No.

In The
Supreme Court of the United States

RADIO COMMUNICATIONS CORPORATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION
AND THE UNITED STATES OF AMERICA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the "best reading" of the Low Power Protection Act ("LPPA") mandates nationwide Low Power Protection denial, as if the LPPA had not been enacted, where:

1. The lower court assumed that a trade association had standing and redressed its speculative third-party injury claim, FCC 23-112 ¶ 38, Pet. App. 77a-78a, asserted on behalf of unknown Full Power broadcasters the LPPA seeks to constrain, even though that injury claim is plainly barred by Article III associational standing rules;

2. The lower court ignored this Court's unanimously rendered interpretive rule that statutory definitions are "virtually conclusive," altered statutory definitions to nullify the LPPA's and 47 U.S.C. § 307(b)'s nationwide protection and licensing mandates, and produced an LPPA reading with no substantial effect upon interstate commerce; and

3. The lower court rejected First Amendment and must-carry issues based upon RCC's purported LPPA ineligibility, but inexplicably and inconsistently used the LPPA-ineligible trade association's speculative third-party injury claim to disqualify RCC from LPPA protection.

PARTIES TO THE PROCEEDINGS BELOW

All parties are disclosed in the case caption above.

RULE 29.6 DISCLOSURE STATEMENT

Petitioner, Radio Communications Corporation, is a nonpublic, closely held company with no publicly owned subsidiaries or owners, and is organized and located in Connecticut. RCC's sole owner is a citizen of the United States residing in Connecticut.

RELATED CASES

The D.C. Circuit's Opinion is reported at 141 F.4th 243 (CADC 2025). Pet. App. 1a.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Radio Communications Corporation, by its counsel, respectfully petitions for a writ of certiorari to review the Opinion and Judgment of the United States Court of Appeals for the District of Columbia Circuit in No. 24-1004, issued June 27, 2025. Pet. App. at 1a-23a.

OPINION BELOW

The D.C. Circuit's Opinion is reported at 141 F.4th 243 (CADC 2025). Pet. App. 1a.

JURISDICTION

The D.C. Circuit's Judgment in this matter issued on June 27, 2025. Pet. App. at 22a. The instant Petition is timely filed within 90 days thereafter. U.S. Sup. Ct. R. 13.1, 13.3. The Court's jurisdiction is invoked under 28 U.S.C. § 1254(1). The D.C. Circuit's jurisdiction arose under 47 U.S.C. § 402(a) and 28 U.S.C. § 2342(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent constitutional and statutory provisions are reproduced in the Appendix. Pet. App. 122a-128a.

STATEMENT

This case concerns the first judicial interpretation of the Low Power Protection Act ("LPPA") enacted on January 5, 2023. 136 Stat. 6193 (2023); 117 P.L. 344; Pet. App. at 122a. As the LPPA's title reveals, Congress directed the Federal Communications Commission ("FCC") to protect Low Power TV stations (sometimes "LPTV") regarding, *inter alia*, spectrum displacement by Full Power TV stations by upgrading LPTV stations to co-equal "primary" license status, Opinion, Pet. App. 6a,[1] but the lower court embarked upon another course.[2] The lower

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[1] *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 221 (2012) *citing INS v. Center for Immigration Rights, Inc.*, 502 U.S. 183, 189 (1991) ("the title of a statute or section can aid in resolving an ambiguity in the legislation's text"). RCC Reply at 2 n.2, CADC No. 24-1004.

[2] After *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024), appeals courts are charged with finding a statute's "best reading" (continued...)

court read the LPPA not as protecting LPTV licenses, but as protecting Full Power TV stations, the very broadcasting group the LPPA seeks to constrain. Opinion, Pet. App. 6a. That topsy-turvy result prohibits RCC from prosecuting a protection application under the LPPA and is reversible error. 5 U.S.C. § 706(2).

The FCC created LPTV in 1982 and it could have protected LPTV at any time. Instead the FCC was content to watch its fundamentally flawed LPTV licensing program flounder for decades: the FCC oddly granted LPTV's Full Power TV competitors the regulatory power to displace LPTV licensees even though LPTV was created to compete against Full Power TV.[3] The FCC's unstable LPTV licensing program has resulted in a combined failure of more than 600 LPTV and Class A stations between 2010-

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[2](...continued)
rather than merely determining whether the agency's reading is permissible. Accordingly, when statutory interpretation, not facts, is the focus of an agency review proceeding, referring to the lower court as the principal actor is appropriate and no disrespect is intended.

[3] FCC Chairman Carr, July 23, 2025: "For decades, the FCC's approach to regulating the broadcast industry has failed to promote the public interest. That has only made it harder for trusted and local sources of news and information to compete in today's media environment." https://docs.fcc.gov/public/attachments/DOC-413180A1.pdf. *Compare e.g.,* RCC Reply at 9-10, CADC No. 24-1004 ("The Commission's decades long regulatory failure has led to highly concentrated media ownership and dangerous information bubbles. . . . FCC 23-112's elevation of media concentration in service to NAB's Clients, directly contradicting clear Congressional direction to protect LPTV, is arbitrary and capricious.").

2023.[4] This is the FCC's years-long record of regulatory failure Congress saw when it enacted the LPPA in 2023, a history the orders below ignore as if the FCC were painting on a blank canvas. *FCC v. Consumers' Rsch.*, 145 S. Ct. 2482, 2536 (2025) (statutes are construed in historic context).

In 1999 and 2023 Congress gathered the political capital to try to protect LPTV, but the FCC barely reacted. Under two statutes which have LPTV protection as their mandates, the FCC favored Full Power TV licenses, culminating in this case where the lower court denied LPPA protection nationwide as if it were the Low Power Protection Denial Act.

The FCC's Low Power TV licensing program, now spanning over four decades, has resulted in significant losses of Low Power and Class A licenses, stranded investments, and inhibited new investment in broadcast equipment and services. RCC is now operating under its third Low Power TV license, having previously lost two Low Power TV licenses and a Class A license. Rather

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[4] Between 2010 and release of FCC 23-112 the number of LPTV licenses declined from 2,387 to 1,889, a 20.9% license loss; the number of CBPA "protected" Class A licenses declined from 525 to 380, a 27.6% Class A license loss, a combined total of 643 lost low power licenses. As of April 2025 that combined lost license total had increased to 743 lost low power licenses since 2010. *See* RCC's April 25, 2025 Rule 28(j) Letter [2112753], CADC No. 24-1004. The lower court ignored the station loss facts, as reported by the FCC itself, without comment. Note: The FCC's periodic station totals publications make clear that Class A and LPTV licenses are distinct license classes even though each license operates at "low power" compared to "full power" TV licenses.

than protect RCC's current Low Power TV license, the proceedings below approved a rule which prohibits RCC, and other Low Power TV licensees covering more than 99% of the Nation's population, from even applying for the LPPA's protection.

A. Congress Twice Protects Low Power TV

Congress has twice responded to the FCC's decades of regulatory failure regarding television competition, concentrated media, stranded capital, and restrained investment by enacting LPTV protection statutes in 1999 and 2023. The Community Broadcasters Protection Act of 1999 ("CBPA"), P. L. 106-113, 113 Stat. 1501A-594, and 2023's LPPA protect LPTV licenses by elevating eligible Low Power TV licenses to "primary" Class A status and vesting in them "the same license terms" as Full Power TV licenses, except as expressly limited by statutory text. *See* 47 U.S.C. § 336(f)(1)(A)(i) (CBPA);[5] LPPA § 2(c)(3)(A), Pet. App. at 125a. In 1999 Congress determined that "license limitations, particularly the temporary nature of the [LPTV] license, have blocked low-power broadcasters from many having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements."

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[5] Class A stations licensed under the CBPA possess the "same license terms . . . as the licenses for full-power television stations except as provided in this subsection." Class A stations licensed under the LPPA possess "the same license terms . . . as a license for a full power television broadcast station, except as **otherwise expressly** provided in this subsection." LPPA Section 2(c)(3)(A), Pet. App. 125a (emphasis added). Compared to the CBPA, the LPPA restates and reemphasizes the FCC's inability to minimize Class A protections.

CBPA, P. L. 106-113 § 5008(b)(3), 113 Stat. 1501A-594, 595. Those conditions persisted after implementation of the CBPA and led to enactment of the LPPA in 2023.

B. The Opinion Remedies Injury Claims For Unaffected Bystanders Who Lack Standing

1. The National Association of Broadcasters ("NAB"), acting as plaintiff in the agency rulemaking proceeding, asserted a speculative third-party injury, claiming that its unnamed members might want to expand their service areas in the future, and that implementation of the LPPA might eliminate that future expansion possibility. FCC 23-112 ¶ 38, Pet. App. 77a-78a. NAB improperly used the LPPA rulemaking proceeding as a petition to deny vehicle seeking nationwide denial of the LPPA's protections.

RCC opposed NAB's speculative injury claim and argued that "to qualify as an association representing the interests of other parties which are attempting to deny or limit the rights or interests of another, an association must 'allege that one or more of its members has standing.'" RCC Reply Comments, MB Docket No. 23-126, Def. Apdx. 00076-77, 82, CADC No. 24-1004 *citing In the Matter of Consent to Transfer Control of Certain Subsidiaries of TEGNA Inc.*, 38 FCC Rcd. 1282, 1288 n.46 (MB 2023), *citing In the Matter of Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 F.C.C.2d 89, 97 (1980), *citing Warth v. Seldin*, 422 U.S. 490, 511 (1975).

NAB failed to identify any specific broadcaster it represented and thus failed to establish associational standing authorizing it to seek denial of RCC's and other

LPTV licensees' assertion of protections under the LPPA, including cable TV must carry rights. NAB's use of the FCC's rulemaking proceeding as a tool to harm LPTV licensees was plainly beyond the scope of a properly established rulemaking proceeding established under the LPPA to explore LPTV license protection. Moreover, the NAB's effort to use the LPPA to limit LPTV rights under the LPPA, merely because Full Power stations might want to expand coverage in the future, was improperly speculative. RCC Main Brief at 12, 27, 37, 40-41, and RCC Reply at 1-3, CADC No. 24-1004.

2. Rather than address RCC's associational standing argument, the FCC leaned into NAB's speculative third-party injury claim and adopted NAB's injury claim as the FCC's sole justification for reading the LPPA in a non-nationwide manner. The FCC quoted from NAB's rulemaking comments to explain:

> As NAB notes, elevating LPTV stations from secondary to primary Class A status comes at the cost of "effectively block[ing] coverage and service improvements by full-service stations." . . . We decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status; rather, Congress adopted a much more balanced approach.

FCC 23-112 ¶ 38, Pet. App. 77a-78a.

FCC 23-112 adopted NAB's anti-competitive objection to the LPPA statute itself and determined that NAB "need not 'represent' or seek to 'protect' LPTV licensees in order to file comments in this proceeding." FCC 23-112 n.28, Pet. App. 35a. NAB failed to intervene in the appeals court litigation even after RCC served it with a courtesy copy of RCC's January 23, 2024 Emergency

Motion [2037054]. NAB has no *bona fide* interest in this proceeding, yet the FCC granted it relief. RCC Main Brief at 12, CADC No. 24-1004.

The FCC completely ignored its own associational standing rule and determined that parties could seek to harm LPTV licensees by asserting speculative future injury claims, and within the very LPPA rulemaking proceeding ostensibly instituted to protect those same LPTV licensees from harm. FCC 23-112 n.28, Pet. App. 35a. Neither the lower court nor the FCC addressed NAB's speculative injury claim, nor the fact that filing injury claims against LPTV licensees was beyond the scope of the LPPA protection rulemaking proceeding, nor the fact that the orders below protect the Full Power TV broadcasters the LPPA seeks to constrain. Opinion, Pet. App. 6a.

RCC argued that the FCC's LPPA reading was "absurd," "irrational," and "nonsensical" because its non-nationwide reading arose from the FCC's improper purpose of protecting NAB's Clients, the very broadcasters the LPPA seeks to constrain. RCC Brief at 27 and RCC Reply at 25, CADC No. 24-1004. The notion of politically "independent" federal agencies is currently the focus of litigation and scholarly debate,[6] but nothing in the LPPA or the Federal Communications Act ("FCA") authorizes the FCC to serve as federal court legal representative for private-party economic interests rather than the public interest. 47 U.S.C. § 307(a),(b) (FCC "shall grant"

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[6] *Slaughter v. Trump*, 2025 U.S. Pet. App. LEXIS 22628 (CADC Sept. 2, 2025) (reinstating a fired FTC commissioner in a split decision); https://www.theregreview.org/2025/06/06/may-the-demise-of-agency-independence-and-the-fcc/.

broadcast licenses nationwide in the public interest), Pet. App. 127a. "The purpose of the Communications Act and the LPPA is the promotion of broadcast outlets, not the elimination of them." RCC Main Brief at 20, CADC No. 24-1004.

The FCC assumed a novel and improper litigation position in this appellate case: as legal representative for a trade association's speculative third-party injury claim asserted on behalf of large broadcasters fully able to represent themselves, *Powers v. Ohio*, 499 U.S. 400, 411 (1991) (third-party representation cannot arise unless the injured party is hindered from seeking relief), the group of broadcasters the LPPA constrains and who lacked standing to pursue their speculative injury in federal court in their own right. That novel and disturbing litigation position easily melts away upon even a cursory application of Article III standing doctrine.

FCC 23-112 ¶ 38, Pet. App. 77a-78a presents a disturbing image of the FCC representing and promoting the private, anti-competitive interests of a national commercial TV trade association with members fully able to represent themselves, *Powers*, 499 U.S. at 411, rather than protecting LPTV licensees like RCC, the LPPA's nominally protected class of broadcasters. However, like "the proverbial dog that did not bark," the combined silence of the lower court and the FCC regarding the special protection accorded to NAB is telling. *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121, 2132 (2025).

3. The lower court, inexplicably assumed NAB's associational standing and redressed NAB's speculative third-party injury claim, without comment. Moreover, the lower court condoned the FCC's literal transcription of NAB's anti-competitive position into federal law even

though that position was utterly devoid of agency factual analysis, expertise, or judgment. FCC 23-112 ¶ 38, Pet. App. 77a-78a. The lower court ignored RCC's reminder of its obligation to examine NAB's Article III standing. RCC Main Brief at 40, CADC No. 24-1004; RCC's June 11, 2025 Rule 28(j) Letter [2120334], CADC No. 24-1004, *citing FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 369 (2024) (holding that alleged "downstream economic injuries" do not support standing when those injuries are speculative and lack support in the record); *see also Adarand Constructors, Inc. v. Mineta*, 534 U.S. 103, 110 (2001) (*per curiam*) ("We are obliged to examine standing *sua sponte* where standing has erroneously been assumed below.").

Article III standing required NAB, as plaintiff before the FCC and then as non-party plaintiff in the lower court through the FCC's representation, to allege an injury in fact, caused by RCC, that was redressable by the appeals court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992). An Article III injury is "an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical." *Garza v. Woods*, 2025 U.S.App. LEXIS 21642 at 7-8 (CA9 Aug. 25, 2025) *citing Lujan*, 504 U.S. at 560. To maintain an associational standing claim in federal court NAB must have members who would otherwise have standing to sue in their own right; whose interests to be protected are germane to the organization's purpose; and neither the claim asserted nor the relief requested requires the participation in the lawsuit of each of the individual members, *Nat'l Ass'n of Priv. Fund Managers v. SEC*, No. 23-60626, 2025 U.S.App. LEXIS 21717, at 7 n.5 (CA5 Aug. 25, 2025) *citing Hunt v. Wash.*

State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977), and the Full Power broadcasters had to demonstrate that they were unable to represent themselves. *Powers*, 499 U.S. at 411.

Neither the Opinion nor FCC 23-112 point to anything in the LPPA showing a Congressional intent to protect the lobbyist's Full Power clients "at the cost" of the Low Power TV licensees the LPPA was enacted to protect. Protecting NAB and its clients was not a proper consideration in the rulemaking proceeding. RCC Main Brief at 17, CADC No. 24-1004, *citing Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (it is "arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider . . . or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise").

The lower court allowed NAB to pursue a speculative third-party injury claim in federal court through the FCC without any analysis or comment. The government cannot "target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders." *Diamond Alt. Energy*, 145 S. Ct. at 2142. The Opinion assumed that unaffected bystander NAB clients, who voluntarily stayed out of the courtroom, but who were targeted by government regulation for relief, had standing to pursue their speculative claim at the expense of RCC, a party suffering actual harm caused by the FCC's action.

C. Altering The LPPA's Two DMA Definitions

1. The LPPA's two "Designated Market Area" ("DMA") definitions, LPPA Sections 2(a)(2)(A),(B), Pet. App. 123a, include all DMAs nationwide whether defined as Nielsen Media Research defined DMAs, Section 2(a)(2)(A), or as "equivalent local markets." Section 2(a)(2)(B).[7] Neither DMA definition is limited by reference to any TV household number or otherwise. Those two statutory definitions are "virtually conclusive" and unalterable absent some "exceptional reason." *Sturgeon v. Frost*, 587 U.S. 28, 57 (2019).

2. The Opinion uses three steps to find that the LPPA implicitly protects NAB's clients and cable TV service providers rather than RCC and other LPTV licensees covering more than 99% of the Nation's population. First, the lower court altered the large market DMA definition, Section 2(a)(2)(A), Pet. App. 123a, by adding a maximum 95,000 TV household limitation to it, thus creating nationwide LPPA protection Disqualification Regions. Opinion, Pet. App. 3a; RCC Main Brief at viii, 4, 13-14, 32 n.15, 34-36, 39 n.17, CADC No. 24-1004.

Second, the lower court negated the small local market DMA definition, Section 2(a)(2)(B), Pet. App. 123a, finding that "local markets" are "not 'equivalent' to the system established by Nielsen, which defines larger

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[7] For ease of reference, the 210 Nielsen defined DMAs are referred to herein as "large market DMAs." Opinion, Pet. App. 8a, explaining that Nielsen DMAs "define[] larger geographic regions than community of license." The "local market" DMAs are referred to herein as "small local market DMAs" because "the LPPA concerns LPTV stations that service small areas with low populations." Opinion, Pet. App. 17a.

geographic regions than community" at Section 2(a)(2)(A). Opinion, Pet. App. 7a-8a, 13a, 15a-16a. However, the LPPA does not mandate that "equivalence" can only mean congruently-sized "geographic regions." RCC argued that "equivalence" between the two market types means "nationwide" and neither market definition specifies a population limitation, but the lower court ignored RCC's statutory interpretation to keep in place the FCC's remedy for NAB's speculative third-party injury claim. FCC 23-112 ¶ 38, Pet. App. 77a-78a; RCC Main Brief at 4, 10-11, 24, 26-28, 29-30, 34-35, 37-38, 40-41, 44-45, 53, and RCC Reply at 24-25, CADC No. 24-1004. Reading both definitions to mean "larger geographic regions" improperly renders the small local market DMA definition at Section 2(a)(2)(A) superfluous. *TRW Inc. v. Andrews*, 534 U. S. 19, 31 (2001) (courts must construe statutes so that "no clause, sentence, or word shall be superfluous, void, or insignificant") (internal quotes omitted). RCC Reply at 24-25, CADC No. 24-1004 ("A basic rule of statutory interpretation is that all words in a statute are to be given effect, yet the Commission renders Section 307(b) and Section 230 superfluous for Class A licensing.").

Third, the lower court used its revised DMA definition to infer a change to the manner of issuing Class A licenses from 47 U.S.C. § 307(b)'s, Pet. App. 127a, decades-old nationwide community licensing mandate, to issuing Class A licenses on a non-nationwide basis to several sparsely populated, large market DMAs. Nationwide licensing is expressly required by § 307(b) and there is no express override of that mandate in the

LPPA.[8] RCC Main Brief at 19-23, CADC No. 24-1004 ("Instead of discussing the Commission's responsibility under Section 307(b) and the LPPA to issue Class A licenses on nationwide basis, FCC 23-112 does the exact opposite and explicitly protects NAB's Clients.").

REASONS FOR GRANTING THE PETITION

A. *Diamond Alternative Energy* & The Other Side Of The Standing Coin: The Targets Of FCC Relief Are Just Unaffected Bystanders

On June 20, 2025 the Court in *Diamond Alt. Energy, LLC v. EPA*, 145 S. Ct. 2121 (2025) reversed the D.C. Circuit's judgment that certain parties lacked standing to litigate alleged injuries caused by the EPA's approval of California's Clean Air Act regulations on the grounds that they were unaffected bystanders. Seven days later the Opinion once again relegated a claim seeker, this time NAB, to unaffected bystander status, the difference being that NAB and its Full Power clients were the explicit targets of speculative third-party regulatory relief at the expense of RCC. FCC 23-112 ¶ 38, Pet. App. 77a-78a. The FCC gave the LPPA a non-nationwide reading which barred RCC, and other Low Power TV licensees covering more than 99% of the Nation's population, from even applying for the LPPA's protection. The lower court's

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[8] RCC argued below that FCC 23-112's LPPA interpretation, as applied, violated constitutional requirements regarding regulation of local economic activity. If the FCC's limited LPPA reading were the only possible reading, then the LPPA would be unconstitutional. However, RCC provided two reasonable LPPA readings which satisfy all constitutional and statutory concerns. Moreover, the LPPA has two DMA definitions and it is literally impossible for there to be just one LPPA interpretation as the lower court determined.

Opinion failed to address NAB's standing even though it granted NAB's speculative third-party relief.

The government cannot "target a business or industry through stringent and allegedly unlawful regulation, and then evade the resulting lawsuits by claiming that the targets of its regulation should be locked out of court as unaffected bystanders." *Diamond Alt. Energy*, 145 S. Ct. at 2142. Similarly, the federal courts cannot ignore the standing of unaffected bystander NAB which is targeted by government regulations for relief at the expense of RCC, a party suffering actual harm caused by the FCC's action.

Article III standing is so important in federal litigation that courts are "obliged" to raise it on their motion if the parties fail to raise it. *Adarand Constructors, Inc.*, 534 U.S. 103. Given the Court's recent remand to the D.C. Circuit regarding entities it had improperly consigned to "unaffected bystander" status in *Diamond Alt. Energy*, the lower court should have examined NAB's standing to seek speculative third-party relief through FCC federal court representation, rather than consigning NAB to "unaffected bystander" status which assumed NAB's standing. The Opinion does not point to any legal theory allowing relief for a claimant who plainly lacked standing.

More than 25 years ago Congress found that FCC "license limitations, particularly the temporary nature of the [LPTV] license, have blocked many low-power broadcasters from having access to capital, and have severely hampered their ability to continue to provide quality broadcasting, programming, or improvements." CBPA, P. L. 106-113 § 5008(b)(3), 113 Stat. 1501A-594, 595. Congress explicitly determined that granting LPTV

license permanence would remedy many of the problems resulting from the FCC's chronic mismanagement of the television industry. The decisions below improperly reject that determination and the Nation remains trapped in dangerous information bubbles caused by the FCC's decades of regulatory failure. RCC Reply at 9-10, CADC No. 24-1004.

RCC's June 29, 2024 Rule 28(j) Letter [2062316], CADC No. 24-1004, *citing Loper Bright*, informed the lower court that granting the FCC's request for *Chevron* deference was not possible. The lower court ignored RCC's information and reviewed the FCC's continuation of decades of broadcast industry regulatory failure, as Chairman Carr succinctly put it, *see* n.3 at 3, *supra*, as if *Chevron* were still a guiding light, the Opinion uncritically repeating the contents of the FCC's Brief while ignoring RCC's arguments. *See* n.14 at 24, *infra*. The Nation remains trapped in dangerous information bubbles Congress has twice attempted to burst. This Court's intervention is warranted.

B. Federal Court Access: Federal Agencies Are Not Alter Egos For Trade Associations

FCC 23-112 ¶ 38, Pet. App. 77a-78a is not the product of agency expertise, fact-finding, or deliberation, it explicitly acknowledges that the FCC's LPTV protection denial rules were created to remedy NAB's speculative third-party injury claim. Neither the FCC nor the Opinion point to anything in the LPPA showing a Congressional intent to protect the NAB's Full Power clients "at the

cost" of the protected LPTV license class.[9] RCC Main Brief at 27, 36-37, 40, CADC No. 24-1004. Instead, the Opinion twists the LPPA into knots, ignoring basic statutory interpretive rules, for the improper purpose of protecting NAB's Full Power clients, the entities the LPPA seeks to constrain. Opinion, Pet. App. 6a.

NAB's third-party injury claim that potential Full Power improvements might be blocked by full LPPA implementation is doubly speculative on its face. Moreover, the Opinion ignored the real world fact that nobody objected to RCC's provisional LPPA protective application on any grounds, expansion-related, must-carry-related, or otherwise. Petitioner's Third Request For Judicial Notice [2118378] at 2-3, filed May 31, 2025, CADC No. 24-1004.

The lower court endorsed the FCC's policy choice declining to protect LPTV licenses on a nationwide basis based upon the FCC's literal transcription of NAB's anti-competitive goal into law.[10] Rather than effectuate explicit

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[9] RCC's Reply at 25, CADC No. 24-1004, states that

> RCC Brief at 27 argues that the Commission's LPPA reading is "absurd," "irrational," and "nonsensical" because that non-nationwide [LPPA] reading is prompted by the [FCC's] improper purpose of protecting NAB's Clients.

The central problem with the lower court's decision is that it condoned the FCC's appellate representation of a trade association's speculative third-party injury claim that the trade association, and its clients, would lack standing to pursue in their own right. The Opinion does not devote a single word to this central issue.

[10] Neither the lower court nor the FCC explained how nationwide LPPA protection denial constituted a "balanced approach" or served

(continued...)

Congressional purpose "to provide low power TV stations with a limited window of opportunity to apply for the opportunity to be accorded primary status as Class A television licensees," LPPA Section 2(b), Pet. App. at 123a, the FCC adopted LPPA protection denial rules dictated by a lobbyist who objected to the existence of the LPPA itself. RCC Main Brief at 12, CADC No. 24-1004.

The FCC's regulatory scheme is explicitly premised upon speculative third-party injury claims that NAB and its clients would lack standing to defend/prosecute in federal court.[11] The Opinion utterly fails to explain how the FCC properly serves as NAB's proxy in federal court for NAB's anti-competitive speculative third-party injury claims.

The LPPA is a simple, two page statute with no hidden, hard-to-find or easy-to-miss provisions. The Opinion does not point to a single word in the LPPA which gives the FCC discretion to value potential Full Power TV expansion plans over "Low Power Protection." The lower court ignored the fact that more than forty years ago the FCC determined that the process of Full Power expansion had concluded and the time to develop small market LPTV in urban areas had arrived. *Report and Order, In the Matter of The Suburban Community Policy, the Berwick Doctrine, and the De Facto Reallocation Policy* (*De Facto Reallocation*), 93 F.C.C.2d 436, 452 n.29 (1983)

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[10](...continued)
a national purpose or affected interstate commerce in any manner.

[11] The lobbyist failed to meet the FCC's associational standing rules which prohibit associational representation. RCC Main Brief at 12, 27, 37, 40-41, RCC Reply at 1-3, and Def. Apdx. 00076-77, CADC No. 24-1004.

citing Inquiry Into The Future Role of Low-Power Television Broadcasting, 45 Fed. Reg. 69178, 69179 (Oct. 17, 1980).[12]

The "balance" Congress plainly struck in the LPPA is that Low Power TV stations must be protected while neither the NAB nor its Full Power clients are even referenced, much less made the LPPA's primary, nationwide protection concern. Nevertheless, FCC 23-112 ¶ 38, Pet. App. at 77a-78a and the Opinion promote NAB's anti-competitive lobbying position, and protect NAB's unverified suzerain, as if NAB's non-textual talking point were somehow the LPPA's primary purpose.

Even though the FCC's literal adoption of NAB's anti-competitive lobbying was front and center of RCC's litigation below, neither the Opinion nor FCC's Brief below even references NAB, as if NAB were a name which must not be spoken. Nor do they discuss the fact that FCC 23-112 explicitly adopted NAB's anti-competitive purpose, elevating it to the status of federal law. FCC 23-112 ¶ 38, Pet. App. at 77a-78a.[13] NAB and its speculative third-party injury allegation are the targets of the FCC's protective regulation. Therefore NAB's standing to assert an injury claim, and the lower court's ability to redress that

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[12] RCC Main Brief at viii, 4-5, 14, 19-20, 32, 38-41, CADC No. 24-1004. Opinion, Pet. App. at 2a, uses ellipses to ignore the critical words "under a system of dividing television broadcast station licensees into local markets" from the DMA definition found at LPPA Section 2(a)(2)(B). That deleted text serves as a basis for RCC's statutory argument, but the lower court inexplicably found that statutory text unimportant.

[13] *See, e.g.*, RCC Main Brief at 10-11, 13, 20-21, 36-37, 53, CADC No. 24-1004.

speculative third-party injury claim, must be examined. *Diamond Alt. Energy*, 145 S. Ct. at 2135, 2142.

RCC invited NAB, in writing, to participate in the lower court review proceeding. However, NAB failed to appear, expressing no overt interest in the remedy it received from the FCC. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. Despite NAB's default, the lower court endorsed the FCC's improper remedy without comment. Federal courts must examine bystander standing when the bystander asserts a claim which is redressed by the agency. *Diamond Alt. Energy*, 145 S. Ct. at 2135, 2142. The lower court utterly failed to address NAB's standing to assert a speculative third-party injury claim, an assertion which caused the FCC to alter the large market DMA definition and "decline to read the LPPA as promoting maximum elevation of LPTV stations to primary status." FCC 23-112 ¶ 38, Pet. App. at 77a-78a. This Court's intervention is warranted.

C. Failure To Follow Supreme Court Direction

1. Review Cannot Ignore Related Statute

The lower court plainly erred in at least two ways when it inferred that because the LPPA does not specifically reference long-existing Section 307(b), Pet. App. 127a, RCC could not use that statutory provision to construe the LPPA. Pet. App. 11a-12a, 14a. First, prior enacted statutes continue in force until Congress explicitly repeals or amends them. *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) (there is a "stron[g] presum[ption] that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wishes to suspend its normal operations in a later statute.") (Internal quotes omitted).

The Opinion fails to point to anything in the LPPA which explicitly provides, or even remotely suggests, that Congress intended to eliminate Section 307(b)'s nationwide licensing mandate, or Section 307(a)'s "public interest" mandate, to favor and elevate bystander Full Power broadcasters' speculative future expansion concerns above the LPPA's explicit LPTV license protection purpose. The Opinion does not even reference, much less discuss, the FCC's explicit justification for its extremely narrow, non-nationwide LPPA interpretation: protecting the anti-competitive policy desire of an association of concentrated media owners the LPPA was enacted to constrain. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. Nor does the lower court discuss the fact that the FCC enshrined a lobbyist's third-party speculative injury claim into law and then prosecuted that speculative injury claim in federal court in violation of Article III standing requirements.

Second, the lower court added the entirety of FCA's Title III broadcast regulation to support its finding that its limited non-nationwide LPPA reading has a substantial economic impact. Opinion, Pet. App. 18a. The lower court does not explain its pick-and-choose standard for adding the whole of the FCA's Title III broadcast regulation to FCC 23-112's nationwide LPPA protection denial to support a finding of substantial interstate commerce, while dismissing RCC's Section 307-based arguments merely because the LPPA does not specifically reference Section 307. Opinion, Pet. App. 11a-12a, 14a. The Opinion inexplicably ignores the fact that FCC 23-112's ordering clauses relied upon Section 307 as supporting legal authority. Pet. App. 98a, 102a; RCC Main Brief at 38-40 & n.16, CADC No. 24-1004. The lower court's view that the LPPA is a stand-alone statute for purposes of

discounting RCC's DMA definitional arguments, ignores its own recognition that the LPPA and the FCA are "related statutes." Opinion, Pet. App. 2a. With all due respect, that is inconsistent adjudication.

Even if the LPPA were a stand-alone statute, RCC's preferred LPPA reading is a more straight forward reading compared to the lower court's statutory vivisection. Section 2(c)(2)(B)(iii), Pet. App. 124a-125a, consists of "two adverbial prepositional phrases [which] describe where and how the subject LPTV station operates." RCC's LPTV station operates in a DMA and RCC's Low Power station serves fewer than 95,000 television households in both the small local DMA market of Allington, CT and the large market DMA. LPTV licenses serving communities of fewer than 95,000 TV households exist from coast to coast, including urban areas. RCC Reply at 20-22, CADC No. 24-1004.

Licensing LPTV stations to serve small communities in spectrum congested urban areas is the reason the FCC created LPTV and changed its licensing rules more than 40 years ago. *See* pp. 18-19, *supra.* The LPPA does not authorize the lower court to rewrite the LPPA, or to infer nationwide protection denial, to harm nominally protected LPTV licensees, like RCC, for the purpose of protecting a trade association which is a mere bystander without standing. This Court's intervention is warranted.

2. Commerce Clause Issue Is Avoidable

Declaring of an Act of Congress unconstitutional is "the gravest and most delicate duty" that courts are called on to perform. *Blodgett v. Holden*, 275 U.S. 142, 148 (1927). That is exactly why RCC developed two procedural off ramps and two LPPA interpretations

involving nationwide small local market DMAs: to avoid the constitutional question of whether nationwide LPPA protection denial substantially affects interstate commerce. RCC Main Brief at 32-33, 35, 36, 45, CADC No. 24-1004, *citing Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988) ("where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of Congress"). RCC's effort to protect LPTV licenses is harmonious with the LPPA.

a. RCC offered the lower court four ways to avoid the commerce clause issue: by ruling on RCC's "beyond the scope" argument that harming LPTV licensees to benefit NAB's clients is beyond the scope of a rulemaking proceeding instituted under the LPPA which was enacted to protect LPTV while constraining NAB's clients; by applying a standing analysis to NAB's speculative third-party injury claim which is at the heart of FCC 23-112, FCC 23-112 ¶ 38, Pet. App. at 77a-78a; or by choosing one of two statutory readings based upon Section 307(b). RCC Main Brief at 12, 37 *citing* FCC 23-112 at 5 n.28, Pet. App. 34a-35a; RCC Reply at 1-3, CADC No. 24-1004. However, the Opinion ignored the issue of whether searching for ways to harm LPTV licensees to benefit NAB's clients is a legitimate rulemaking objective under the LPPA, ignored NAB's standing problem, and negated both local markets approaches RCC offered by determining that small local DMA markets cannot exist under the LPPA, Opinion, Pet. App. 7a-8a, 13a, 15a-16a, despite the plain text of LPPA Section 2(a)(2)(B) which explicitly defines DMAs as including "local markets." Pet. App.

123a. With all due respect, proper review does not ignore evidence of improper rulemaking, especially when evidenced by the agency's own words, without any comment whatsoever.

Instead, the lower court chose the FCC's large market DMA rule which inherently implicates a commerce clause issue because the FCC's approach denies LPPA protection on a nationwide basis. Opinion, Pet. App. 18a, blames RCC for raising the LPPA's constitutionality, but RCC's argument had absolutely nothing to do with the lower court's need to reach the constitutional issue. The lower court reached the commerce clause issue of its own volition "because the statute and the agency's interpretation are effectively indistinguishable . . .." *Id.*[14]

b. Opinion, Pet. App. 18a, states that "Congress is acting to regulate the interstate broadcast market more broadly, not just local activity." That is exactly what RCC has argued for the past two-plus years, but that is not the determination the Opinion actually delivered regarding the LPPA. The central issue presented is whether the Opinion presents the LPPA's "best reading" as being a Congressional standstill order which maintains the status quo, denies LPPA protection nationwide, and has no substantial effect upon interstate commerce. Congress could have achieved those ends without enacting the LPPA in the first place. The lower court's statutory construction elevated a trade association's speculative third-party injury claim for the purpose of protecting a

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[14] *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984) was overruled and determining whether FCC 23-112 is permissible under, or "indistinguishable" from, the LPPA was not the objective of the lower court review proceeding, the objective was to find the LPPA's "best reading." *Loper Bright*, 603 U.S. at 400.

group of Full Power broadcasters the LPPA seeks to constrain. Opinion, Pet. App. 6a.

RCC plainly argued that the LPPA's broadcast protection cannot be limited to "deserts, rivers, lakes, mountains, prairie grasslands, literally authorizing Class A service to everywhere, except those places where people are located." RCC Brief at 14, 32, CADC No. 24-1004. "The FCA exists to provide broadcast services to communities of people, not licensing broadcast services to vast, unpopulated swatches of beautiful, natural vistas." *Id. citing* 47 U.S.C. § 307(a),(b), Pet. App. 127a. Prairie dogs, grass, cactus, sagebrush, sand, *etc.*, are not economic entities contributing to the GDP.

At oral argument undersigned counsel was asked directly by the panel: "You don't raise a facial constitutional challenge to the statute?" To which undersigned counsel responded: "Not on that basis, no. Our reading of the statute is constitutional. We're using the Commission's current licensing scheme to make nationwide licensing. The Commission wants to do, for the first time, non-nationwide licensing." The lower court needed to reach the LPPA's constitutionality *only* "if FCC 23-112's LPPA reading were the only one possible, then the LPPA would be facially unconstitutional for having an insubstantial effect upon interstate commerce." RCC Main Brief at 36, CADC No. 24-1004. The LPPA has two DMA definitions and it is literally impossible for there to be just one LPPA interpretation as the lower court determined.

LPPA invalidation does absolutely nothing to advance RCC's interests: RCC is seeking the LPPA's protection, invalidating the LPPA is not even remotely

RCC's objective.[15] The lower court's suggestion that it was RCC who sought to void the LPPA on constitutional grounds does not even rise to the level of being specious – the assertion is facially implausible as a litigation tactic. The lower court's decision to alter statutory definitions and create a constitutional issue, only to close its eyes to the reality that no commerce is generated by nationwide LPPA protection denial, merely to remedy an unaffected bystander trade association's third-party speculative injury claim, FCC 23-112 ¶ 38, Pet. App. at 77a-78a, demonstrates both the importance of this case and the weakness of the lower court's LPPA reading.

The lower court reached the constitutionality of the LPPA because it determined that the "best reading" of the LPPA rewrites statutory definitions, turns the LPPA into a nationwide protection denial statute that has no substantial effect upon interstate commerce, serves no national purpose, and reads the LPPA out of existence as if Congress had codified a federal version of the Dormant Commerce Clause merely to maintain the status quo to direct the FCC "to keep doing nothing." That cannot possibly be correct, such an act would be titled the "Low Power Prevention Act" not the "Low Power Protection Act." Neither the lower court nor the FCC answered the obvious question: why would Congress "waste its time for the purpose of affecting such a marginal impact?" FCC 23-112 n.173, Pet. App. 77a (quoting, but not addressing, RCC's rulemaking comment). RCC Main Brief at 26 n.11, CADC No. 24-1004.

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[15] The public interest is not served by waiting another generation for Congress to enact a third low power protection action act to try to reign in the FCC's unlawful Full Power TV protectionism.

Opinion, Pet. App. 13a, weakly tries to wring a concession from RCC by stating that:

> Section 307(b)'s "community of license" does not provide for an equivalent system, as RCC itself recognizes, and thus was not a viable option for the FCC to adopt. *See* Pet'r's Final Br. 13 (describing Nielsen's DMA as much "larger geographic regions" than section 307(b)'s community of license).

RCC "recognized" no such thing. To the extent that the quoted passage indicates that RCC endorsed, or otherwise accepted, adopted, condoned the FCC's view that "local markets" cannot exist under the LPPA because "local markets" are not "equivalent" to "larger markets," the court's opinion is, with all due respect, very poorly drafted. First, RCC's Main Brief at 13, CADC 24-1004, clearly quotes and criticizes the quoted passage which RCC took from FCC's rulemaking text: RCC did not argue that it should lose this case. Second, the lower court utterly ignored RCC's argument that the two DMA definitions found at LPPA Sections 2(a)(2)(A),(B) were "equivalent" because neither definition contains a population limitation and each definition requires LPPA protection through nationwide markets. *See, e.g.*, RCC Main Brief at 30, 34, 44, CADC No. 24-1004. RCC's approach had the added efficiency benefit that the FCC and LPTV licensees are already familiar with the Section 307(b) community of license licensing scheme. Pet. App. 127a.

c. Opinion, Pet. App. 18a, latches onto the FCC's argument that "a feature of broadcasting is that it crosses state lines, and in approving specific local stations for status upgrades, Congress is acting to regulate the

interstate broadcast market more broadly, not just local activity." The lower court's adopted reasoning suffers from three defects.

First, the lower court followed the FCC's lead and completely ignored RCC's argument that LPPA eligible LPTV stations already exist in the frequency environment having already cleared the FCC's interference screen and interstate signals are not an issue in Class A upgrade licensing. The LPTV license upgrade modification merely requires typing a new "Class A" station class on the superseded LPTV class license, no change to the electromagnetic spectrum is required to obtain Class A protection status. RCC Main Brief at 29 n.13, 40-41.

The lower court ignored the fact that of the handful of Class A upgrade applications which were filed out of 1,889 potential upgrade applicants, the FCC approved upgrade applications containing insubstantial, single sentence assertions of non-interference unsupported by electrical engineering studies. RCC's February 22, 2025 Rule 28(j) Letter [2102165], CADC No. 24-1004. The lower court ignored FCC 23-112 ¶ 46, Pet. App. 88a-89a, which prohibits LPPA protection applicants from modifying their transmission systems in conjunction with Class A upgrades to avoid frequency/engineering issues. The FCC's Class A denial process has nothing to do with interstate signal regulation and does not support a finding of substantial interstate commerce.

Second, Congress did not "approve specific local stations for status upgrades," Congress stated its protection purpose generally, "to provide low power TV stations with a limited window of opportunity to apply for" upgrades, without pointing to "specific local stations." LPPA Section (2)(b), Pet. App. 123a. The LPPA does not designate any

"specific local stations" for inclusion in, or exclusion from, LPPA protection.

Third, the Opinion reads the LPPA very narrowly, endorsing the FCC's express purpose of protecting NAB's clients from speculative harm. FCC 23-112 ¶ 38, Pet. App. at 77a-78a. The lower court construed the LPPA as doing nothing on a nationwide basis, that is the exact the opposite of Congress, in the words of the Opinion, "acting to regulate the interstate broadcast market more broadly." This Court's intervention is warranted.

3. Improper Statutory Definition Alterations Provoke Commerce Clause Issue

a. LPPA Section 2(a)(2), Pet. App. 122a-123a, defines "Designated Market Area" ("DMA") in two ways:

> (A) a Designated Market Area determined by Nielsen Media Research; or
>
> (B) a Designated Market Area under a system of dividing television broadcast station licensees into local markets using a system that the Commission determines is equivalent to the system established by Nielsen Media Research.

Neither the "large market DMA" nor the "small local market DMA" definition requires using the smallest number of markets which could possibly exist in a regulatory scheme;[16] contains any geographic size or

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[16] For ease of reference, the 210 Nielsen defined DMAs are referred to herein as "large market DMAs." Opinion, Pet. App. 8a, explaining that Nielsen DMAs "define[] larger geographic regions than community of license." The "local market" DMAs are referred to herein as "small local market DMAs" because "the LPPA concerns

(continued...)

population limitation; overrides the nearly century-old nationwide licensing mandate found at 47 U.S.C. § 307, Pet. App. 127a; nor indicates that Congress intended something less than nationwide application of the LPPA. Therefore, LPPA defined DMAs are nationwide in scope whether defined as Section (a)(2)(A) "large market DMAs" or as Section (a)(2)(B) "small local market DMAs." RCC Main Brief at 30 & n.14, 33-34, CADC No. 24-1004.

b. The lower court erred by literally reading the LPPA from back to front, improperly severing the "95,000 television household limit" found in the LPPA's LPTV licensee qualification clause at Section 2(c)(2)(B)(iii), Pet. App. 125a, and grafting it onto the earlier occurring "virtually conclusive" DMA large market definition. LPPA Section 2(a)(2)(A). Pet. App. 122a-123a. The lower court then used its definitional alteration to infer that Congress intended non-nationwide Low Power TV protection under the "Low Power Protection Act." However, the interpretive presumption is that when Congress acts "the application of federal legislation is nationwide." *Jerome v. United States*, 318 U.S. 101, 104 (1943). The LPPA's explicitly stated statutory purpose "is to provide low power TV stations with a limited window of opportunity to apply for the opportunity to be accorded primary status as Class A television licensees," nothing in the LPPA suggests that its purpose is nationwide Low Power protection denial. LPPA Section 2(b), Pet. App. 123a.

Like a Frankenstein's monster, the Opinion treats the LPPA's 95,000 TV household licensee qualification

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[16](...continued)
LPTV stations that service small areas with low populations." Opinion, Pet. App. 17a.

clause at Section 2(c)(2)(B)(iii), Pet. App. 125a, as if it were "a disconnected appendage of the 'Designated Market Area' definition found at Section 2(a)(2)" to be reassembled into a legislative abomination. RCC Main Brief at 30, 34, No. 24-1004. However, "had Congress intended that reading, it would have written the statutory definition to reflect that." RCC Reply at 22, CADC No. 24-1004. *See Sturgeon v. Frost*, 587 U.S. 28, 57 (2019) (statutory definitions are "virtually conclusive" absent some "exceptional reason"); *Meese v Keene*, 481 US 465, 484-485 (1987) ("It is axiomatic that the statutory definition of the term excludes unstated meanings of that term"); *Colautti v Franklin*, 439 U.S. 379, 392-393 n.10 (1979) ("As a rule, a definition which declares what a term means . . . excludes any meaning that is not stated") (internal quotes omitted); RCC Reply at 22, No. 24-1004, *citing Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 967 (CA11 2016) ("It is very rare that a defined meaning can be replaced with another permissible meaning of the word on the basis of other textual indications; the definition is virtually conclusive.") (internal quote omitted).

Opinion, Pet. App. 13a, cites the lower court's own recently decided case holding that statutory definitions are "virtually conclusive," *Rawat v. Comm'r*, 108 F.4th 891, 895 (CADC 2024), but failed to apply that holding to this case and failed to provide any reason, "exceptional" or otherwise, for altering the LPPA's "virtually conclusive" DMA definition. Despite the existence of two explicitly worded, unlimited, nationwide DMA definitions, the Opinion takes the extraordinary step of creating a statutory definition for the non-statutory purpose of rendering the LPPA non-nationwide in scope to protect NAB's speculative interests.

c. The Opinion errs stating that "how the Commission defines a station's DMA for the purpose of Class A eligibility does not affect the station's area of licensing or otherwise alter its LPTV license." Pet. App. at 15a. First, it is not the FCC's function to "define[] a station's DMA," the LPPA's two DMA definitions are "virtually conclusive," do not contain population limitations, and there was nothing for the FCC to define. LPPA Section 2(a)(2)(A),(B), Pet. App. 122a-123a. Improper definitional alteration was a central issue below, but the Opinion ignores this Court's interpretive rule that statutory definitions are "virtually conclusive" absent some "exceptional reason." *Sturgeon v. Frost*, 587 U.S. at 57.

Second, the explicit "purpose" of the LPPA is to affect and alter Low Power licenses, that is, altering LPTV licenses to provide them with LPPA protection. The lower court's focus on nationwide Low Power protection denial as the overriding statutory purpose underlying the "Low Power Protection Act," rather than modifying LPTV licenses to provide them with protection, is plainly contrary to the LPPA's explicitly defined nationwide protection purpose.

d. The Opinion improperly reads the "local markets" DMA definition out of existence merely because "local markets" are not sized like Nielsen's "much larger geographic region" DMAs. Pet. App. 13a (internal quote omitted). The LPPA's DMA definitions do not require that "equivalence" is only based upon congruent "size" as the Opinion determined. The question is whether small local market DMAs are "equivalent" to large market DMAs based upon some objective metric. Clearly small local market DMAs can differ in size from larger market DMAs

because Congress included definitions for both market sizes in the LPPA.

The lower court's LPPA construction reads the small local market DMA definition and the large market DMA definition as if they were the same thing, improperly rendering superfluous the LPPA's Section 2(a)(2)(B) small local market DMA definition. Pet. App. 123a. *See Pulsifer v. United States*, 601 U.S. 124, 143 (2024) ("the canon against surplusage applies with special force" when a subparagraph is rendered meaningless"); *TRW Inc.*, 534 U.S. at 31; RCC Reply at 20-25, CADC No. 24-1004.

The lower court found RCC's statutory discussion "convoluted," Pet. App. 11a, but generally failed to discuss RCC's two approaches to LPPA interpretation, each of which read the LPPA as protecting Low Power TV nationwide in small local market DMAs based upon Section 307(b) communities of license. Pet. App. 127a. RCC's preferred interpretation leaves the DMA definitions untouched because they define nationwide DMA markets and the definitions are "virtually conclusive."

Turning to the very last clause of the LPPA's licensee qualification section, LPPA Section 2(c)(2)(B)(iii), Pet. App. 124a-125a, provides that:

> The Commission may approve an application submitted under subparagraph (A) if the low power TV station submitting the application . . . operates [1] in a Designated Market Area [2] with not more than 95,000 television households.

Section 2(c)(2)(B)(iii) consists of "two adverbial prepositional phrases [which] describe where and how the subject LPTV station operates." RCC's LPTV station operates in a DMA and RCC's Low Power station serves

fewer than 95,000 television households in the Section 307(b) community of license it serves. RCC Reply at 20-22, CADC No. 24-1004.

RCC's statutory construction leaves the DMA definitions intact, leaves the licensee qualification section intact, and has only two steps, including an English grammar refresher. RCC's statutory construction is not "convoluted," but is easily understood and it maintains the LPPA's nationwide function as a "Low Power Protection Act." Moreover, every eligible "low power TV station submitting the application" was initially licensed under Section 307(b). Section 307(b) provides an existing, nationwide system of "local markets"under which every broadcast station has been licensed for more than 90 years. *See* RCC Main Brief at 30, 34, 44, and RCC Reply at 20-23, CADC No. 24-1004.

The lower court's construction, on the other hand, strips a clause from the licensee qualification section, selectively appends that textual alteration to the "virtually conclusive" large market DMA definition, but not to the small local market DMA definition, and transforms the extracted LPTV licensee qualifier into a DMA market-size qualifier. With all due respect, it is the appeals court's statutory construction that is a "convoluted," unnatural LPPA reading.

If it were necessary to augment the LPPA Section 2(a)(2) DMA definitions, Pet. App. 123a, with the TV household limit taken from the licensee qualification section, the lower court should have modified the LPPA's Section 2(a)(2)(B) small local market DMA definition in the same manner as the lower court modified the large market DMA definition, using the Section 307(b), Pet. App. 127a, community of license as the small local market

DMA boundaries. RCC's small local DMA markets LPPA reading applies nationwide and substantially affects interstate commerce by promoting nationwide broadcast investments and deconcentrates media across the nation. The lower court's statutory construction, on the other hand, applies the LPPA in a non-nationwide manner, limits broadcast investment, concentrates media, and creates dangerous information bubbles via nationwide LPPA protection denial. RCC Main Brief at 8 n.5, 9, 41 and RCC Reply at 9-10, CADC No. 24-1004. This Court's intervention is warranted.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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