



The Daily Dish

It's Time To Let Broadcasting Have a Fair Fight

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Last week, Nextstar Media Group, the largest local broadcast television station owner in the United States, [announced the acquisition](#) of rival Tegna for \$6.2 billion. The deal will undoubtedly draw the usual antitrust scrutiny from both the Department of Justice and the Federal Communications Commission (FCC), but it also could kick off a major regulatory reform long in the making.

Currently, FCC rules prohibit a single firm from owning television stations that have an [aggregate national audience](#) reach of 39 percent of U.S. households. This rule was designed to prevent large broadcasting networks from exerting too much control over the local stations and their programming choices. And while this rule may have made sense in 2004 when the current iteration was adopted, the market has left broadcasting as a medium in the dust.

Currently, broadcast television accounts for only [18.5 percent of total video consumption](#) in the country, and the number has been decreasing over time. Consumers have myriad options for television and video content more generally, and many don't watch television at all. At the same time, broadcast's main rival, digital streaming services, do not have the same restrictions and regulations that currently apply to broadcast television. In June, consumers spent [46 percent of their video viewing](#) on streaming services, compared to 41.9 percent on cable and broadcast television, combined.

Fortunately, FCC Chairman Brendan Carr kicked off a process to revisit these [rules and regulations](#) that govern the reach of broadcast corporations. While the FCC should promote localism and the independence of broadcast stations, as prescribed by Congress, enforcing a national ownership cap that drives broadcasters out of business will serve no one.

Unfortunately, the FCC may not have the legal authority to alter or eliminate the national

ownership cap. In 2004, Congress directed the FCC to set the national ownership cap at 39 percent. Under the [broadcasters' preferred interpretation](#), Congress didn't set a permanent cap, and the FCC is free to revisit that cap as it sees fit: The direction was only to have the FCC change it in 2004. But with the decision in [Loper Bright and its overturning of Chevron deference to agency interpretations](#), reviewing courts may find that [Congress clearly set the cap at 39 percent](#), and that the determination is not subject to FCC review.

Regardless, Congress should revisit its 2004 decision and make clear that the FCC has the authority to set the national ownership cap - or eliminate the cap entirely. The Nextstar/Tegna deal is the canary in the coal mine: If the federal government continues to regulate broadcasters differently than their digital rivals, stations across the country may go out of business. Maybe broadcasting as a medium is outdated and will fall by the wayside, but it should be the market, not the regulator, that makes this decision.