

Comments of the International Center for Law & Economics

*RE: 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)*

December 10, 2025

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Executive Summary

The relationship between television networks and their affiliates has changed over time, but these changes have little to do with the Federal Communications Commission's ("FCC" or "commission") chain-broadcasting rules. The value proposition that affiliates once provided to networks long hinged on their ability to provide the last-mile connection to consumers. Without affiliates, networks would not be able to generate returns on their costly investments in high-quality programming. In recent years, however, technological developments have diminished affiliates' value to networks, who are now able to deliver this content nationally through various means. Most notably, such programming may be delivered through streaming services offered over the top of broadband connections. While it may be appropriate for the FCC to reexamine its chain-broadcasting rules, changes to those rules will not alter the market realities of modern broadcasting.

Instead, the commission should focus on changes to its media-ownership and retransmission-consent rules. Broadcast television still provides several unique qualities that some consumers prefer. If the FCC were to allow independent broadcasters to expand their reach, their value would likewise increase. And if the commission reforms its retransmission-consent rules to treat broadcast content like any other content, independent broadcasters will have an incentive to develop their own valuable content, and potentially no longer affiliate with larger networks.

If the FCC does choose to reconsider its chain-broadcasting rules, it should focus primarily on ensuring that affiliation agreements do not lead independent stations to involuntarily transfer station control to larger networks. While the commission does have legal authority to regulate chain broadcasting, this authority is limited, and major changes could give courts the opportunity to revisit the FCC's broad public-interest authority over broadcasting.

I. Introduction and Overview

The International Center for Law & Economics (ICLE) submits these comments in response to the Federal Communications Commission's ("FCC" or "commission") public notice regarding review of the commission's network-affiliation rules.¹ ICLE is a nonprofit, nonpartisan research center that promotes the use of law & economics methodologies to inform public policy. ICLE's work aims to ensure that competition policy and regulation are grounded in sound economic analysis and that they promote consumer welfare, particularly in dynamic, technology-driven markets such as media and telecommunications.

¹ Public Notice, *Empowering Local Broadcast TV Stations to Meet Their Public Interest Obligations: Exploring Market Dynamics Between National Programmers and Their Affiliates* (Fed. Comm'n Comm'n MB Docket No. 25-322, 2025), available at <https://docs.fcc.gov/public/attachments/DA-25-961A1.pdf> (hereinafter "Public Notice").

The public notice poses various questions regarding the power dynamics inherent to network-affiliation agreements and raises concerns that local affiliates can no longer air content they choose. Undoubtedly, the economics of broadcasting have changed as a result of technological development; the value that local affiliates once provided to larger networks has been diminished by new alternatives to reach consumers.² But the network-affiliation rules have played little role in that change, and changes to the rules should not be expected either to protect affiliates or promote the public interest.

Therefore, rather than reexamining the network-affiliation rules in isolation, the FCC should focus on broader reforms to its broadcast-ownership, content, and retransmission-consent rules to allow broadcasters to compete with alternative technologies on equal footing. If a major network wants to reach a nationwide audience without maintaining an affiliate in every market, allowing an independent broadcaster to increase its reach will provide that broadcaster more leverage in network-affiliation negotiations. Likewise, if large networks can't leverage local broadcasters' retransmission rights to extract rents from multichannel video-distribution programmers (MVPDs), the networks will have less incentive to exert control over those same local affiliates.

The FCC should also take care not to invoke its chain-broadcasting authorities too broadly. While the Communications Act does give the commission authority to regulate broadcast networks and their affiliation agreements, the primary purpose of these provisions is to promote competition and diversity of programming.³ As more technological options become available to consumers, the First Amendment justification for the agency to invoke these authorities may be on shaky ground.⁴ The FCC should instead either retain the existing rules or eliminate them entirely, and allow market forces to dictate the value of content to consumers.

II. Power Has Shifted Away from Local Broadcasters

The public notice raises reasonable concerns about the relative power imbalance between networks and their affiliates.⁵ The real challenge for affiliates, however, stems not from monopoly power or anticompetitive conduct on the part of the networks, but from market realities brought about by

² Kristian Stout & Eric Fruits, *Toward Comprehensive Reform of Broadcast Rules*, INT'L CTR. FOR LAW & ECON. (Nov. 19, 2025), <https://laweconcenter.org/resources/toward-comprehensive-reform-of-broadcast-rules>.

³ See 47 U.S.C. § 303(i); 47 U.S.C. § 310(d).

⁴ Ben Sperry, *First Amendment Jurisprudence Should Reflect Economic Reality: Why Red Lion and Pacifica Must Fall*, TRUTH ON THE MKT. (Oct. 14, 2025), <https://truthonthemarket.com/2025/10/14/first-amendment-jurisprudence-should-reflect-economic-reality-why-red-lion-and-pacifica-must-fall>.

⁵ Public Notice, at 2 (“This Public Notice is an important step in gathering the information needed to consider whether the national programming networks are exerting undue influence or control over their affiliate stations, whether the Commission’s rules are operating to ensure the independence of affiliate stations, and whether the Commission’s rules require any clarification or amendment to ensure that local affiliates are empowered to meet their statutory public interest obligations.”)

technological change. The market dynamics that originally gave rise to the network-affiliate model simply no longer exist, and changing the rules in an effort either to restore those dynamics or to arbitrarily shift power between the networks and their affiliates would inevitably lead to consumer harm.

A. Origins of Network-Affiliate Relationships

Historically, the network-affiliate model arose through a mutually beneficial arrangement in which both parties provided value to the other. Large broadcasting networks wanted to produce expensive, high-quality content designed to be consumed by a national audience, and to use that content to negotiate national advertising agreements.⁶ The major networks, however, were limited in their ability to reach a national audience.

First, Congress and the FCC limited how many stations a broadcaster could own nationwide. These early restrictions eventually grew into the FCC's 1953 "Rule of 7," which allowed companies to own up to seven AM, seven FM, and seven television stations.⁷ Changes in the 1980s and deregulatory efforts in the 1990s have eased these restrictions, but even today, a broadcast group (including both the major networks and independent broadcasters) cannot own stations that combine to reach more than 39% of U.S. households, and there are limitations on the number of stations that can be owned in individual markets.⁸ While these restrictions were designed to promote competition, diversity, and localism, they provide little value in the modern media marketplace, which has largely shifted to internet-based alternatives.⁹

Moreover, not all markets provide enough value to the major networks, as measured in advertising revenue, to make it worthwhile to own and operate local stations. A television station in New York City can reach almost 7.5 million households,¹⁰ while one in Omaha, Nebraska, only has access to 458,000 households.¹¹ Each station comes with overhead costs for facilities, a newsroom, sales staff,

⁶ *Report on Chain Broadcasting* (Commission Order No. 37, Docket No. 5060, May 1941) at 4, 30, <https://babel.hathitrust.org/cgi/pt?id=mdp.39015026285083&seq=5> ("Because of the basic nature of the network broadcasting system, the ability to transmit high quality programs and the volume of commercial programs which flow through these companies, affiliation is a desirable factor for the individual broadcast stations.")

⁷ Herbert H. Howard, *A Critique of the Fowler FCC's 1984-85 Multiple Ownership Rule*, 10 U.C. L. S.F. COMM'NS & ENTMT'J. (1988), 555, 557 n. 15, citing *Multiple Ownership of Television Broadcast Stations* (Report and Order in Docket No. 10822, F.C.C. 54-1185, 19 FED. REG. 6099, 11 RAD. REG. (P & F) 1519, para. 3, adopted Sep. 17, 1954).

⁸ Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629, 118 Stat. 99 (2004), available at <https://www.congress.gov/108/plaws/publ199/PLAW-108publ199.pdf>.

⁹ *Comments of the International Center for Law and Economics* (GN Docket No. 25-133, Apr. 11, 2025), 6-10, available at <https://laweconcenter.org/wp-content/uploads/2025/04/2025-Delete-Delete-Delete-Comments-r3.pdf> (hereinafter "ICLE Delete, Delete, Delete Comments").

¹⁰ *New York*, U.S. TELEVISION DATABASE, <https://ustvdb.com/markets/new-york> (last visited Dec. 1, 2025).

¹¹ *Omaha*, U.S. TELEVISION DATABASE, <https://ustvdb.com/markets/omaha> (last visited Dec. 1, 2025).

and costly broadcast equipment.¹² Station ownership also poses risks, such as potential liability for defamation or violation of FCC rules.¹³ Finally, each local station must contend with local politics, and independent broadcasters are often better tuned to these politics and FCC obligations.¹⁴ Ultimately, the major networks found that it was only worthwhile to maintain owned-and-operated stations in the largest markets, with their much higher potential returns on investment.

Local affiliates provided value to the major networks by allowing them to obtain last-mile connections in the majority of markets where the attendant costs and risks of station ownership made it uneconomical to maintain owned-and-operated stations. The network could invest in higher-quality programming and then use local broadcasters' facilities to reach more consumers. This, in turn, allowed the networks to raise revenue from national advertising. The affiliates, for their part, received compensation from the networks, and generated additional advertising revenue by delivering local content that consumers wanted to see.

B. Disruptions to the Economics of Affiliate Relationships

Because an affiliate's value to a network is found in that last-mile connection, any other last-mile connection presents a competitive challenge for the broadcaster. Without exclusive access to the consumer, the value of local broadcasting decreases.

MVPD systems were the first major disruption to the broadcaster market. An MVPD—originally offered by cable providers, and later joined by satellite, fiber, and “virtual” multichannel video-distribution programmers (vMVPDs) offered over the internet—provides much the same functionality to the consumer as broadcast television, but with vastly more content. While consumers could still receive broadcast signals free over-the-air, many were willing to pay a subscription fee in exchange for that additional content. Over time, MVPDs became the most common television option for consumers.

¹² *Reply Comments of the National Association of Broadcasters* (GN Docket No. 24-119, Jul. 8, 2024), 28-29, <https://www.fcc.gov/ecfs/document/10708547922642/1>.

¹³ The chairman has indicated a preference for more vigorous enforcement of individual stations' public-interest obligations, especially in relation to content from nationwide networks—e.g., “frankly, I think that it's really sort of past time that a lot of these licensed broadcasters themselves push back on Comcast and Disney and say ‘listen we are going to preempt, we are not going to run Kimmel anymore until you straighten this out because we licensed broadcaster are running the possibility of fines or license replication from the FCC if we continue to run content that ends up being a pattern of news distortion.’” See PALM BEACH POST, *FCC vs. Jimmy Kimmel: Brendan Carr Condemns Charlie Kirk Comments, Challenges Local Broadcasters*, YouTube (Sep. 18, 2025), <https://www.youtube.com/watch?v=ved5hVb4yfM>.

¹⁴ For example, broadcasters must sell airtime during the “political window” at a discount, and political ads can create inventory shortages that damage relationships with long-term local clients like car dealerships and furniture stores. Stations must also keep a political file available for public inspection and cannot censor candidate ads. See Brian Wallheimer, *How All Those Political Ads Affect Commercial Advertising*, CHICAGO BOOTH REV. (Jun. 10, 2021), <https://www.chicagobooth.edu/review/how-all-those-political-ads-affect-commercial-advertising>.

In the early years of MVPDs, such packages would either carry a local broadcaster's signal with no payment to the broadcaster or not host the broadcast at all.¹⁵ While most consumers could still access their local broadcast stations over-the-air, many wanted to access local broadcasters through their MVPD system instead. Due to concerns about the franchising model that granted cable MVPDs a monopoly in each franchise area, Congress eventually required cable providers to retransmit local broadcasters' signals in their local market, either through an elected "must-carry" option or through the retransmission-consent regime.¹⁶ The combination of consumer demand for local broadcast stations and FCC rules requiring MVPDs to negotiate with local broadcasters for retransmission consent would ultimately lead MVPDs to pay significant retransmission-consent fees, especially for network affiliates that had access to high-quality content and live sports.¹⁷

This may seem like a boon for local affiliates. Consumer demand for local affiliate stations was, however, always driven primarily by their interest in costly high-quality network content, not in the news and lifestyle programming the broadcaster would produce locally or the relatively low-cost content they would purchase on the syndication market. Over time, the power shifted back toward the networks; if an affiliate wanted to continue receiving hefty retransmission fees from cable providers, they would have to share a portion of that revenue with the network.¹⁸ This flipped the traditional dynamic of networks paying local affiliates for last-mile access to consumers into a relationship where affiliates paid the network a portion of their retransmission revenue in order to access to the network's content.

C. Networks No Longer Need Affiliates to Access Consumers

The rise of over-the-top streaming services has all but eliminated the need for broadcast networks to rely on local affiliates. Broadband is a multi-purpose connectivity option that allows consumers to access television programming, much like broadcast or cable services long have, but also offers additional functionality like on-demand viewing, gaming, or general internet browsing. Because most Americans have access to a broadband connection, broadcast networks no longer need the

¹⁵ The FCC implemented must-carry obligations in 1966 that were in place until the Supreme Court invalidated the rules in 1985. See Jeffrey A. Eisenach, *Delivering for Television Viewers: Retransmission Consent and the U.S. Market for Video Content*, NERA ECONOMIC CONSULTING (Jul 2014), available at <https://www.freetv.com.au/wp-content/uploads/2020/05/Eisenach-Retransmission-Consent-Report.pdf>.

¹⁶ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992).

¹⁷ Aaron Heresco & Stephanie Figueroa, *Over the Top: Retransmission Fees and New Commodities in the U.S. Television Industry*, 29 DEMOCRATIC COMMUNIQUÉ 19, 20-21 (2020), <https://journals.flvc.org/demcom/article/download/121286/120253/182736>.

¹⁸ Michael Grotticelli, *Reverse Compensation Could Strain Network-Affiliate Relations*, TV TECH (Jul. 7, 2011), <https://www.tvtechnology.com/news/reverse-compensation-could-strain-networkaffiliate-relations>.

affiliates to make that last mile-connection to consumers.¹⁹ Instead, all four of the major broadcast networks either own their own streaming services or are part of corporate families that include one or more streaming services. The studios that own the networks typically also have extensive content-licensing deals with even-larger streaming services like Netflix and Amazon Prime. This allows them to deliver network content to consumers directly.

Local broadcasters do still hold some value. The concerns outlined in the public notice, however, do not stem primarily from a problem with the FCC's existing network-affiliation rules, but from the nature of the market. Local broadcasters' unique value to networks was found in their access to consumers; once that unique value was diminished by technological advancements, the nature of the network-affiliate dynamic inevitably changed.

Networks have no duty to deal with a local broadcaster; they can bypass the relationship entirely and reach consumers directly over the internet. If the FCC wishes to promote the public interest, it must resist the urge to take a "command-and-control" approach that seeks to artificially shift the balance of power between networks and affiliates beyond what the market dictates.

III. Ease Regulatory Burdens on Broadcasters and MVPDs

The commission inquires about various network-affiliate rules that prevent stations from relinquishing control of the station to networks.²⁰ The current power dynamics, however, are instead driven partly by separate FCC regulations that encourage networks to leverage local affiliates for revenue, while simultaneously limiting independent broadcasters' ability to compete.

A. Eliminate Broadcast-Ownership Restrictions

While technological advancements have reduced the value of the broadcast business model, broadcasting still has advantages that can allow stations to compete with alternative technologies. Broadcasters are inherently local and can respond more directly to local community needs. Advertisers also may see value in campaigns targeted at a broadcaster's local market.²¹ Further, broadcasting is free and over the air, meaning consumers can access it when there are internet outages or when the consumer either does not want, or is unable, to pay for costly subscriptions.

¹⁹ *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion* (2024 Section 706 Report, Mar. 18, 2024), available at <https://docs.fcc.gov/public/attachments/FCC-24-27A1.pdf> (hereinafter "Section 706 Report").

²⁰ Public Notice at pp. 3-4.

²¹ *Local TV News Fact Sheet*, PEW RES. CTR. (Sep. 14, 2023), <https://www.pewresearch.org/journalism/fact-sheet/local-tv-news>.

Finally, some locations still lack adequate broadband connectivity; a low-income family in a remote rural area, for example, may have few television options other than local broadcasts.²²

If the commission is concerned about the existing power dynamics of the network-affiliate relationship, it should eliminate rules that limit broadcast stations' ability to compete. The market for broadcasting services still exists, but myriad FCC rules dictate how broadcasters may operate.²³ These include ownership restrictions that limit a broadcaster from owning stations that reach more than 39% of U.S. households, as well as restrictions on how many stations a broadcaster can own in a single market.²⁴ Eliminating or modifying these ownership restrictions to allow independent broadcasters to assemble a collection of stations with greater consumer reach would boost their value to both national networks and advertisers. It would also give individual broadcasters more leverage in negotiations with both large networks that do not want to own and operate stations nationally and with cable operators. Moreover, it would do so in a way that lets the market, rather than FCC mandates, dictate the value of broadcast service.

Further, there are various content-based FCC regulations still on the books for broadcasters that do not apply to the other communications services with which they compete in the modern market.²⁵ These rules would clearly be found to violate the First Amendment but for outdated court precedents that hinge on the supposed scarcity of the broadcast medium.²⁶ For example, broadcasters must dedicate a portion of their programming to children's television, a requirement with which no other media must comply.²⁷ This both adds costs to the broadcaster's bottom line, and limits affiliates' value to larger networks that may want to program other types of content at specific hours to meet consumer needs and demands.

Most importantly, the commission should eliminate its news-distortion policy.²⁸ As the Chairman Carr has rightly noted, FCC rules on news distortion prevent a broadcaster from intentionally

²² Section 706 Report at ¶ 4 ("Rural areas and Tribal lands significantly trail more urban area, with approximately 28% of people living in rural areas and approximately 23% of people in tribal lands lacking access to 100/20 Mbps fixed broadband service.")

²³ ICLE Delete, Delete, Delete Comments, at 6.

²⁴ 47 C.F.R. § 73.3555; Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, § 629, 118 Stat. 99 (2004), available at <https://www.congress.gov/108/plaws/publ199/PLAW-108publ199.pdf>.

²⁵ Jeffrey Westling, *The FCC's News Distortion Rules Highlight Need for Updates*, AM. ACT. FORUM (Oct. 8, 2024), <https://www.americanactionforum.org/insight/the-fccs-news-distortion-rules-highlight-need-for-updates>.

²⁶ Sperry, *supra* note 4.

²⁷ 47 C.F.R. § 73.670.

²⁸ See *Serafyn v. FCC*, No. 95-1385 (D.C. Cir. 1998), <https://law.justia.com/cases/federal/appellate-courts/cadc/95-1385/95-1385a-2011-03-24.html>.

distorting the news.²⁹ While this is a very high bar, some local affiliates may worry that content provided by the national networks violates these rules.³⁰ Where and when this happens, it is the local affiliate that is ultimately at risk of an FCC enforcement action, up to and including potential revocation of its broadcasting license. While the public notice asks about ways that an affiliate might push back on such content, eliminating the news-distortion policy entirely would absolve the regulatory concern for broadcasters altogether.

B. Reform Retransmission-Consent Rules

MVPD services are inextricably linked to the challenges faced by local affiliates. When Congress passed the Cable Television Consumer Protection and Competition Act of 1992, it determined that MVPD services had “undue market power” over programming due to the local-franchise model that granted MVPDs exclusive access to local markets.³¹ But by 2009, the U.S. Circuit Court of Appeals for the D.C. Circuit determined this bottleneck power no longer existed.³² Moreover, in the 16 years since that case, MVPD services’ market power has continued to diminish.³³ Broadcasters are now able to extract rents through the retransmission-consent regime that aren’t justified by market forces.

At the same time, these additional fees have shifted power from affiliates to the major networks, because the content the MVPD services most want and for which they are willing to pay will rarely be the local news or other programming a local broadcaster develops. Instead, it is costly national network content, with live sports taking the lion’s share of attention.³⁴ Because local broadcasters need that network content to successfully negotiate with the MVPD services, networks can charge local broadcasters to enjoy access to their content and essentially dictate what content the broadcaster must air.

²⁹ Jon Brodtkin, “How About No”: FCC Boss Brendan Carr Says He Won’t End News Distortion Probes, ARS TECHNICA (Nov. 14, 2025), <https://arstechnica.com/tech-policy/2025/11/how-about-no-fcc-boss-brendan-carr-says-he-wont-end-news-distortion-probes>.

³⁰ For example, some broadcasters chose to preempt the Jimmy Kimmel show shortly after Carr outlined the news-distortion policy and warned that licensees could see enforcement action for network content the affiliate decides to air. See Faith Wardwell, *Nexstar, Joining Sinclair, Will Preempt Jimmy Kimmel’s Late Night Show*, POLITICO (Sep. 23, 2025), <https://www.politico.com/news/2025/09/23/jimmy-kimmel-return-preempt-nexstar-00576320>.

³¹ Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 2(a)(2), 106 Stat. 1460 (1992).

³² *Comcast Corp. v. FCC*, 579 F. 3d 1, 8 (2009).

³³ As of August 2025, cable television only accounts for 22.5% of U.S. television viewing. See Eric Fruits, *The FCC’s Broadcast Ownership Review: Will the Agency Open the Door for Comprehensive Reform?*, TRUTH ON THE MKT. (Sep. 29, 2025), <https://truthonthemarket.com/2025/09/29/the-fccs-broadcast-ownership-review-will-the-agency-open-the-door-for-comprehensive-reform>.

³⁴ Harry A. Jessell, *Broadcasting Wins Big With NFL Deals*, TVNEWSCHECK (Dec. 16, 2011), <https://tvnewscheck.com/uncategorized/article/broadcasting-wins-big-with-nfl-deals>.

If the FCC were to eliminate its broadcast-ownership rules, one resulting effect may be that networks and their affiliates would have even more leverage to negotiate with MVPD services. The commission should therefore also consider eliminating the existing retransmission-consent framework.³⁵ This approach would treat broadcasters like any other content creators. If the content they produce is valuable, MVPD services will negotiate with broadcasters to carry that content, or risk losing their own customers. Networks could also negotiate directly with MVPD services for access to their content, either through one of the network's affiliated cable channels or through a new service, such as a live feed on one of the network's streaming apps.

At the same time, independent broadcasters would have more incentive to develop and distribute their own content. For example, if independent broadcasters want retransmission fees without having to pay a portion to a larger network, the company could produce their own national or local content, providing an alternative to the large networks.³⁶ Without the built-in advantage broadcasters currently receive in retransmission negotiations, they would be forced to improve and develop higher-quality content if they want MVPD services to carry their signal.

Even if the FCC chooses not to abolish the current retransmission-consent regime, it could still make incremental changes to the process to better allow market forces to dictate outcomes. These reforms might include strengthening good-faith negotiations standards, limiting automatic fee-escalation clauses, and implementing final-offer arbitration or other targeted arbitration mechanisms that provide backstops during high-value programming periods.³⁷

To the extent that the commission has concerns about the existing power dynamics between networks and their affiliates, the best approach would be to get the FCC out of the broadcasting business. By allowing broadcasters to access more consumers and eliminating the financial incentive for networks to leverage local broadcasters in retransmission-consent negotiations, the commission could allow the market to determine broadcasters' value. Large networks with significant content libraries may not need a local affiliate to reach consumers, and the local broadcaster could be better off developing and delivering its own content. But so long as FCC rules restrict market forces, large networks will continue to have an incentive to leverage their local affiliates for gain.

³⁵ Eric Fruits, Geoffrey A. Manne, & Kristian Stout, *Broadcast Ownership, Retransmission, and the Case for Comprehensive Reform*, INT'L CTR. FOR LAW & ECON. (Nov. 18, 2025), <https://laweconcenter.org/resources/broadcast-ownership-retransmission-and-the-case-for-comprehensive-reform>.

³⁶ Hank Price, *Will Stations Revolt Over Network Payments*, TVNEWSCHECK (Sep. 23, 2024), <https://tvnewscheck.com/business/article/will-stations-revolt-over-network-payments>.

³⁷ See Fruits, Manne, & Stout, *supra* note 35.

IV. Network-Affiliation Rules Shouldn't Further Distort Markets

The Communications Act grants the FCC specific authority to regulate broadcast networks, but invoking those provisions to dictate the shape of network-affiliate relationships would both run counter to the public interest and could exceed agency authority. Section 303(i) allows the FCC to regulate chain broadcasting in the public interest, but the legal justification for commission rules is tied to Section 310(d), which prevents a broadcaster from indirectly transferring control over the station without FCC approval. The network-affiliation rules, therefore, serve a specific narrow purpose and should not be seen as a blunt tool to dictate how network and broadcaster affiliation agreements should operate.

While independent broadcasters can enter into affiliation agreements with a network, the individual licensee still has ultimate control over the content it chooses to air. Its decision to abide by affiliation-agreement terms that relinquish some content decisions to the network is voluntary. Most modern affiliation agreements last three to five years, giving stations ample opportunity to revisit agreements that no longer serve the best interests of the station or its viewers. To the extent that FCC rules are needed to ensure the license remains effectively in the local broadcaster's hands, the commission should retain them.

If, however, the commission were to adopt the changes to broadcast-ownership and retransmission-consent rules outlined above, it may also find that eliminating the network-affiliation rules could promote competition and the public interest. For example, allowing a network to purchase stations in any market it desires would diminish the need for a network-affiliate framework. Local stations competing with the larger networks would have incentive to develop their own content, and independent broadcasters with a large inventory of stations could offer additional value to networks, justifying a more balanced split of retransmission and advertising revenue.

Similarly, if the FCC pursues reform to the retransmission-consent regime, networks may find that specific local markets are unprofitable and abandon those affiliations. Independent broadcasters could either enter into more economical affiliation agreements that account for lost retransmission revenue or forego a larger network to focus on local content that specifically targets a market untapped by nationwide content options in that community.

The FCC should be skeptical of proposals to use its chain-broadcasting authority to dictate how networks and affiliates negotiate if it wants to retain jurisdiction over broadcasting more generally.

Courts have previously granted the commission broad leeway to regulate broadcasters, including through specific rules governing network-affiliation agreements.³⁸ As the Supreme Court explained

³⁸ See *Nat'l Broad. Co. v. United States*, 319 U.S. 190 (1943).

in *National Broadcasting Co. v. United States*, the Communications Act “does not restrict the Commission merely to the supervision of traffic. It puts upon the Commission the burden of determining the composition of that traffic.”³⁹

But the broadcast market of 1943, when the *NBC* case was decided, was markedly different from broadcast markets today.⁴⁰ Earlier decisions relied on the scarcity of the electromagnetic spectrum for radio waves—presumed at the time to be the only medium capable of delivering televisual content—that the rise of MVPDs, satellite television, and internet-based alternatives all demonstrate no longer holds true.⁴¹

If the FCC decides to change its rules to exert greater control over network-affiliate interactions, the Court could take up broader First Amendment questions that have cast a long shadow over the FCC’s regulation of broadcasting. It would not be surprising if the end result were that the agency lost much of its authority to regulate broadcast content generally. While this might be the ideal outcome for consumers, it is likely not the FCC’s intent in launching this proceeding.

V. Conclusion

The FCC should take this opportunity to reexamine the broadcast market, and specifically how the network-affiliate relationship has changed over time. Broadcasters today face market challenges from rivals that offer a very different value proposition, and it is one that most consumers have demonstrated they prefer. But simultaneously, various existing FCC rules have contributed to a system that puts independent broadcasters at a disadvantage in their negotiations with the national networks.

If the FCC wants independent broadcasters to remain an option for consumers, it should eliminate rules that encourage the major networks to leverage the last-mile connection offered by local affiliates and instead enable broadcasters to better compete with these emerging content-generation and distribution rivals.

³⁹ *Id.*, at 215-16.

⁴⁰ Fruits, *supra* note 33.

⁴¹ Sperry, *supra* note 4.