

FCC Eliminates National TV Ownership Cap, Moves to Case-By-Case Evaluation Of Broadcast TV Ownership – What You Need to Know

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INTRODUCTION

On October 1, 2026, the Federal Communications Commission (“FCC”) released an Order to repeal the current national television ownership cap in favor of a case-by-case approach for evaluating national broadcast television ownership levels. The new rule was adopted in a 2-1 vote, with Republican FCC Chairman Brendan Carr and Republican Commissioner Olivia Trusty voting for the item and Democratic Commissioner Anna Gomez issuing a scathing dissent.

The Order will take effect 60 days after publication of the decision in the Federal Register and is expected to be subject to numerous requests for reconsideration and/or court challenges. Elimination of the ownership cap also is expected to usher in a new era of broadcast television transactions, such as mergers, acquisitions, or station swaps. To the extent the effective date of the FCC’s decision is not stayed, such transactions can proceed while any requests for reconsideration or court challenges are pending.¹

¹ While such transactions will now be permissible under the FCC’s rules subject to case-by-case review, parties must still ensure transactions comply with applicable antitrust law requirements. In her comments on the item, Democratic FCC Commissioner Gomez noted that concerns about localism and viewpoint diversity would not necessarily be protected by the antitrust review process.

WHAT IS THE CURRENT RULE?

The current National Television Multiple Ownership Rule restricts a single entity from owning television stations that reach greater than 39% of television households in the United States. The purpose of the rule was to promote localism by maintaining the balance of power between the networks and their affiliates.

As applied, the rule generally presumed that it would not be in the public interest to allow a single owner to reach more than 39% of television households. However, the digital marketplace has changed dramatically, according to the FCC, with the proliferation of digital platforms, which enjoy unrestricted national reach. Streaming services now reach over 80% of U.S. adults, and this scale provides them with a competitive edge in the media marketplace over broadcasters. The FCC believes the elimination of the cap in the broadcasting space will allow broadcasters to better compete with these unregulated digital giants. The FCC cited the recent Nexstar/TEGNA merger to illustrate the changes to media marketplace conditions and help explain why a blanket rule that automatically prohibits television mergers exceeding an inflexible numerical bar without a waiver no longer makes sense.

WHAT ACTION DID THE FCC TAKE?

The FCC deleted in its entirety the current National Television Multiple Ownership Rule found in Section 73.3555(e) of the FCC's rules. The FCC finds a "rigid cap" is no longer needed to serve the public interest, convenience, and necessity, which is the standard of review used by the FCC to evaluate broadcast ownership.

The FCC will now evaluate broadcast television ownership on a case-by-case basis, rather than deferring to an *ex ante* limit. The FCC finds repeal will neither create harms nor affect its ability to assess and address any particular concerns about the potential effect of a proposed transaction. Given the changes in the national media marketplace, the FCC believes a case-by-case review is a more effective approach to promote the FCC's goals to increase local programming and innovation.

Approval of any given transaction will continue to depend on the FCC's analysis of the transaction's potential benefits and harms and the likelihood that any potential harms can be mitigated by the imposition of merger conditions. The FCC provides some "initial guidance" on its anticipated approach to case-by-case review. For example, a threshold consideration will be the transaction-specific nature of any alleged harms – the FCC expects oppositions to transactions to focus on the transaction itself, rather than "some hypothetical ideal marketplace not grounded in practical realities." The FCC reminds parties that a key question in the FCC's public interest review will be the overall effect of the transaction on the viewing public. As the FCC processes new transactions under the case-by-case approach, it will help to refine and further develop the "guideposts and criteria" for transaction review.

WHY IS THE FCC ELIMINATING THE RULE?

The decision to repeal the rule is underpinned by the FCC's belief that changes to market conditions render the cap a disservice to the public interest. The national cap, the FCC reasons, is no longer needed because of fundamental changes to the conditions of the media marketplace, given that networks can now reach viewers directly through nonbroadcast platforms.

In addition, the abolishment of the cap will allow the FCC to consider additional proposed transactions, instead of those currently brought by applicants because they happen to comply with an outdated cap. In light of changing market conditions, the FCC finds it is no longer valid to presume that virtually any transaction that breaches the cap would disserve the public interest.

The FCC also asserts that eliminating the national cap will serve to allow affiliates to restore their leverage in negotiations with networks, which will promote the public interest by providing affiliates with the ability to use their greater returns to invest in local programming. The rule change will provide leverage to broadcast television stations against national networks by enabling television station owners to expand their audience reach.

Further, the FCC believes the repeal will remove artificial restrictions on opportunities for broadcast television to attract capital and generate revenue while also allowing broadcast television owners to better fulfill their public interest obligations, including through increased investment in local programming.

The FCC asserts the cap is not necessary because it is not needed to promote viewpoint diversity or competition or localism, which were the foundational reasons for the rule's implementation. The FCC also admits there are potential pitfalls that exist with the repealing of the national cap, including a possible (i) decrease in local programming; (ii) increase in retransmission consent fees; and (iii) loss of journalists and other communication workers. However, the FCC found that even with the potential pitfalls of repealing the rule, the benefit to public interest is greater, asserting the repeal will neither create harms nor affect the FCC's ability to assess and address any particular concerns about the potential effect of a proposed transaction.

WHAT IS THE FCC'S AUTHORITY TO REPEAL RULE?

Many have disputed whether the FCC has the legal authority to repeal the national cap, or if such action must be taken by Congress. Originally, the FCC adopted a national ownership cap after determining that such a rule was necessary to serve the public interest. In 1996, however, Congress instructed the FCC to set the national cap at a specific numerical percentage as set forth in the federal Telecommunications Act of 1996. Congress later directed the FCC to increase that percentage in 2004. While Congress reset the level of the national cap, in the FCC's view, Congress has done so by directing the FCC to modify its rules rather than by enacting a fixed cap into law.

The FCC therefore claims it has the authority to repeal the broadcast ownership limit under Sections 154(i) and 303(r) of the Communications Act of 1934. *See* 47 U.S.C. § 154(i); 47 U.S.C. § 303(r). Those statutory provisions empower the FCC to make any such rules as may be necessary in the execution of its functions and to carry out the provisions of the federal Communications Act. As with any FCC rule, the FCC has "the authority and obligation" to reexamine the national cap rule in response to changing circumstances, and to modify or repeal it, if the rule no longer serves the public interest.

The FCC concludes its interpretation is the best reading of the prior Congressional mandates regarding the cap. In short, the FCC finds the plain text of the Telecommunications Act of 1996 and the later 2004 legislation demonstrates the FCC has the authority to modify or eliminate the national cap upon determining that the rule no longer serves the public interest.

By contrast, opponents of the FCC's action argue that the 39% national audience reach limitation was established by a statute and thus only Congress has the authority to change or eliminate the limitation. They argue Congress

took “deliberate, explicit, and binding” steps to prohibit the FCC from modifying the limitation. Many of these arguments are set out in Commissioner Gomez’s 8-page dissent to the Order.

WHY DID ONE COMMISSIONER VOTE AGAINST THE REPEAL?

Democratic Commissioner Gomez said the FCC’s decision to eliminate the cap is unlawful on its face because Congress set the cap in federal law, and therefore, only Congress can change it. She noted that Republicans with deep firsthand knowledge agree with her opinion, including former FCC Commissioner Mike O’Rielly, former House Majority Leader Tom DeLay, and Senate Commerce Chair Ted Cruz, each of whom have made statements expressing skepticism about the validity of the change absent an act of Congress. She went on to say that elimination of the cap does not free local broadcasters from economic pressure but rather changes who is doing the squeezing. By repealing the cap, she believes large station groups will be positioned to grow even larger, allowing national companies to increasingly dictate what airs on local stations.

CONTACT

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