁶ 47 CFR § 73.3555(b).

The FCC's prior finding in the 2018 Quadrennial Review that broadcast television constitutes its own distinct product market was questionable then and is inconsistent with the current state of the video market now.³⁷ The NPRM's query about the appropriate product-market definition must be answered by acknowledging the vast and interconnected video ecosystem in which broadcasters compete.

Today's consumers have a plethora of choices for video programming that are direct substitutes for over-the-air broadcasting:³⁸

- **Traditional Multichannel Video Programming Distributor (MVPDs):** Cable and satellite providers (e.g., Comcast, DirecTV) remain a significant source of video programming.
- **Virtual MVPDs (vMVPDs):** Services like YouTube TV, Hulu + Live TV, and Sling TV offer packages of linear broadcast and cable channels delivered over the internet, competing directly with both broadcasters and traditional MVPDs.
- **Subscription Video-on-Demand (SVOD):** Global firms like Netflix, Amazon Prime Video, Disney+, and Apple TV+ have become dominant forces, investing tens of billions of dollars annually in original and licensed content.⁹
- **Free Ad-Supported Streaming Television (FAST):** Platforms like Tubi and Pluto TV offer thousands of linear channels and on-demand titles for free, competing directly with broadcasters for both viewers and advertising dollars.
- **Social Media and Short-Form Video:** Platforms like YouTube and TikTok command a massive share of video consumption and are formidable competitors for advertising revenue.

Each of these platforms competes directly with local television stations on every meaningful dimension: for audience attention, for programming rights, and for local and national advertising revenue.³⁹ Even solely audio products like podcasts and audiobooks provide competitive pressure on broadcasters, as many consumers use broadcast television as background noise while doing household chores, reading, or chatting with friends. The notion that a consumer who can watch their local news on a station's website, a vMVPD, or a FAST service, and can watch primetime

³⁷ 2018 Quadrennial Review, *supra* note 28, at para. 73 (“[W]e continue to find that broadcast television remains unique and non-substitutable with other sources of video programming, particularly with respect to fulfilling our traditional public interest objectives of competition (e.g., in terms of competition among local broadcast television stations and with respect to local programming), localism (e.g., in terms of supplying locally responsive programming), and viewpoint diversity (e.g., in terms of airing a multitude of viewpoints through local news and other local programming).”).

³⁸ Fruits, *supra* note 13.

³⁹ See generally Kristian Stout & Geoffrey A. Manne, *Promoting Competition and Innovation in the Evolving Video Sector*, INT’L CTR FOR LAW & ECON. (May 29, 2025), available at <https://laweconcenter.org/wp-content/uploads/2025/05/VCP-Innovation-in-the-Video-Sector.pdf>.

entertainment on Netflix or Hulu, still views broadcast television as a “distinct product market” is an inaccurate description of the market.

A. Consolidation Is Necessary for Local Content to Survive

The NPRM seeks comment on whether and to what extent non-broadcast video entities provide local news and other local content. According to Pew, 56% of U.S. adults often get their news from digital devices, while 32% often get their news from TV.⁴⁰ Despite their technological and regulatory differences, consumers increasingly view online and TV news as substitutes.

By way of example, in late September and early October, President Donald Trump announced his intent to send National Guard troops to quell protests outside an Immigration and Customs Enforcement facility just outside of downtown Portland, Oregon. In addition to coverage from local ABC, NBC, CBS, and Fox affiliates, more than a dozen video reports were available from cable outlets (e.g., CNN) and internet news outlets such as NewsNation, Instagram, and TikTok. Even niche local content, such as the announcement of a World Naked Bike Ride through Portland, was aired on local affiliates, cable outlets, and through distributed by videos on Instagram, Facebook, and X/Twitter. Every local government in the Portland region—such as the City of Portland, Multnomah County, the Metro regional government, and the Portland Public Schools district—streams its meetings and distributes them via YouTube, along with full transcripts that can be quickly queried and summarized using AI.

Organizations like Free Press⁴¹ and the National Hispanic Media Coalition⁴² argue that media mergers threaten local-news coverage, as new owners seeking efficiency gains replace costly community reporting with cheaper, centrally produced national content. This concern reflects real economic pressures: local newsrooms require substantial investments in staff, equipment, and production, making cost consolidation appear economically rational after mergers. The 2023 closure of WNWO-TV’s local-news operations in Toledo, Ohio—where Sinclair replaced local newscasts with centrally produced content—would appear to validate these fears about corporate consolidation prioritizing cost-cutting over community service, as the perpetually underperforming station could no longer justify funding its money-losing local news operation.⁴³

The relationship between ownership and local content is more, however, complex than this lone anecdote would suggest. WOOD-TV in Grand Rapids, Michigan, moved in the opposite direction,

⁴⁰ *News Platform Fact Sheet*, PEW RES. CTR (Sep. 25, 2025), <https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet>.

⁴¹ See Press Release, *Nexstar’s Unlawful Acquisition of TEGNA Is a Bad Deal for the Public*, FREE PRESS (Aug. 19, 2025), <https://www.freepress.net/news/nexstars-unlawful-acquisition-tegna-bad-deal-public>.

⁴² See Press Release, *NHMC Opposes the \$6.2 Billion Merger Between Nexstar/Tegna*, NAT’L HISPANIC MEDIA COAL. (Aug. 19, 2025), <https://www.nhmc.org/nhmc-opposes-the-6-2-billion-merger-between-nexstar-tegna>.

⁴³ Tim Dillon, *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>.

drastically reducing syndicated national programming to expand local-news broadcasts and lifestyle shows.⁴⁴ This market bifurcation reveals that station positioning matters more than ownership structure. Strong stations like WOOD-TV are investing in local content because it provides irreplaceable “must-have” programming that appeals to local advertisers and creates leverage in fee negotiations, while struggling stations like WNWO-TV abandon local-news operations they cannot financially sustain. Both strategies reflect rational economic decision making in response to the same market pressures.

The consumer response to these changes has been notably muted. Reports indicate there was no significant public outcry when WNWO-TV ceased local-news production, with the station’s relatively small audience simply switching to competing local newscasts.⁴⁵ This suggests consumer indifference to programming changes at underperforming stations, raising questions about whether the threat to local coverage from mergers is as severe as critics suggest, or whether market dynamics and station competitiveness play a more decisive role in determining local-news investment than ownership structure alone.

By limiting an entity to owning two stations per market, the Local Television Ownership Rule undermines the economic model for local-content production. It prevents broadcasters from achieving the operational efficiencies needed to sustain and expand local-content operations in the face of declining linear viewership and the diversion of advertising revenue to digital platforms. Common ownership allows for:

- **Shared Newsgathering Resources:** A single, larger news department can serve multiple stations in a market, allowing for more comprehensive coverage and more investigative journalism.
- **Shared Infrastructure:** Combining studios, satellite trucks, helicopters, and administrative staff would reduce duplicative overhead costs.
- **Enhanced Bargaining Power:** A larger station group has a better negotiating position for syndicated programming and with national networks.

Financially stronger, scaled station groups are better positioned to make the long-term investments in local journalism that serve the communities in which they are licensed. The current rule, by prioritizing the number of owners over the financial health of the stations they own, is contributing to the decline in local-content output in many markets. It ensures a greater number of weaker competitors, leading to a reduction in local-content investment. In contrast, repealing the Local

⁴⁴ 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>.

⁴⁵ Dillon, *supra* note 43.

Television Ownership Rule would enable weaker affiliates to merge with stronger affiliates, generating efficiencies that could be invested in producing in-demand local content.

B. Zimmer Decision and Top-Four Prohibition

The 8th Circuit's vacatur of the Top-Four Prohibition was a crucial and correct step, with the court recognizing that the rule was arbitrary and lacked a rational connection to the competitive realities of the current market. The FCC should not attempt to resurrect this prohibition.

The logic that compelled the vacatur of the Top-Four Prohibition applies with equal force to the underlying duopoly rule itself. If the video market is broadly competitive (which it is), there is no economic justification for a *per se* numerical limit on the number of stations an entity can own in a market. The competitive constraint comes not from the third or fourth local broadcaster, but from YouTube, Netflix, and dozens of other video options available to consumers.

C. Recommendation: Full Repeal

The FCC should repeal the Local Television Ownership Rule in its entirety. The rule is based on an obsolete market definition and harms the public interest by undermining the economic viability of local news. By allowing broadcasters to generate efficiencies and deliver the content that consumers want, FCC repeal of the rule would promote localism, competition, and content diversity.

The potential competitive effects of any given local-television merger—for example, on local spot-advertising rates or retransmission-consent negotiations—can and should be evaluated by the expert antitrust agencies on a case-by-case basis. The DOJ and FTC can define a relevant local advertising market that includes all video platforms and assess whether a proposed transaction would substantially lessen competition. This tailored, fact-based approach is superior to the FCC's rigid, outdated, and counterproductive structural prohibition.

D. FCC Discretion to Repeal the Rule

The FCC has clear authority under Section 202(h) to repeal the Local Television Ownership Rule. The statutory mandate requires the Commission to repeal rules that are no longer “necessary in the public interest as the result of competition.” The evidence of a hyper-competitive video marketplace—where local broadcasters are dwarfed by traditional and virtual MVPDs, SVOD services, and other online platforms—provides sufficient basis for the FCC to conclude that the rule is no longer necessary.

Making such a finding based on the competitive record is the core of the discretion granted by Congress. Furthermore, the *Zimmer* court's interpretation of Section 202(h) as a one-way deregulatory mandate means that any action taken must be a loosening of the rules. Repealing the rule entirely is a definitive deregulatory action, fully consistent with the FCC's statutory obligations and the 8th Circuit's interpretation of the law.

V. Dual Network Rule Is an Anachronism that Harms Consumers

The Dual Network Rule does not directly prohibit a merger between the major broadcast networks. Instead, it operates by prohibiting a local television-broadcast station from affiliating with any entity that owns two or more of the networks defined as such in 1996: ABC, CBS, NBC, and Fox.⁴⁶ This restriction on local affiliates has the practical effect of prohibiting a merger between or among any of the “Big Four” networks, as a combined entity would be unable to distribute its programming through the affiliate model that underpins broadcast television.

The rule is a policy solution to a market structure that no longer exists. In today’s global media environment, it serves only to handicap domestic companies and prevent the emergence of a competitor to dominant streaming services.

The Dual Network Rule is an anachronism dating back nearly 80 years, as the FCC explained in 2001:

The Commission first adopted a dual network rule in 1941, following its investigation of “chain” broadcasting. The rule adopted then mandated a flat prohibition on an entity maintaining more than a single radio network. ... [W]hen the Commission extended the rule to television networks in 1946, it determined that permitting an entity to operate more than one network might preclude new networks from developing and affiliating with desirable stations. These stations might already be tied up by the more powerful network entity and might provide the commonly owned networks with too much market power.⁴⁷

Thus, the original justification for the rule—adopted during the “First Network Television Season”⁴⁸—was concern that a powerful entity owning more than one network could “preclude new networks from developing and affiliating with desirable stations.”⁴⁹ At the time, there were only six commercial stations on the air⁵⁰ and two networks, the National Broadcasting Co. (NBC) and the DuMont Television Network.⁵¹

⁴⁶ 47 CFR § 73.658(g).

⁴⁷ Report and Order, *In the Matter of Amendment of Section 73.658(g) of The Commission’s Rules—The Dual Network Rule*, (MM Docket No. 00-108, at para. 2, Apr. 19, 2001), [hereinafter “Dual Network Rule”].

⁴⁸ Steve Baltin, *Music’s Television Empire*, GRAMMY AWARDS (Aug. 13, 2016), <https://www.grammy.com/news/musics-television-empire>.

⁴⁹ Dual Network Rule, *supra* note 47, at para. 2.

⁵⁰ AMERICAN TELEVISION SOCIETY, AMERICAN TELEVISION DIRECTORY 86 (1946), available at <https://ia601502.us.archive.org/3/items/americantelevisi01amer/americantelevisi01amer.pdf>; see also *id.* at 14 (Paul Porter, *FCC Hopes and Expectations for Television*, “For the benefit of historians who will some day be poring over a yellowed and crumbling copy of this Directory and Yearbook and who get little fun out of life anyway—I want to record that as of this writing the nation has six commercial television stations in operation.”)

⁵¹ Troy Brownfield, *The Origins of America’s First TV Networks*, SAT. EVENING POST (Mar. 4, 2019), <https://www.saturdayeveningpost.com/2019/03/the-origins-of-americas-first-tv-networks>.

In an era when there were only a handful of television stations in the entire country, this concern about concentrated ownership was plausible. Decades ago, access to a limited number of local broadcast affiliates was the only path for a network to reach a national audience. In that environment of extreme scarcity, a multinetwork owner could theoretically foreclose market entry by signing exclusive deals with the few available stations.

Over time, the original justification weakened. By 2023, the FCC shifted toward a different reason for maintaining the Dual Network Rule, specifically to maintain affiliate bargaining power *vis-à-vis* networks:

By keeping the rule in place, the Commission finds that the bargaining power of local broadcast affiliates, including many small entities, is promoted by enabling such entities to better influence top-four network programming decisions in ways that better serve the interests of local communities. ... The Commission finds that the bargaining power of affiliates would diminish were there to be a reduction in the number of the Big Four broadcast networks. The lasting economic impacts from the retreat of such bargaining power may diminish local broadcasters' abilities to provide the type of local programming that the Commission believes increases competition for local audiences. Thus, by eliminating the Dual Network Rule, local affiliates would be further displaced from the networks in terms of their negotiating power.⁵²

A. The Scarcity-Based Rationale Is Obsolete

The rule's original scarcity-based rationale is no longer relevant in today's media market of overwhelming abundance. The development of new "networks" is no longer dependent on the traditional broadcast-affiliate model. The last "new" major broadcast network, The CW, was founded in 2006 and is now owned by Nexstar and Warner Bros. Discovery.⁵³ It would be reasonable to conclude that, regardless of FCC ownership rules, the United States may never again see the entry of a new affiliate-based network. The world has moved on from that model.

The most powerful and dominant video programmers today are entities that did not exist when the rule was written and that have achieved global scale without affiliating with a single local broadcast station. Global streaming services like Netflix, Amazon Prime Video, and Disney+ operate as worldwide networks, directly reaching consumers over the internet. These firms, along with tech giants like Apple and Google (via YouTube), invest tens of billions of dollars annually in original content, dwarfing the programming budgets of the Big Four broadcast networks. Their success demonstrates that the path to content distribution is no longer through network formation and the acquisition of local broadcast affiliates, but through capital investment in content and technology.

⁵² 2018 Quadrennial Review, *supra* note 28, at para. 30.

⁵³ Jennifer Maas, *Nexstar to Acquire 75% Stake in the CW Network From Paramount Global, Warner Bros. Discovery*, VARIETY (Aug. 15, 2022), <https://variety.com/2022/tv/news/the-cw-nexstar-acquisition-paramount-warner-bros-discovery-1235150229>.

Furthermore, the distribution landscape has undergone a complete transformation. A network seeking to distribute its programming today has a multitude of options beyond the local-broadcast station model, including virtual vMVPDs like YouTube TV and Hulu + Live TV, FAST services, and the networks' own direct-to-consumer streaming platforms such as Peacock and Paramount+, which allow them to bypass the affiliate system entirely. The original fear of a powerful entity tying up desirable stations is irrelevant when those stations are no longer the sole gatekeepers to the consumer audience. The rise of these alternative distribution platforms means that, even if a hypothetical merged broadcast network had affiliations in every market, a new content distributor could still launch and reach a national audience through numerous other channels.

The premise of the Dual Network Rule—that the four legacy broadcast networks constitute a uniquely powerful and discrete market whose combination would prevent new entry—is therefore demonstrably false. The market for national programming is now global and multiplatform. The barriers to entry are no longer based on access to a limited number of broadcast licenses, but on the ability to compete for content and viewers against trillion-dollar technology companies. The concern that animated the rule in 1946 has been rendered moot by decades of technological innovation and market evolution.

Streamers, vertically integrated studios, and tech platforms compete directly with the Big Four for every key input and output: talent, production resources, premium content rights, audience viewership, and national advertising dollars. In this environment, any merger among the Big Four would more likely be driven by economic or financial distress, rather than the anticipation of exercising any market power. The relevant market for video content is expansive, dynamic, and global. In that market, the Big Four are smaller players, not dominant forces.

By prohibiting a merger among any of the Big Four, the rule artificially constrains the market and prevents the formation of a scaled, broadcast-centric entity that could more effectively compete with the dominant streaming services. A combined network entity would have a larger library of content, greater financial resources to bid for premium programming like major sports leagues, and the scale to invest in technological innovation. Such an entity could represent a more formidable competitor to the streaming giants, fostering greater price and quality competition in the overall video market. In its current form, the rule effectively serves to protect the market positions of Netflix and Amazon by preventing the legacy media companies from combining to challenge them effectively.

B. Network-Affiliate Bargaining Dynamics Have Changed

The FCC's more recent rationale that the Dual Network Rule protects the bargaining power of local affiliates is flawed and outdated. It is flawed because it considers repeal of the Dual Network Rule independently from repeal of the Local Television Ownership Rule, when it should have considered the effects of repealing both rules simultaneously.

A case could be made that repeal of the Dual Network Rule *by itself* might lead to a merger that tilts bargaining power in favor of networks at the expense of affiliates. Similarly, a case could be made

that repeal of the Local Television Ownership Rule *by itself* might lead to mergers that tilt bargaining power in favor of affiliates at the expense of networks. It is not clear whether the FCC has considered how the balance of bargaining power would shift if *both* rules were repealed. As we've witnessed with the recent *Jimmy Kimmel Live!* contretemps, affiliates with many stations can exercise substantial power over a network's programming decisions.⁵⁴

An affiliate's negotiating position today is determined less by its ability to switch its affiliation from one legacy network to another and more by the overall health of the broadcast ecosystem and the value that network programming provides relative to streaming alternatives. The networks have altered the historic relationship by launching their own direct-to-consumer streaming platforms (e.g., Peacock, Paramount+). They can also bypass their affiliates entirely to distribute content, a development that has shifted bargaining power in the networks' favor.

In this new reality, a stronger, combined network entity could prove a better partner for affiliates. Such a network would have a greater ability to invest in high-quality programming that drives viewership to local stations and could offer affiliates a more robust platform to navigate the transition to a hybrid broadcast/digital future. The notion that preserving four separate, weaker networks benefits affiliates more than allowing the formation of two stronger ones is a relic of a bygone era.

C. Recommendation: Full Repeal

The Dual Network Rule is a regulation designed to solve problems that no longer exist. It harms competition by preventing the formation of a challenger to the dominant streaming platforms. Any proposed merger between two of the former "Big Four" networks should be reviewed under standard antitrust principles by the DOJ and FTC. The agencies can identify the relevant national market for video programming—a market that must include all major streaming providers—and assess whether a transaction would lead to a substantial lessening of competition. This fact-specific inquiry would be the appropriate mechanism to protect the public interest, not a prophylactic ban based on an archaic view of the media world.

D. FCC Discretion to Repeal the Rule

The FCC's authority to repeal this rule is unambiguous. Section 202(h) empowers and directs the Commission to repeal regulations that are no longer "necessary in the public interest as the result of competition." The premise of the rule—that the Big Four networks constitute a unique and dominant market—is factually incorrect in today's global media landscape.

An FCC finding that the rule is no longer necessary would be a rational conclusion based on the evidence of competition from scaled, global streaming services. This exercise of judgment is precisely

⁵⁴ See, e.g., Ben Sperry, *Kimmel, Coercion, and the Public Interest Standard: The Problem of Boundless Government Power*, TRUTH ON THE MKT. (Sep. 19, 2025), <https://truthonthemarket.com/2025/09/19/kimmel-coercion-and-the-public-interest-standard-the-problem-of-boundless-government-power>.

what the statute contemplates. The deregulatory imperative of Section 202(h), as clarified by the 8th Circuit in *Zimmer*, further supports repeal as the appropriate course of action. Because repeal is the most complete form of “loosening” a regulation, it is an action that is plainly within the FCC’s legal authority.

VI. General Antitrust Principles Are the Proper Competition Safeguard

Repealing the FCC’s media-ownership rules would not mean the abandonment of regulatory oversight of media consolidation. It would mean replacing the Commission’s *ex-ante* structural prohibitions with case-by-case analysis based on economic principles of the Clayton Act and the Sherman Antitrust Act, as enforced by the nation’s expert competition agencies, the DOJ and the FTC.

This approach would not only be more efficient and effective but would also align with a regulatory philosophy that trusts dynamic market forces over centralized planning, as envisioned by the FCC’s *Delete, Delete, Delete* proceeding⁵⁵ and other administration initiatives.

A. Superiority of Case-By-Case Review

The core deficiency of the FCC’s ownership rules is their prophylactic nature. They are designed to prevent a potential market structure from forming, regardless of the actual competitive effects of a specific transaction in a specific market. This one-size-fits-all approach is ill-suited for the complex and varied media markets across the country.

In contrast, general antitrust law provides a flexible toolkit to evaluate mergers. The DOJ and FTC are equipped with the economic expertise and legal authority to define relevant markets, analyze competitive effects, consider pro-competitive efficiencies, and tailor remedies.

Unlike the FCC’s static rules, antitrust agencies define relevant product and geographic markets based on a given transaction’s specific facts and the competitive realities on the ground, considering evidence of substitutability from both consumers and advertisers. Antitrust agencies conduct a detailed analysis of potential unilateral and coordinated effects. They can assess whether a merger is likely to harm competition with respect to consumer prices (*e.g.*, retransmission-consent fees paid by MVPDs), advertising rates, or innovation and quality.

The antitrust framework also explicitly allows for consideration of pro-competitive efficiencies that a merger might generate, such as cost savings that could allow for greater investment in local news. The FCC’s rules, by their nature, ignore such benefits. If a transaction is found to pose a competitive threat, antitrust agencies can impose tailored remedies, such as targeted divestitures, rather than blocking an entire transaction that may be, on balance, pro-competitive.

⁵⁵ Public Notice, *In re: Delete, Delete, Delete*, 40 FCC Rcd 1601 (2025).

The FCC's continued use of structural ownership rules reflects an institutional perspective rooted in the Communications Act's Progressive Era origins. A modern approach requires not just repealing the rules, but a philosophical shift at the Commission toward recognizing that dynamic competition, backstopped by general antitrust enforcement, is a more effective regulator than arbitrary ownership limits.

B. Avoiding Duplicative and Conflicting Regulations

Maintaining a separate, industry-specific competition regime at the FCC is inefficient and creates the potential for conflicting regulatory outcomes. A transaction that might be cleared by the expert antitrust agencies could still be blocked by the FCC's outdated structural rules, leading to the scuttling of pro-competitive and pro-consumer combinations. This duplicative system imposes unnecessary costs on merging parties and creates uncertainty in the market.

The FCC should embrace regulatory modernization by ceding primary jurisdiction over media-merger review to the antitrust agencies. Its institutional role should focus on its core competencies of spectrum management and enforcing licensee obligations to serve the public interest, not on acting as a second-string competition authority wielding outdated tools. The antitrust laws are universally applicable and have proven sufficiently flexible to handle the unique characteristics of media markets without imposing the kinds of rigid rules the FCC currently maintains.

VII. Conclusion

The FCC faces a straightforward choice in this proceeding. Section 202(h) directs the agency to repeal regulations no longer necessary in the public interest as a result of competition. The evidence of competition in both audio and video markets is overwhelming.

Consumers allocate their attention across broadcast stations, streaming services, podcasts, social media platforms, and dozens of other video and audio sources without regard to regulatory classifications. Advertisers chase audiences across all these platforms, seeking reach and targeting capabilities wherever they can find them.

The market capitalizations of the dominant digital platforms—measured in trillions of dollars—dwarf those of the largest broadcast groups by orders of magnitude. In this environment, maintaining ownership rules premised on the assumption that broadcasters operate in isolated silos constitutes failure to fulfill the statutory mandate. The 8th Circuit's interpretation in *Zimmer* clarifies that Section 202(h) permits only the loosening of regulations, placing the burden squarely on the FCC to justify retention. That burden cannot be met.

Repealing the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule would serve the FCC's core public-interest goals: competition, localism, and viewpoint diversity. Allowing broadcasters to achieve necessary scale through consolidation would enable greater investment in local-news operations and community programming, the fixed costs of which cannot be sustained by artificially fragmented ownership structures. Stronger, more efficient

broadcast groups would be better positioned to compete for audiences and advertising revenue against global technology firms, fostering genuine competition in the media marketplace rather than preserving the illusion of competition among weakened local entities. Viewpoint diversity depends not on maximizing the count of struggling station owners but on ensuring the financial viability of multiple voices capable of producing quality content.

The DOJ and FTC possess the expertise and legal authority to review individual transactions for anticompetitive effects, defining relevant markets to include all competitive platforms and imposing tailored remedies where necessary. This case-by-case approach under general antitrust principles is superior to the FCC's rigid, one-size-fits-all prohibitions.

The FCC should exercise its statutory authority and discretion to repeal these three rules in their entirety. The alternative of retaining regulations that weaken the very industry the FCC purports to protect, while leaving dominant digital platforms entirely unconstrained, serves neither the statute's objectives nor the American public's interest in access to diverse, high-quality local content.

The record supports repeal. The law requires it. The FCC should act accordingly.