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Don't Revive "Social Contracts" to Address Video Marketplace Inefficiencies

by

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I. Introduction and Summary

On June 18, 2025, the FCC's Media Bureau released a Public Notice "seek[ing] to refresh the record in the National Television Multiple Ownership Rule proceeding." That rulemaking, initiated in 2017, sought public input on whether the agency should revise its regulation preventing a single entity from owning television stations that collectively reach more than 39 percent of U.S. television households – a limit commonly known as the "national cap."

The refreshed record undoubtedly will provide illuminating insight into the current regulatory state of affairs: how relief from the national cap might affect the broader video programming marketplace, which other legacy rules equally deserve a similar second look, and so on. It also surely will include a lively debate as to whether the Commission has the authority, in the wake of the Supreme Court's *Loper Bright* decision, to modify the national cap, which Congress set at 35 percent in Section 202(h) of the Telecommunications Act of 1996 and raised to 39 percent in Section 629 of the 2004 Consolidated Appropriations Act.

To the FCC's credit, it has chosen to tackle these thorny issues through a traditional notice-and-comment rulemaking subject to judicial review – not an extralegal grand bargain styled after the so-called "social contracts" struck with cable operators in the early 1990s.

This brings us to a novel proposal by Cincinnati Bell Extended Territories LLC and Hawaiian Telcom Services Company, Inc. (both offering video, voice, and broadband as the service provider "altafiber") that would condition expedited waivers of media ownership restrictions on broadcasters' commitments to reduce retransmission consent rates by 50 percent over three years. Thereafter, increases would be tied to the Consumer Price Index. These so-called "social contracts" would have a minimum term of seven years.

In its *ex parte* notification dated June 6, 2025, incongruously filed in the deregulatory IN RE: DELETE, DELETE, DELETE docket, altafiber grounds its unconventional and broad-reaching proposal in the concern that increased broadcast television station consolidation might lead to an "imbalance in negotiating leverage with respect to retransmission consent." It also folds into the discussion of two tangentially related topics: (1) the definition of a "multichannel video programming distributor" (MVPD) and its implications for how, and with whom, virtual MVPDs (vMVPDs) negotiate retransmission consent agreements, and (2) broadcast television stations' transition from the ATSC 1.0 to 3.0 standard, which altafiber asserts could create additional revenue streams.

In the words of altafiber, together these changes could "result in a huge financial windfall" for broadcasters. Its solution? A reboot of the early 1990s-era "social contract" mechanism that would prescribe retransmission consent rates well into the future – and, given the fast pace of technological and marketplace developments, an unknowable future at that.

On a superficial level, altafiber's proposal may appear to be creative policymaking. Fundamentally, however, it rests on the misguided premise that marketplace evolution driven by competition warrants more – not less – regulation. The Commission therefore should reject altafiber's call to embrace "social contracts" that, in reality, would involve government-mandated multiyear rate regulation under the guise of "voluntary" agreements. Such an interventionist approach would further entrench outdated regulatory frameworks, distort market outcomes, tie the hands of MVPDs not party to the agreements, and – by design – circumvent judicial review.

II. The altafiber Proposal Is Overreaching and Extralegal

To assess altafiber's proposed "social contract" approach, one first must appreciate the near-future regulatory landscape that it presupposes. Specifically, it anticipates that the FCC, apparently through traditional regulatory processes, will create new revenue growth opportunities for station owners across multiple dimensions.

First, the altafiber proposal envisions that the agency will expand the definition of a "multichannel video programming distributor" (MVPD) to include virtual MVPDs (vMVPDs), like YouTube TV, Hulu + Live TV, DIRECTV (formerly known as DIRECTV STREAM), and Sling TV, that stream content over the public Internet. Historically, the MVPD classification has applied only to facilities-based providers: cable and direct broadcast satellite operators.

Redefining an MVPD to include vMVPDs would expand the pool of entities that must obtain retransmission consent directly from local television stations and thereby drive up broadcasters' aggregate revenues. Yet, as I noted in a recent post to the *FSF Blog*, the abundance of video programming alternatives available to consumers today counsels against expanding regulation. Instead, regulatory parity should be achieved by eliminating or relaxing legacy rules for facilities-based providers.

Second, the altafiber proposal anticipates that the Commission will grant the pending National Association of Broadcaster (NAB) Petition for Rulemaking seeking the establishment of a date certain for a mandatory transition to the ATSC 3.0 standard. ATSC 3.0, also known as "NextGen TV," allows for improved picture quality and sound, more efficient spectrum use, targeted advertising, and datacasting capabilities. According to altafiber, the mandatory adoption of ATSC 3.0 could deliver a "huge financial windfall for larger broadcasters who are already flush with significant annual streams of free cash flow."

Beyond these two developments, the altafiber proposal envisions a deregulatory shift on the broadcast ownership front – an expectation subsequently corroborated by the aforementioned Media Bureau Public Notice. In altafiber's view, should the FCC via rule change relax or eliminate the national cap and/or the local ownership restrictions that prevent a single entity from owning two of the top four stations in a local market, broadcasters would benefit from "relief on all three fronts" that "without compensatory measures will hurt consumers."

Which leads us to the proposal, in which altafiber urges the FCC instead to revive the so-called "social contract" model employed with cable operators in the wake of the 1992 Cable Act – agreements designed to bypass formal rulemakings and judicial review. Under its framework, the Commission would offer broadcasters the opportunity to obtain expedited consideration and a greater likelihood of success in seeking waivers of the national cap and local ownership rules. In exchange, broadcasters would be required to agree to pricing constraints.

The core requirement of altafiber's proposal is that any broadcaster receiving such a waiver must agree to reduce retransmission consent fees by 50 percent over a three-year period in the relevant designated market areas (DMAs). In the case of a national cap waiver, that presumably would include every DMA in which the broadcaster operates. For years four through seven – seven years being the minimum term – rate increases would be tied to changes in the Consumer Price Index. These pricing constraints would be enforceable despite being derived from an ostensibly voluntary agreement.

Remarkably, altafiber's proposal even goes a step further. It would impose obligations, not only on the signatory broadcasters, but also on MVPDs that are not themselves party to any agreement. Specifically, "[a]ny MVPD subject to the reduced retransmission consent fees must certify to the Commission and the broadcaster that it will reduce its basic tier rate or fees (*e.g.*, a broadcast fee) by an amount equal to" that rate cut.

In short, the altafiber proposal seeks to blend supposed deregulatory relief with de facto rate regulation – binding both broadcasters and MVPDs – while intentionally circumventing judicial oversight through the mechanism of an administrative "social contract." This is stated out loud in the *ex parte* notification: "[u]nlike changes to regulations, social contracts are negotiated agreements between the Commission and broadcasters and would not be subject to judicial challenge by either party."

III. Conclusion

The altafiber proposal may represent outside-the-box thinking, to be sure. At its core, however, is the misguided premise that marketplace evolution driven by competition warrants more – not less – regulation. These so-called voluntary "social contracts" would impose enforceable, multiyear pricing constraints – effectively, rate regulation – while circumventing judicial scrutiny. Worse still, they would not merely bind the broadcaster and the Commission, they also would interfere with the pricing practices of MVPDs not party to the agreements.

Yes, a legacy cap on station ownership constrains broadcasters' ability to achieve greater scale that could enhance their ability to compete with global direct-to-consumer platforms operated by the likes of Alphabet, Apple, Amazon, Netflix, Disney, and Paramount. Yes, the disparate regulatory treatment of facilities-based MVPDs and vMVPDs leads to suboptimal outcomes. Yes, a date certain for the transition to the ATSC 3.0 standard could create new revenue opportunities for broadcasters (along with an improved viewing experience for consumers). And yes, the retransmission-consent regime established during an unrecognizable, now-bygone era generates opportunities for regulatory arbitrage.

But none of these marketplace and technological dynamics justify forward-looking, government-imposed pricing mandates that could persist for a decade or more. To the contrary, in today's video programming marketplace, marked by unprecedented consumer choice and minimal bottlenecks, the right path forward is not greater regulation, no matter the vehicle. As Commissioner Brendan Carr has demonstrated through his IN RE: DELETE, DELETE, DELETE initiative, the proper way forward is to modernize the regulatory landscape through the elimination of legacy rules that impede consumer choice and consumer-benefitting competition.

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Further Readings

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