APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

August Term 2025
Argued: May 7, 2026
Decided: July 13, 2026

No. 26-88

CUMULUS MEDIA NEW HOLDINGS INC.,

Plaintiff-Appellee,

v.

THE NIELSEN COMPANY (US), LLC,

Defendant-Appellant.[*]

Appeal from the United States District Court
for the Southern District of New York
No. 25-cv-8581, Jeannette A. Vargas, *District Judge*.

[*] We grant Cumulus's motion to file its letter brief in response to our April 30, 2026 order under seal.

Before: PÉREZ and NATHAN, *Circuit Judges*, and KATZMANN, *Judge*.[†]

This antitrust appeal concerns radio broadcasting data vital for radio networks hoping to sell advertisements on their stations nationwide. Nielsen, a market research firm, collects and sells radio audience data in hundreds of local geographic areas and collates that information into a national radio broadcasting report—the only product of its kind. Cumulus, a major audio media company that operates both a national audio network and local radio stations, seeks to buy Nielsen's one-of-one national radio report, as well as some of its local data in certain local markets. In other local markets, it hoped to purchase data from a competitor. But a new Nielsen policy prohibits audio networks like Cumulus from purchasing Nielsen's national data report unless they also agree to purchase Nielsen's local data products in all markets in which they operate. As the parties began to discuss a new contract, that policy soon impeded their negotiations. Nielsen's new policy—and subsequent offers that were impacted by that policy—put Cumulus to a choice: purchase Nielsen's local data in all relevant geographic markets, or purchase its preferred local data from a competitor and lose the ability to buy Nielsen's crucial national data product.

Cumulus sued, arguing that Nielsen's new policy is an anticompetitive tying arrangement in violation of the Sherman Act. The district court agreed. It concluded that Nielsen unlawfully tied its local data products to its national data product, used its

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[†] Judge Gary S. Katzmann, of the United States Court of International Trade, sitting by designation.

monopoly power in the national data market to force Cumulus into purchasing unwanted local data products, and distorted competition in local data markets by fencing out competitors. It thus granted Cumulus a preliminary injunction prohibiting Nielsen from expressly or constructively enforcing its new tying policy. Nielsen appealed. On these facts, we hold that the district court's decision to grant a preliminary injunction was not an abuse of its discretion, nor does its injunction violate the specificity requirement of Rule 65(d). Moreover, we hold that we need not automatically stay this appeal in light of Cumulus's intervening bankruptcy petition. **AFFIRMED**.

KATHERINE B. WELLINGTON, Hogan Lovells US LLP, Boston, MA (Charles Loughlin, Jennifer Fleury, Michael J. West, Hogan Lovells US LLP, Washington, DC, Claude Szyfer, Hogan Lovells US LLP, New York, NY, *on the brief*) *for* Cumulus Media New Holdings Inc., *Plaintiff-Appellee*.

THOMAS H. DUPREE JR., Gibson, Dunn & Crutcher LLP (Helgi C. Walker, Zachary B. Copeland, Gibson, Dunn & Crutcher LLP, Washington, DC, Jefferson E. Bell, Gibson, Dunn & Crutcher LLP, New York, NY, *on the brief*) *for* The Nielsen Company (US), LLC, *Defendant-Appellant*.

NATHAN, *Circuit Judge*:

Defendant-Appellant The Nielsen Company (US), LLC collects, compiles, and sells radio broadcasting data that tracks audience listenership and reach across the United States. It sells two different types of products: local radio data, which reflects listenership in specific geographic areas, and national radio data, which consists of all local data assembled into a comprehensive nationwide report. Nielsen is the only supplier of national radio data in the United States. Both types of data are critical for large radio broadcasters like Plaintiff-Appellee Cumulus Media New Holdings Inc., which uses national data to sell advertising time on its national radio networks, and local data to sell the same to advertisers on its local radio stations.

Nielsen once offered its national and local data products separately. But that changed in 2024, when it adopted a new policy barring national broadcasters like Cumulus from purchasing a functional version of its national report unless they also purchased all relevant local data products from Nielsen as well. That policy posed a problem for Cumulus, as it hoped to buy Nielsen's national report but only some of Nielsen's relevant local data. Cumulus wanted to buy at least some other local data from a competitor of Nielsen's.

After contract negotiations between the parties reached an impasse on those grounds, Cumulus sued Nielsen, claiming that its new policy is an anticompetitive tying arrangement in violation of the Sherman Act. Following discovery and a hearing, the district court agreed and granted Cumulus a preliminary injunction. We review for abuse of discretion and affirm that interlocutory order. The district court did not abuse its discretion when it concluded that Nielsen's new policy—enforced both expressly and constructively—was an unlawful tie, because Nielsen exploited its monopoly in the national radio data market in order to force customers like Cumulus to purchase its local data products. Nor did the district court abuse its discretion by finding that Nielsen's conduct caused anticompetitive effects in the relevant local data markets, that Cumulus would suffer irreparable harm as a result of the new policy, and that the public interest and the balance of equities tipped in Cumulus's favor. We further hold that the district court's injunction is sufficiently specific and tailored to remedy Cumulus's harm, and we agree with both parties that we may resolve this appeal despite Cumulus's interceding bankruptcy petition.

This interlocutory appeal raises several complicated issues of antitrust law. On this preliminary posture, we resolve them in favor of Cumulus, mindful of the deference we owe to the district court's factual findings and discretionary decisions. Accordingly, we affirm the district court's order in full.

BACKGROUND

A. Factual Background

This antitrust dispute concerns radio broadcasting data that drives the price and placement of advertisements on radio stations across the country. Cumulus, one of the largest audio media companies in the United States, sued Nielsen for its allegedly anticompetitive conduct in the sale of that crucial data.

The following facts are drawn from the district court's findings, to which we defer unless they constitute clear error. *See D.L. Cromwell Invs., Inc. v. NASD Regul., Inc.*, 279 F.3d 155, 158 (2d Cir. 2002). In creating this factual record, the district court considered, among other things, "the Complaint, documents cited in the Complaint, and deposition testimony and declarations submitted by the parties." *Cumulus Media New Holdings, Inc. v. Nielsen Co. (US) LLC*, No. 25-cv-8581, 2026 WL 63294, at *1 (S.D.N.Y. Jan. 8, 2026).

Both Nielsen and Cumulus are major players in the radio industry. Cumulus is a broadcaster that operates 395 radio stations nationwide and distributes audio content to over 9,500 other affiliated stations through its syndication network, Westwood One. Like other broadcasters, Cumulus generates revenue by selling advertising space—i.e., commercial time on its various radio stations—to advertisers. Nielsen, for its part, is a market research company that collects, analyzes, and sells radio ratings data. Nielsen collects audience listening statistics in more than 270 geographic areas; it then compiles that local information into a national ratings report known as the Nationwide Report (Nationwide). It sells both its Nationwide product as well as data in each discrete local area it surveys. Nielsen has one competitor in the local radio data space: Eastlan, which surveys listeners and produces radio data primarily in "smaller-sized" geographic markets as well as in geographic markets where Nielsen does not operate. *Cumulus*, 2026 WL 63294, at *3. But Nielsen has no competitors in the market for national radio ratings data, in which it enjoys a 100% market share.

Both national and local data are essential for broadcasters such as Cumulus. National audio networks and local radio stations alike generate revenue by selling advertisements, so broadcasters use both types of data to market their available advertising inventory. For example, while advertisers purchasing time slots on national radio reasonably seek to assess a broadcaster's national reach (that is where Nationwide comes in), advertisers purchasing time slots in only certain local markets seek data that reflects that area's specific listenership. Accordingly, Cumulus needs both types of data to adequately price and sell its time slots to different kinds of advertisers.

Nielsen has historically offered Nationwide and its individual local ratings data as separate products. However, in 2024, it announced a change to that practice. Nielsen's new "Network Policy" prohibits broadcast networks that operate "a local station in a Nielsen-measured market" and do not "subscribe" to Nielsen's local ratings data in that market from purchasing Nielsen's Nationwide product with the inclusion of data for "that specific market[.]" *Cumulus*, 2026 WL 63294, at *4. For example, if a national broadcasting network also operates local stations in 30 markets and purchases only Nielsen's Nationwide product—not Nielsen's local data—Nielsen will omit data for those 30 local markets from Nationwide.[1] Nielsen says it adopted the Network Policy in order to stop national broadcast customers from sharing Nationwide with their local affiliates for free, making decisions for those local affiliates based on information in Nationwide, or extracting the relevant local data from Nationwide without paying for it. According to an executive at Nielsen, the Policy was designed to "bring groups with non-subscribing markets back to the negotiation table," "command subscriptions in local markets," and "prevent networks from getting data through the back door." Appellee's Suppl. Sealed App'x 440. But it is undisputed that a Nationwide product that exempts data from certain local markets is not useable. Indeed, in Nielsen's own words, the exempted Nationwide product is "like Swiss cheese"—and in Cumulus's case, that "Swiss cheese" national product would exclude data from numerous geographic markets where Cumulus operates, including major markets such as San Francisco, Los Angeles, and New York City. *See Cumulus*, 2026 WL 63294, at *6.

The Network Policy and its impact on the parties' contract negotiations lie at the heart of this dispute. We briefly summarize those negotiations below. Cumulus's previous contract with Nielsen—executed before the development of the Network Policy—was set to expire at the end of 2025. Under that contract, Cumulus had purchased both Nationwide and Nielsen's local data in 76 discrete markets. However,

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[1] Nielsen's Network Policy applies only to customers who operate both a national broadcasting network and local radio stations. That comprises 12 customers, including "the three largest companies in radio," which together control about a third of all radio advertising spend. *Cumulus*, 2026 WL 63294, at *4.

before the parties began to negotiate a new contract in May 2025, Cumulus decided that it no longer wanted to subscribe to some of those 76 local markets. Instead, it determined that the cost of Nielsen's local ratings data had outstripped their value in most local radio markets, and it intended to switch to Eastlan—a lower-cost alternative—in at least some of those markets. Accordingly, at the outset of negotiations, Cumulus informed Nielsen that it wished to purchase only its local data in certain markets, not the full suite of local markets that Cumulus had previously purchased.

But the Network Policy impeded that possibility. In June, Nielsen made its first offer to Cumulus: the full Nationwide product, "plus local service in every local market in which Cumulus operates radio stations." *See id.* at *5. Nielsen followed that up with another offer that also included all local markets in which Cumulus operates. Cumulus, however, did not want to subscribe to all of those local markets. So Cumulus asked Nielsen to provide a price for the Nationwide product alone, as well as market-by-market pricing for the local data it sought to purchase. Nielsen refused to provide either price, citing its Network Policy. *See id.* at *6 (quoting a Nielsen executive stating that a standalone price for Nationwide was "not possible to achieve in light of our policy on local subscription"). Instead, in line with its Network Policy, Nielsen offered Cumulus its desired subset of local markets but only the "Swiss cheese" version of Nationwide, which omitted data from all other local markets where Cumulus operates. Nielsen told Cumulus that it would sell the full version of Nationwide only if Cumulus also subscribed to all local markets in which Cumulus operates. Cumulus counteroffered for only its desired subset of local markets.

In August, the negotiations reached an impasse. Cumulus then sent a cease-and-desist letter, claiming that Nielsen's Network Policy violated the antitrust laws by unlawfully tying its products together (its Nationwide product and its data in the local markets) and threatening to file suit if Nielsen continued to enforce the Network Policy. About a month later, Nielsen responded by exempting Cumulus from the Network Policy by offering, for the first and only time in the negotiations, a price for Nationwide as a standalone product. The offered price was at least 150% more than any other national network paid for Nationwide, and it was also "ten times more than what Cumulus was paying for Nationwide under its existing contract." *See id*. Cumulus did not accept. Finally, on October 16, 2025, Nielsen offered Cumulus its full Nationwide product plus local data in all 80 markets where Cumulus operates—which again included local markets that Cumulus did not want to purchase from Nielsen. That same day, Cumulus filed this lawsuit in the United States District Court for the Southern District of New York.

B. Procedural Background

Cumulus in its complaint accuses Nielsen of violating Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, by creating an unlawful tying arrangement—what Cumulus calls "a textbook abuse of monopoly power."[2] Compl. at 2. An unlawful tying arrangement occurs when a seller uses its economic

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[2] Cumulus also asserted five other causes of action in its complaint, none of which are relevant for the purposes of this interlocutory appeal.

power in one market to coerce a buyer into purchasing a different product in a separate market by refusing to sell the two products separately. Here, Cumulus claims that the Network Policy "ties" Nielsen's Nationwide product to its local data products and forces Cumulus into an illusory choice: either purchase Nielsen's local data in *all* markets, or use competitor Eastlan for local data, but receive only Nielsen's unusable "Swiss cheese" Nationwide Report. And though Nielsen later offered Cumulus a standalone price for full Nationwide, Cumulus argues that the exorbitant price of Nielsen's offer left Cumulus with the same illusory choice. Because Cumulus cannot buy national data from anyone else, and because Nielsen's exorbitant price for standalone Nationwide means it is not economically viable for Cumulus to separately purchase local data from its preferred vendor, Cumulus says the Network Policy has effectively foreclosed its ability to purchase Eastlan's local data and distorted competition in the relevant local data markets by fencing out competitors. All this, Cumulus says, constitutes an unlawful tying arrangement prohibited by the Sherman Act.

On the same day it filed its complaint, Cumulus moved for a preliminary injunction, seeking to bar Nielsen from imposing any tie related to Nationwide during the parties' negotiations. After a three-day evidentiary hearing featuring testimony from economics experts and the parties' representatives, the district court granted Cumulus's motion. We summarize the district court's relevant findings of fact and conclusions of law below. At the outset, the district court determined that Cumulus sought to alter the status quo and therefore subjected its motion to the more demanding standard for mandatory injunctions. But even under that heightened standard, the district court concluded that Cumulus established a clear likelihood of success on the merits of its tying claim as well as a strong showing of irreparable harm.

The district court first considered the merits of Cumulus's express and constructive tying claim. As an initial matter, it adopted Cumulus's definitions of the relevant product and geographic markets which, "[f]or purposes of this preliminary injunction motion, the parties are in agreement": The product markets are those for "local radio ratings data and national radio ratings data," *Cumulus*, 2026 WL 63294, at *10, and the geographic markets are the United States (national data) and "each local geographic area for which a ratings report is generated" (local data), *id*. at *11. It then concluded that "Nielsen's Network Policy is an anticompetitive tying policy," reasoning that the Policy expressly conditions the availability of Nationwide on a buyer's purchase of Nielsen's local data, that Nielsen had used its monopoly power in the national data market to coerce customers into purchasing its local data, and that Nielsen's conduct had unlawfully restrained competition in the various local data markets. *Cumulus*, 2026 WL 63294, at *12–14.

Though it recognized that Nielsen had facially exempted Cumulus from the Network Policy, the district court found Nielsen's Nationwide-only offer to be "so exorbitant as to make it economically unfeasible to purchase Nationwide as a separate product." *Id*. at 13. That high price, it said, "therefore served as a constructive tie." *Id*. The district court also recognized that tying arrangements are *per se* unlawful—without regard to their anticompetitive effects—when the perpetrator is a monopolist in the tying market, like Nielsen is for national data. *Id.* But even absent such a *per se* rule, the district court went on to analyze the anticompetitive effects of the constructive tie and concluded that Nielsen's tying caused anticompetitive effects because "Eastlan is effectively foreclosed from competing" with Nielsen in many local markets. *Id.* The district court further rejected Nielsen's procompetitive justifications for its Network Policy on grounds that they were both unsupported by the record and pretextual. *Id.* at *14–15. All told, the district court concluded that Cumulus was substantially likely to succeed on its claim that Nielsen had unlawfully exploited its monopoly power in the national data market to restrain competition in local data markets via both express and constructive tying.

Next, the district court found that Cumulus made a strong showing of irreparable harm on three grounds. First, it held that "'[t]hreatened economic harm to consumers is plainly sufficient to authorize injunctive relief' under Section 16 [of the Clayton Act]." *Id.* at *15 (quoting *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 661 (2d Cir. 2015)). Second, it found that Cumulus would likely experience "major disruption" of its business, loss of goodwill, and decreased market share without access to Nationwide because it would be unable to develop reasonable advertising proposals for the coming year. *Id.* at *15–16. Advertisers, the district court found, were therefore "all but guaranteed to shift some or all of their advertising inventory purchases to competitors or refrain from purchasing advertising inventory from [Cumulus] at all[.]" *Id.* at *16. Third, the district court held that distortion of the relevant local ratings markets due to anticompetitive behavior also constituted irreparable harm. Thus it concluded that Cumulus carried its burden on the irreparable harm prong. Finally, the district court determined that the balance of the equities and public interest favored Cumulus, reasoning that Nielsen would suffer little harm from the injunction and that barring anticompetitive behavior serves the public's interest.

The district court granted Cumulus a preliminary injunction. Its order barred Nielsen "from enforcing its Network Policy" and "from charging a commercially unreasonable rate for its Nationwide Report as a complete, standalone product." *Id*. at *18. The order further provided that "a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable." *Id*.

Nielsen thereafter moved the district court to stay the preliminary injunction pending appeal. The district court denied Nielsen's motion for a stay pending appeal, but granted Nielsen's alternative motion for a short administrative stay to allow Nielsen to seek relief from this Court. Nielsen then noticed this interlocutory appeal and moved for a stay of the district court's order pending the appeal, a request that a motions panel granted in February 2026. In the meantime, Nielsen filed an answer in the district court asserting several counterclaims against Cumulus, all of which Cumulus moved to dismiss.

On March 10, 2026, Cumulus notified the district court that it had filed a petition for voluntary Chapter 11 bankruptcy. In the notice, Cumulus explained its view that, under Section 362(a)(1) of the Bankruptcy Code, its bankruptcy petition operated as an automatic stay of Nielsen's counterclaims because they were asserted "against [a] debtor." 11 U.S.C. § 362(a)(1). And though Cumulus reserved its right to argue that its bankruptcy did not automatically stay its own claims against Nielsen (or this interlocutory appeal), it consented to a stay of its claims below as a matter of the district court's discretion. The next day, the district court stayed litigation of Nielsen's counterclaims under Section 362(a)(1) and stayed the remaining claims "pending further order[.]" By then, this expedited appeal was well underway.

STANDARD OF REVIEW

We review the district court's grant of a motion for a preliminary injunction for abuse of discretion. *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 82 (2d Cir. 2024). "A district court 'abuses' or 'exceeds' the discretion accorded to it when (1) its decision rests on an error of law (such as application of the wrong legal principle) or a clearly erroneous factual finding, or (2) its decision—though not necessarily the product of a legal error or a clearly erroneous factual finding—cannot be located within the range of permissible decisions." *Zervos v. Verizon N.Y., Inc.*, 252 F.3d 163, 169 (2d Cir. 2001) (footnote omitted). And a "finding is clearly erroneous when[,] although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." *Wu Lin v. Lynch*, 813 F.3d 122, 126 (2d Cir. 2016) (quotation marks omitted). The abuse-of-discretion standard requires, in other words, that we take three different approaches to the district court's order: We assume the district court's factual findings are true unless we are firmly convinced they are wrong (clear error), we review the district court's legal rulings without deference (*de novo*), and we review the district court's discretionary decisions by asking whether they were within the range of permissible decisions.

DISCUSSION

Nielsen raises several challenges to the district court's grant of a preliminary injunction. It claims that the district court abused its discretion in applying all four prerequisites for obtaining interim relief, and that the resulting injunction is both too ambiguous and a poor match for Cumulus's asserted harms. In addition to reaching these issues, we consider an antecedent one: the impact of Cumulus's pending bankruptcy on the status of this appeal.

I. Section 362(a)(1) Automatic Bankruptcy Stay

Before resolving the merits, we must decide whether to hold this appeal until Cumulus's bankruptcy proceedings conclude. *See Ostano Commerzanstalt v. Telewide Sys., Inc.*, 790 F.2d 206, 207 (2d Cir. 1986). Under Section 362(a)(1) of the Bankruptcy Code, also known as the automatic-stay provision, a bankruptcy petition ordinarily "operates as a stay, applicable to all entities, of . . . a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced" before the filing of the petition. 11 U.S.C. § 362(a)(1). The provision renders judicial proceedings, including appeals, "void and without vitality if they occur after the automatic stay takes effect." *Rexnord Holdings, Inc. v. Bidermann*, 21 F.3d 522, 527 (2d Cir. 1994); *see also Ostano*, 790 F.2d at 207. The statute limits the reach of the automatic stay to proceedings brought "against the debtor," which we assess based on the parties' status at the outset of an action rather than by who is "ahead" or who has appealed. *Teachers Ins.*

& Annuity Ass'n of Am. v. Butler, 803 F.2d 61, 64–65 (2d Cir. 1986). That said, a counterclaim asserted against a debtor, like those Nielsen asserted against Cumulus in this case, also counts as a "proceeding against the debtor" that must be stayed upon the filing of a bankruptcy petition. *See Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994). That raises the question whether the assertion of a counterclaim against a debtor triggers an automatic stay of the entire action, including the plaintiff-debtor's original claims. We hold that it does not. Because an action must be "disaggregated" into claims brought by and against a debtor, *see Mar. Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204–05 (3d Cir. 1991), Section 362(a)(1) does not stay litigation over a debtor's original claims.[3]

Our interpretation of Section 362(a)(1) begins with its text, which we read not "in isolation" but "as a whole." *United States v. Bulloch*, 165 F.4th 676, 682 (2d Cir. 2026) (quotation marks omitted). As the Third Circuit has explained, "the clear language of section 362(a) indicates that it stays only proceedings *against* a 'debtor.'" *Mar. Elec. Co.*, 959 F.2d at 1204 (quoting 11 U.S.C. § 362(a)(2)). The operative

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[3] In doing so, we join the majority of circuit courts to have considered the question. *See Mar. Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir. 1991); *U.S. Abatement Corp. v. Mobil Expl. & Producing U.S. (In re U.S. Abatement Corp.)*, 39 F.3d 563, 568 (5th Cir. 1994); *Parker v. Bain*, 68 F.3d 1131, 1137 (9th Cir. 1995); *Seiko Epson Corp. v. Nu-Kote Int'l, Inc.*, 190 F.3d 1360, 1364 (Fed. Cir. 1999); *Lehman v. Revolution Portfolio L.L.C.*, 166 F.3d 389, 392 n.5 (1st Cir. 1999); *In re Hall*, 304 F.3d 743, 746 (7th Cir. 2002); *Thomas v. Blue Cross & Blue Shield Ass'n*, 333 F. App'x 414, 420–21 (11th Cir. 2009)(summary order); *cf. Dominic's Rest. of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760–61 (6th Cir. 2012).

statutory term is "proceeding," which the Bankruptcy Code does not define. *See* 11 U.S.C. § 101. But in the bankruptcy context in particular, the term "proceeding" is used to refer to "[a] particular dispute or matter arising *within* a pending case—as opposed to the case as a whole." *Proceeding*, Black's Law Dictionary (12th ed. 2024) (emphasis added). After all, it is typical for bankruptcy *cases* to comprise core and non-core *proceedings, see In re Ben Cooper, Inc.*, 896 F.2d 1394, 1397–98 (2d Cir. 1990), which is strong evidence that Congress intended the latter term to carry a narrower, specialized meaning in this context, *see United States v. Hansen*, 599 U.S. 762, 774–76 (2023). Indeed, Congress drafted at least one other bankruptcy provision with precisely this distinction in mind, permitting district courts to refer "*proceedings* . . . arising in or related to a *case* under title 11" to a bankruptcy judge. 28 U.S.C. § 157(a) (emphases added). To define "proceeding" to be coextensive with an entire "case" would collapse these careful distinctions.

Any lingering ambiguity in the statutory text is resolved by its evident purpose. *Cf. Mar-Can Transp. Co., Inc. v. Loc. 854 Pension Fund*, 167 F.4th 581, 593 (2d Cir. 2026). We have explained that the rationale behind the automatic stay is "to give the debtor time to organize its affairs—which includes protection from having to defend claims brought against the estate as well as continuing to pursue judicial proceedings on its own behalf." *Teachers*, 803 F.2d at 65. "The stay is designed to provide the debtor with a breathing spell from his creditors," *Koolik*, 40 F.3d at 568 (quotation marks omitted), and lest such proceedings "distract a debtor's attention from its primary goal of reorganizing," *Teachers*, 803 F.2d at 65. Those goals are well-served by permitting debtors to invoke the protections of the automatic stay against counterclaims, but would be frustrated by an interpretation of Section 362(a)(1) that permitted defendants to delay a debtor's recovery simply by asserting a counterclaim. That approach would prejudice creditors, too, by preventing any eventual recovery on the debtor's claims from flowing to the bankruptcy estate. *Cf. Martin-Trigona v. Champion Fed. Sav. & Loan Ass'n*, 892 F.2d 575, 577 (7th Cir. 1989) (Posner, J.) ("The fundamental purpose of bankruptcy, from the creditors' standpoint, is to prevent creditors from trying to steal a march on each other . . . . There is, in contrast, no policy of preventing persons whom the bankrupt has sued from protecting their legal rights.").

Reading Section 362(a)(1) to permit disaggregating cases into discrete proceedings against the debtor (which must be stayed) and those brought by the debtor (which need not) thus "best reflects the statute's text, structure, and legislative purpose." *Mar-Can Transp.*, 167 F.4th at 593 (typeface altered). Application of the rule to this case is straightforward: The district court's preliminary injunction order concerned only Cumulus's original claims. Nielsen did not even file its answer with counterclaims until after the notice of appeal had been docketed. Section 362(a)(1) thus does not require that we stay this appeal pending the conclusion of Cumulus's bankruptcy proceedings. And though we, like the district courts, retain "discretionary power to stay proceeding[s] in the interest of justice and in control of [our] dockets," *Teachers*, 803 F.2d at 65, we discern no reason to delay decision in this appeal, which has been briefed and argued on an expedited schedule.[4]

II. Cumulus's Entitlement to a Preliminary Injunction

Nielsen's principal argument on appeal is that Cumulus did not satisfy the requirements for obtaining preliminary relief.

> To obtain a preliminary injunction, plaintiffs must show (1) a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly in the plaintiffs' favor, (2) that they are likely to suffer irreparable injury in the absence of an injunction, (3) that the balance of hardships tips in their favor, and (4) that the public interest would not be disserved by the issuance of a preliminary injunction.

Mendez v. Banks, 65 F.4th 56, 63–64 (2d Cir. 2023) (alterations accepted and quotation marks omitted). "The standard for obtaining preliminary injunctive relief is higher, however, where the movant seeks to modify the status quo by virtue of a *mandatory* preliminary injunction" or "where the injunction being sought will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits." *A.H. ex rel. Hester v. French*, 985 F.3d 165, 176 & n.39 (2d Cir. 2021) (quotation marks omitted). The higher standard requires plaintiffs

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[4] Though we decline to exercise our discretion to stay this appeal, we acknowledge that the district court's contrary decision concerned different considerations, and that the district court is free to revisit that decision at any time on remand.

"show a clear or substantial likelihood of success on the merits and make a strong showing of irreparable harm." *Schneiderman*, 787 F.3d at 650 (quotation marks and citation omitted).

At the outset, we agree with Nielsen and the district court that the higher standard for obtaining a mandatory preliminary injunction applies in this case. *See Cumulus*, 2026 WL 63294, at *8. "Because the proposed injunction's effect on the status quo drives the standard, we must ascertain the status quo—that is, the last actual, peaceable uncontested status which preceded the pending controversy." *N. Am. Soccer League, LLC v. U.S. Soccer Fed'n, Inc.*, 883 F.3d 32, 37 (2d Cir. 2018) (quotation marks omitted). Here, Cumulus sought, at the end of 2025, an order preliminarily enjoining Nielsen's Network Policy, which had been in effect since September 2024. Cumulus and Nielsen spent months negotiating under the policy until, in August 2025, Cumulus sent Nielsen a cease-and-desist letter alleging an antitrust violation. In other words, the last "uncontested status preceding the present controversy," *see Mastrio v. Sebelius*, 768 F.3d 116, 121 (2d Cir. 2014), was the time the parties spent negotiating a new contract under the Network Policy, rather than before September 2024. Moreover, if Cumulus obtains interim relief but Nielsen ultimately prevails, it would be difficult if not impossible to render a meaningful remedy to Nielsen who would have had to negotiate its contract renewals this year without the Network Policy. *See Tom Doherty Assocs. v. Saban Ent., Inc.*, 60 F.3d 27, 34–35 (2d Cir. 1995). Thus, in addition to being a mandatory preliminary injunction, the remedy Cumulus sought and obtained below may irreparably "alter th[e] relationship" between the parties. *See N. Am. Soccer League*, 883 F.3d at 37–38.

Cumulus thus sought, and the district court issued, a mandatory preliminary injunction that altered the status quo, potentially irreparably. So, we review the district court's decision to ensure Cumulus demonstrated "a clear or substantial likelihood of success on the merits" as well as "a strong showing of irreparable harm." *Schneiderman*, 787 F.3d at 650 (quotation marks omitted).

A. Clear or Substantial Likelihood of Success on the Merits

The parties next dispute the district court's application of Section 2 liability for unlawful tying. The typical tying case involves "an agreement by a party to sell one product but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461 (1992) (quotation marks omitted). Motivating the prohibition is "[t]he fear . . . that a monopolist in one product market will seek to expand its monopoly by conditioning the purchase of the monopolized product upon the purchase of a product in a separate market," thereby distorting competition in the tied market. *Kaufman v. Time Warner*, 836 F.3d 137, 141 (2d Cir. 2016). Put another way, an unlawful tying policy forces a buyer to purchase a tied product "that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms"—and, accordingly, "competition on the merits in the market for the tied item is restrained and the Sherman Act is violated." *Jefferson Par. Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984), *abrogated on other grounds, Ill. Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28 (2006).

This dispute began as a typical tying case. The district court found that Nielsen's Network Policy—which expressly prohibits Cumulus from buying Nielsen's useable Nationwide product without also buying its local market data—constituted an unlawful "agreement by a party to sell one product but only on the condition that the buyer also purchases a . . . tied[] product[.]" *Eastman Kodak*, 504 U.S. at 461; *see also Cumulus*, 2026 WL 63294, at *12. The district court found that the "tying" product is national radio data (a market in which Nielsen has 100% market share), while the "tied" product is the data in certain local markets. Nielsen does not challenge the district court's conclusion as to the lawfulness of its Network Policy on appeal.

After Cumulus sent Nielsen a cease-and-desist letter accusing it of anticompetitive behavior, Nielsen exempted Cumulus from its Network Policy and offered Cumulus a standalone price for its Nationwide product. However, the district court reasoned that this standalone offer still constituted a "constructive tie," because "[t]he price that Nielsen offered Cumulus for a standalone Nationwide—ten times more than it currently pays—is so exorbitant as to make it economically unfeasible to purchase Nationwide as a separate product." *Cumulus*, 2026 WL 63294, at *13. As explained below, Nielsen takes issue with the district court's understanding of this "constructive" tie on both the law and the facts.

To state a *prima facie* tying claim, Cumulus must establish five elements:

> (i) the sale of one product (the tying product) is conditioned on the purchase of a separate product (the tied product); (ii) the seller uses actual coercion to force buyers to purchase the tied

> product; (iii) the seller has sufficient economic power in the tying product market to coerce purchasers into buying the tied product; (iv) the tie-in has anticompetitive effects in the tied market; and (v) a not insubstantial amount of interstate commerce is involved in the tied market.

Kaufman, 836 F.3d at 141. Then, "if a plaintiff successfully establishes a *prima facie* case[,] . . . the monopolist may proffer a 'procompetitive justification' for its conduct." *United States v. Microsoft Corp.*, 253 F.3d 34, 59 (D.C. Cir. 2001) (citing *Eastman Kodak*, 504 U.S. at 483); *see also Schneiderman*, 787 F.3d at 652. Once the defendant asserts a "nonpretextual" procompetitive justification for a purported tie, the burden shifts to the plaintiff either to rebut the justification or to "demonstrate that the anticompetitive harm outweighs the procompetitive benefit." *Schneiderman*, 787 F.3d at 652 (citing *Microsoft Corp.*, 253 F.3d at 58–59).

The parties largely dispute elements (i) and (ii) of the *prima facie* case[5]: Nielsen claims that it cannot have "conditioned" the sale of Nationwide on its local data because "constructive" tying is not a viable theory of Sherman Act liability, and even if it were, it

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[5] The district court explained that "[t]hree of the five prongs of the tying test are unchallenged," and that at issue was coercion and anticompetitive effects in the tied market. *Cumulus*, 2026 WL 63294, at *12–13. On appeal, Nielsen primarily challenges the viability of a constructive tying theory—that is, whether there can be such a thing, and if so, whether the constructive tie was coercive in this case—thus implicating the first two prongs as well. As to the district court's findings on anticompetitive effects, Nielsen asserts that such analysis was beside the point because it was premised on an express rather than constructive tie. *See* Appellant's Br. at 27–28.

did not "coerce" Cumulus into purchasing its local data.

We are unpersuaded. Instead, we agree with the district court that constructive tying is a valid theory of Sherman Act liability. Further, on these facts, we find that the district court did not abuse its discretion by determining that Nielsen effectively coerced Cumulus into purchasing its local data in certain markets that Cumulus did not otherwise want. We also find that the district court did not abuse its discretion in concluding that Nielsen's conduct had anticompetitive effects in the tied market or in rejecting Nielsen's proffered procompetitive justification.

1. The Availability of Constructive Tying

We consider first whether a "constructive" tying arrangement can ever be unlawful under Section 2 of the Sherman Act. Nielsen contends that the only actionable form of tying requires an express tie between two products—that is, the seller's explicit refusal to sell one product (the tying product) without the other (the tied product). We disagree. Case law and common sense indicate that unlawful tying liability is not solely limited to express tying policies. Tying may also occur when a seller *de facto* ties two products via exorbitantly high prices, leaving the buyer with only one economically rational choice: to purchase the products together.

Two cases lead us to that conclusion. We begin with the Supreme Court's decision in *United States v. Loew's, Inc.*, in which the Court recognized the power of price to perpetuate an unlawful (yet constructive) tying arrangement. 371 U.S. 38 (1962), *abrogated on other grounds, Ill. Tool Works*, 547 U.S. 28. In *Loew's*, the United States sued several major film distributors for their "block booking" policies, which prohibited TV stations from licensing their films individually. *Id*. at 39–40. The government claimed that block booking constituted an unlawful tying arrangement; in effect, if a TV station sought to license one popular movie, the block booking policy forced it to purchase the licenses for dozens of unpopular films as well. *Id*. at 40. The Supreme Court ultimately held that block booking violated the Sherman Act. *Id*. at 49–50. But before the Court issued its decision, the distributors allegedly rescinded their block booking policies and began to offer their films at individual prices. *Id*. at 50–51. In light of that change, the distributors urged the Court to vacate the district court's injunction. Instead, recognizing the risk of a constructive tie even absent a formal block booking policy, the Supreme Court affirmed an injunction that barred the distributors from charging "a price differential between a film offered individually and as part of a package which '*has the effect of* conditioning the sale or license of such film upon the sale or license of one or more other films,'" *see id*. at 54 (emphasis added), and modified the injunction to specifically prohibit "noncost-justified" price differentials, *id*. at 52–54. The Supreme Court in *Loew's* thus identified—and foreclosed—the distributors' obvious workaround to an anti-block booking injunction: selling their most popular movie individually for an exorbitant price and their bundles for the same prices, which would replicate the harms of the express tying arrangement. In short, the Supreme Court rejected the distributors' attempts to avoid liability by facially discarding their express tying policy but continuing to *de facto* enforce it via high price differentials. That is precisely the theory of constructive tying that the district court employed here.

We, too, have recognized the availability of constructive tying liability under the Sherman Act. In *American Manufacturers Mutual Insurance Company v. American Broadcasting-Paramount Theatres, Inc.* (*American Manufacturers I*), we considered a dispute between the TV network ABC and plaintiffs who sought to purchase advertising time on some of its local stations. 388 F.2d 272, 274–76 (2d Cir. 1967). The plaintiffs alleged that ABC required sponsors to purchase advertisements on *all* local stations during a given time slot in order to advertise on *any* local stations—what the plaintiffs called an unlawful tying arrangement. *Id*. When the plaintiffs sought to purchase advertising time on only some local ABC stations, they claimed that the network would only sell those individual stations at "an unreasonable cost[.]" *Id*. at 276. The district court granted ABC's motion for summary judgment, *id*. at 278, but we reversed, "find[ing] it impossible on the record before us to determine whether ABC was justified in reverting to its higher . . . prices" for the individual stations, *id*. at 283. Instead, "where there is no quality or distinguishing desideratum between a product offered singly or in a package," we said that "the seller cannot charge substantially higher for the individual product if the price differential has the effect of conditioning the sale of the single product to the sale of the entire package and if the difference in price cannot be legitimately justified by cost considerations." *Id*. (citing *Loew's*, 371 U.S. at 43). That statement in *American Manufacturers I* squarely recognizes that price differentials can, in some instances, create an unlawful constructive tie.

Nielsen resists this conclusion by claiming that we later abandoned that determinative holding in *American Manufacturers Mutual Insurance Company v. American Broadcasting-Paramount Theatres, Inc.* (*American Manufacturers II*), 446 F.2d 1131 (2d Cir. 1971). But Nielsen's reliance is misplaced. The second *American Manufacturers* appeal reached us after "a three-day trial" on the question of whether ABC had in fact coerced the plaintiff into purchasing bundled local stations. *Id*. at 1133. The district court answered in the negative and we affirmed, holding that, on those facts, plaintiff had not proven that it "fe[lt] any economic pressure from ABC" to purchase the bundled stations and thus was not coerced. *Id*. at 1137. But nothing in *American Manufacturers II* suggests that we revisited our earlier holding about the general availability of constructive tying liability. If anything, the pair of appeals follows a standard arc: We recognized the viability of a constructive tying claim in *American Manufacturers I*, but after trial, we held that the plaintiff did not in fact establish such a claim in *American Manufacturers II*. The latter holding is entirely consistent with the former.

In light of the Supreme Court's decision in *Loew's* and our own in *American Manufacturers I*, we conclude that constructive tying is an available theory of antitrust liability. That conclusion makes good sense: "[T]he essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms." *Jefferson Par.*, 466 U.S. at 12. That "essential characteristic" of tying—the compulsion to purchase an unwanted product—can occur via an express tie, like block booking. *Id.*; *see also Loew's*, 371 U.S. at 48–49. But it can also occur via a constructive tie, such as non-cost justified, steep price differentials between an individual product and the tied bundle that have "the effect of" coercing the buyer into accepting the bundle. *American Manufacturers I*, 388 F.2d at 283. Both types of tying arrangements can produce the same effect. *See Jefferson Par.*, 466 U.S. at 14 ("When 'forcing' occurs, our cases have found the tying arrangement to be unlawful.").

Constructive tying is a viable theory of Sherman Act liability. The remaining question is whether the district court abused its discretion by finding on this preliminary posture that Cumulus is clearly or substantially likely to succeed on its constructive tying claim.

2. Nielsen's Constructive Tie

The district court determined that Nielsen's single standalone offer for Nationwide "was priced so exorbitantly that this offer was the effective equivalent" of its formally tied offers and thus constituted a constructive tie. *Cumulus*, 2026 WL 63294, at *6, *13. Put another way, the district court found that Nielsen had continued to *de facto* enforce its unlawful Network Policy by offering to sell Nationwide only at an unreasonable cost. Nielsen argues that its standalone price for Nationwide was merely its opening offer for the product, which it says categorically cannot produce tying liability because opening offers never "actual[ly] coerc[e]" a buyer into purchasing the tied product. *Kaufman*, 836 F.3d at 141. But the district court determined on this preliminary record that Nielsen's steep price for Nationwide alone was not merely an opening offer, but instead an ongoing enforcement of its Network

Policy that left Cumulus with no other rational choice but to purchase Nielsen's "tie[d]" local markets data as well. *See Cumulus*, 2026 WL 63294, at *13.

We agree. Reviewing the district court's factfinding for clear error and its conclusions of law *de novo*, *see Zervos*, 252 F.3d at 169, we conclude that Nielsen's non-cost justified and "exorbitant" standalone offer for Nationwide within the context of negotiations here rises to the level of coercion by effectively forcing Cumulus to purchase unwanted local markets data from Nielsen. *Cumulus*, 2026 WL 63294, at *13. The preliminary record suggests that Nielsen's "exemption" of Cumulus from its unlawful Network Policy was no exemption at all.

Determining the existence of coercion is a fact-bound inquiry. On the one hand, a seller's "use of strong persuasion, encouragement, or cajolery to the point of obnoxiousness to induce [the purchaser] to buy its full line of products does not . . . amount to actual coercion." *Unijax, Inc. v. Champion Int'l, Inc.*, 683 F.2d 678, 685 (2d Cir. 1982) (quotation marks omitted). On the other, if the seller "goes beyond persuasion and conditions [the] purchase of one product on the purchase of another," we will say that the buyer has shown "[a]ctual coercion supporting a finding of a tying violation." *Id*. Though the line between the two is not always clear, the district court's decision as to actual coercion is supported by the preliminary record here.

We begin with a brief survey of the relevant facts as found by the district court, nearly all of which are unchallenged on appeal and to which we defer unless clearly erroneous. *See D.L. Cromwell Invs.*, 279 F.3d at 158. First, the parties agree that the relevant geographic markets are "the United States" (for national data) and "each local geographic area for which a ratings report is generated" (for local data).[6] *Cumulus*, 2026 WL 63294, at *11. Nielsen enjoys 100% market share in the market for national radio data, but in certain local markets, it competes with Eastlan. *See id*. at *5, *8. Neither party disputes that Cumulus sought to purchase local markets data from Nielsen in only a subset of the 80 markets that Cumulus operates in; Cumulus intended to purchase data in at least some of those remaining local markets from Eastlan. Therefore, the allegedly "tied" products are Nielsen's data in the unwanted local markets.

Turn now to the parties' negotiations. At the outset of the talks, Cumulus informed Nielsen that it was interested in purchasing Nielsen's Nationwide data along with its data in only a subset of those local markets. *See Cumulus*, 2026 WL 63294, at *5. Nielsen replied that its Network Policy barred Cumulus from purchasing anything less than full Nationwide and *all* relevant local markets, *id*. at *5–6, and it offered Cumulus that package at [REDACTED] (the June offer). Because Nielsen does not challenge the district court's finding that the Network Policy is an unlawful (and express) tying

[6] "For antitrust purposes, the concept of a market has two components: a product market and a geographic market." *Concord Assocs., L.P. v. Ent. Props. Tr.*, 817 F.3d 46, 52 (2d Cir. 2016). The product markets in this case are for "local radio ratings data" and "national radio ratings data." *Cumulus*, 2026 WL 63294, at *10. At times, the district court uses the shorthand "the local market" to describe the separate geographic markets here—i.e., "each local geographic area for which a ratings report is generated," *id*. at *11—but it is clear from its analysis that it ultimately concluded each individual local market in which Cumulus did not seek to purchase Nielsen's data had been effectively "tied" by Nielsen's Network Policy.

arrangement, *id*. at *12, that June offer enforcing the policy was also unlawful. Nielsen then proceeded to make more offers enforcing the Policy by either continuing to include *all* relevant local markets—with the unwanted markets—or offering only the unusable "Swiss cheese" version of Nationwide along with the desired local markets. Months later, and under threat of litigation, Nielsen exempted Cumulus from its Network Policy and offered its standalone Nationwide product at a price of [REDACTED], the relevant offer for our purposes. But the district court credited Cumulus's expert's assertion that the standalone offer was the "effective equivalent" of the unlawful June offer, concluding that the standalone offer "was priced so exorbitantly" that it would be economically irrational for Cumulus to also purchase its desired local data from Eastlan in the relevant local markets. *Id*. at 6, *13.

Those undisputed facts support the district court's legal conclusion that Nielsen's standalone offer was coercive even in the absence of a formal tie. Here, the district court found that the best price Cumulus could get for Eastlan's data in the desired local markets was [REDACTED]. *Id*. But if Cumulus purchased Nielsen's Nationwide data for [REDACTED] and Eastlan's local data for [REDACTED] it would pay a total of [REDACTED] for both products—$1.2 million more than Nielsen's unlawfully tied June offer. Thus, Nielsen's standalone offer gave Cumulus only an illusory choice: accept Nielsen's tied June offer, or pay $1.2 million *more* to purchase the desired local data from a competitor. As the district court found, that is no choice at all. Instead, given the course of dealing here, it found that Nielsen went "beyond persuasion" and actually conditioned the purchase of Nationwide on the purchase of the local markets data, *Unijax*, 683

F.2d at 685, which coerced Cumulus into purchasing data in local markets that it "either did not want at all" or "preferred to purchase elsewhere on different terms," *Jefferson Par.*, 466 U.S. at 12. That coercion "impair[ed] competition on the merits" in the relevant local data markets by "harm[ing] existing competitors" (like Eastlan) and "creat[ing] barriers to entry of new competitors"—both results that "a free market would not tolerate." *Id.* at 14–15 (quotation marks omitted).

As for whether Nielsen's standalone Nationwide offer was justified by the cost of producing that product, the district court noted that "Nielsen has made no effort to quantify these costs or correlate them with its price for standalone Nationwide." *Cumulus*, 2026 WL 63294, at *15. But the district court did find that the Nationwide-only offer "was exponentially more than what any other network pays for Nationwide as a standalone product"—indeed, the offer to Cumulus was 150% higher than the highest price Nielsen had ever previously charged for the product. *Id.* at *6. Moreover, the standalone offer for Nationwide was "ten times more than what Cumulus was paying for Nationwide under its existing contract." *Id.* Though Nielsen may later "quantify [its] costs or correlate them with its price for standalone Nationwide," *id.* at *15, the record as it stands supports the conclusion that "the difference in price cannot be legitimately justified by cost considerations," *American Manufacturers I*, 388 F.2d at 283.

On this preliminary posture, given the evidence that Nielsen exploited its economic power in the national data market to force Cumulus into the purchase of tied products—Nielsen's data in several local markets—that it did not otherwise want, the district court did not abuse its discretion by finding that Cumulus was clearly or substantially likely to succeed on its tying claim. We recognize, of course, that "antitrust law does not prohibit lawfully obtained monopolies from charging monopoly prices." *Pac. Bell Tel. Co. v. LinkLine Commc'ns, Inc.*, 555 U.S. 438, 454 (2009). But the difference here is that the district court found that Nielsen's conduct—namely, the non-cost justified offer for Nationwide—gave Cumulus no rational choice but to accept its unlawfully tied June offer. That conduct coerced the purchase of the tied local data products and restricted competition in those markets. *See Verizon Commc'ns. Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004) ("[T]he possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive *conduct*."). And it is precisely the type of "economic pressure" we have said is the hallmark of tying liability. *American Manufacturers II*, 446 F.2d at 1137.

Nielsen does not meaningfully dispute the above facts, but instead argues that its standalone Nationwide offer was merely its opening salvo in the negotiations, to which Cumulus was required to respond before filing suit. Indeed, on Nielsen's telling, an opening offer can *never* establish antitrust liability. While we agree that a party's "preliminary bargaining position" will typically not establish tying liability, because a true opening offer will rarely be coercive, *see id.*, we disagree that Nielsen's standalone offer here—its fourth offer of eight—falls into that category. Instead, on these facts, we think the district court did not err by concluding that coercion occurred.

Nielsen's "opening offer" argument is not a freestanding element of, or defense to, tying liability. Instead, in *American Manufacturers II*, we described the parties' negotiation history as part of the broader question as to whether the buyer has been coerced. *See id*. at 1136–37. There, we held that the plaintiff had failed to demonstrate coercion because it "did not persevere long enough" in negotiations for individual TV stations "to feel any economic pressure from ABC[.]" *Id*. at 1137. Nielsen relies heavily on *American Manufacturers II* to argue that Cumulus, too, did not "feel any economic pressure" from Nielsen's standalone Nationwide offer. *Id*. But we think *American Manufacturers II* is factually distinguishable. In that case, the plaintiff "never sought or received a reasonably firm ABC offer" for individually-priced stations. *Id*. Indeed, the plaintiff negotiated with ABC for months without ever indicating that it might want less than the full slate of stations, *id*. at 1133–34, and when it finally made an offer for individual stations, the price of its offer "did not differ significantly from the price offered by ABC," a fact that that we called "significant," *id*. at 1135. Then, after ABC's "initial negative response" to the plaintiff's individually-priced offer, the plaintiff "abandoned [the] issue . . . without any coercion by ABC" and focused on negotiating other contractual terms. *Id*. at 1135–36. Only after the plaintiff eventually purchased the bundled stations did it later assert that it had been coerced into such a purchase. *Id*. at 1136–37. On those facts, we found that the plaintiff had not demonstrated that ABC's refusal to individually price "ever crystallized into any identifiable or reasonably definitive policy," and thus the plaintiff had not demonstrated "actual exertion of economic muscle" that "influence[d] the buyer's choice." *Id*. at 1135, 1137. After all, although "the law does not demand that [plaintiffs] joust with windmills," *American Manufacturers I*, 388 F.2d at

285, the plaintiff in *American Manufacturers* did not press its negotiating position enough to "discover[] whether it faced a windmill or a bona fide giant," *American Manufacturers II*, 446 F.2d at 1137.

The current record in this case tells a very different story. At the outset of contract negotiations, Cumulus informed Nielsen that it was no longer interested in purchasing certain local data from Nielsen. *See Cumulus*, 2026 WL 63294, at *5. When Nielsen repeatedly declined to craft an offer exempting those unwanted local markets, Cumulus asked Nielsen for Nationwide pricing alone, which Nielsen refused to provide given its Network Policy. *See id*. at *5–6. Later, Cumulus counteroffered Nielsen for only its desired local markets, an offer that Nielsen rejected. *Id*. Even after all the above negotiating—in which Cumulus made unmistakably clear its desire to purchase local data in *only* a subset of markets—Nielsen twice restated offers to sell Cumulus its local radio ratings data in all 80 markets, including the unwanted ones, and explicitly pointed to its Network Policy in doing so. Unlike the plaintiff in *American Manufacturers II*, the negotiation history between the parties here suggests that Cumulus repeatedly pressed its desire to purchase Nationwide with only a subset of the local data markets, and Nielsen steadfastly refused to make such an offer. In that context, Nielsen's eventual exorbitant offer for standalone Nationwide was not a "bartering ploy[]," but a continuation of the same coercion. *See American Manufacturers II*, 446 F.2d at 1137. Our holding in *American Manufacturers II* reflects the straightforward conclusion that plaintiffs cannot be coerced by a contract term that they did not seriously dispute; here, the record reflects that the unwanted local data markets were the central disputed term from the outset.

In sum, our case law illustrates that a seller's high price can, in certain circumstances, constitute unlawful coercion that effectively "conditions [the buyer's] purchase of one product on the purchase of another." *Unijax*, 683 F.2d at 685. In other circumstances, of course, such an offer will merely constitute "strong persuasion[.]" *Id*. (quotation marks omitted). But this is not one of those circumstances. To the contrary, the facts support the conclusion that Nielsen "actual[ly] exert[ed] [its] economic muscle" to coerce Cumulus into purchasing unwanted local data in several markets. *American Manufacturers II*, 446 F.2d at 1137. We therefore hold that, on this preliminary record, the district court did not abuse its discretion by concluding that Cumulus was likely to succeed in proving that Nielsen's standalone offer constituted an unlawful tie.

3. Alleged Anticompetitive Effects

Next, Nielsen argues that the district court erred in concluding that its proscribed conduct has anticompetitive effects in the local ratings data markets.[7] Reviewing the district court's preliminary factual findings for clear error, we disagree.

[7] The district court held that, because Nielsen is an undisputed monopolist in the market for nationwide ratings data, its constructive tie is illegal *per se* without a showing of anticompetitive effect. *See Cumulus*, 2026 WL 63294, at *13 (citing *Jefferson Par.*, 466 U.S. at 17). Because we find no error in the district court's alternative holding—that Nielsen's Network Policy and standalone Nationwide offer had anticompetitive effects in the local ratings data markets, *see id.* at *13–14—we need not and do not reach the question whether tying can constitute a *per se* violation of Section 2.

Prevailing on a tying claim requires proof of "anticompetitive effects in the tied market." *E & L Consulting, Ltd. v. Doman Indus. Ltd.*, 472 F.3d 23, 31 (2d Cir. 2006) (quotation marks omitted). The requirement is satisfied if a plaintiff proves "that the tie impairs competition in the tied market and forecloses a substantial volume of commerce in that market." *Gonzalez v. St. Margaret's House Hous. Dev. Fund Corp.*, 880 F.2d 1514, 1517 (2d Cir. 1989). In other words, illegal tying arrangements are those that "restrain competition on the merits by forcing purchases that would not otherwise be made." *Jefferson Par.*, 466 U.S. at 27. In conducting this inquiry, we "must focus on the market or markets in which the two products are sold, for that is where the anticompetitive forcing has its impact." *Id*. at 18.

On this score, the district court found that "[t]he record evidence overwhelmingly indicates that the Network Policy poses a significant barrier to entry, preventing Eastlan from achieving any measure of scale or industry-wide acceptance." *Cumulus*, 2026 WL 63294, at *13. Because the Network Policy applies to "the largest national broadcasters," *id*., Eastlan is deprived of the customers most likely to purchase its products in the local ratings data markets. And though Eastlan can theoretically target smaller broadcasters in local markets that are not subject to the Network Policy, "the record indicates that many such stations would not earn enough in advertising revenue to make purchase of Eastlan's product feasible." *Id*. at *14. To illustrate the Network Policy's anticompetitive effects, the district court relied in part on evidence from the New Orleans market, where one smaller broadcaster not subject to the Network Policy "earned less in annual revenue in 2024 than the cost of Eastlan's local ratings data." *Id*.

On those findings, the district court concluded that Nielsen's Network Policy "has an adverse effect on the competitive process in the market for local radio ratings data." *Id*. On appeal, Nielsen presses two objections.

First, Nielsen argues that the district court improperly focused on the Network Policy, which it claims to have exempted Cumulus from, and that "[t]he district court never found that Nielsen's standalone Nationwide offer . . . had anticompetitive effects." Appellant's Reply Br. at 13. But the district court's analysis, albeit preliminary, was more comprehensive. It explained that "[t]he fact that Nielsen, after being accused by Cumulus of violating the antitrust laws, finally offered to sell Nationwide to Westwood One as a standalone product does not negate the anticompetitive effects of its Network Policy." *Cumulus*, 2026 WL 63294, at *13 (citations omitted). That the standalone price was "so exorbitant as to make it economically unfeasible to purchase Nationwide as a separate product," *id*., meant that the standalone offer was part of Nielsen's continued coercing of Cumulus into accepting Nielsen's combined offer. In other words, Nielsen's conduct amounted to continued enforcement of its Network Policy, and it follows that such conduct had the same anticompetitive effect on Cumulus's ability to purchase from Eastlan in the local ratings data markets. Nielsen neither challenges that factual finding on appeal nor explains why its pricing structure would cause different competitive effects than those the district court found for the Network Policy.

Second, Nielsen argues that even if the district court was right to focus on the Network Policy in looking for anticompetitive effects, it erred in considering evidence from only one local market—New Orleans—in doing so. The record says otherwise. Before referring to the New Orleans market as an "example" of anticompetitive effects, *see Cumulus*, 2026 WL 63294, at *14, the district court cited evidence about the "many markets in America" where large broadcasters subject to the Network Policy were effectively forced to purchase Nielsen's local ratings data, cutting out Eastlan, *id*. at *13 (quotation marks omitted). The dynamic has "ma[de] it difficult [for Eastlan] to grow in local markets" or to target them, the district court found, "preventing Eastlan from achieving any measure of scale or industry-wide acceptance." *Id*. That the district court then further explained its findings with reference to a particular market hardly qualifies as clear error.

Thus, the district court did not abuse its discretion in concluding that Cumulus made a substantial showing of a *prima facie* tying claim in violation of Section 2.

4. Nielsen's Procompetitive Justification

Because we find no reversible error in the district court's preliminary analysis of Cumulus's *prima facie* claim, we turn to Nielsen's argument that it adequately "proffer[ed] nonpretextual procompetitive justifications for its conduct." *Schneiderman*, 787 F.3d at 652 (quotation marks omitted). When a "monopolist asserts a procompetitive justification—a nonpretextual claim that its conduct is indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal—then the burden shifts back to the plaintiff to rebut that claim." *Microsoft*, 253 F.3d at 59. If a defendant's procompetitive justifications are found to be pretextual, however, "we need not weigh them against the anticompetitive harms" of the defendant's conduct. *Schneiderman*, 787 F.3d at 658.

The district court rejected Nielsen's purported procompetitive justifications—preventing unlicensed sharing of national ratings data, generating efficiency for consumers in the form of a bundled deal, and recouping the primarily local-driven costs of producing Nationwide—on two grounds. First, it held that all three justifications were insufficiently supported by the record, and thus outweighed by the anticompetitive harms generated by the Network Policy. *See Cumulus*, 2026 WL 63294, at *14–15. Second, the district court held that the justifications were pretextual in light of Nielsen's motive to exclude competition. *See id*. On appeal, Nielsen retains only its third, cost-recoupment justification, arguing that it was legitimately motivated to recoup its costs and that the record does not support finding pretext. We disagree.

First, the district court did not clearly err in concluding that Nielsen did not sufficiently quantify its cost-recoupment justification. Instead, it concluded based on the preliminary record before it that Nielsen "made no effort to quantify these costs or correlate them with its price for standalone Nationwide." *Id*. at *15. In this deferential posture, "[t]he weight of the evidence is not a ground for reversal on appeal, and the fact that there may have been evidence to support an inference contrary to that drawn by the trial court does not mean that the findings are clearly erroneous." *Ceraso v. Motiva Enters., LLC*, 326 F.3d 303, 316 (2d Cir. 2003) (citation omitted). Nor has Nielsen mustered any record evidence to support its contention on appeal.

Instead, it merely quotes the district court's acknowledgments that its "data-collection costs are sizable" and thus "aligning pricing with costs was a legitimate concern." Appellant's Br. at 28 (quotation marks omitted). At this stage of the proceedings, that absence of evidence well supports the district court's conclusion. *See Schneiderman*, 787 F.3d at 659; *see also LePage's Inc. v. 3M*, 324 F.3d 141, 164 (3d Cir. 2003) (en banc) ("3M cites to no testimony or evidence in the 55 volume appendix that would support any actual economic efficiencies in having single invoices and/or single shipments."). The district court thus did not err in holding that the "unquantified and hypothetical" procompetitive justifications proffered by Nielsen were outweighed by the "imminent and substantial" anticompetitive harms. *Cumulus*, 2026 WL 63294, at *15.

Second, and in any event, the district court did not clearly err in finding that Nielsen intended to exclude competition in the local ratings data markets, and thus that its purported procompetitive justifications were pretextual. *See Cumulus*, 2026 WL 63294, at *15. On this score, the district court cited an email from Rich Tunkel, Managing Director of Nielsen Audio, claiming that the Network Policy was intended to "command subscriptions in local markets" and "bring groups with non-subscribing markets back to the negotiation table." *Id*. (quotation marks omitted); *see also* Appellee's Suppl. Sealed App'x 440. The district court also cited other record evidence containing similar statements from Tunkel, including that the Network Policy would "help reinforce the value of Nielsen local market measurement and secure local subscription." *Cumulus*, 2026 WL 63294, at *15 (quotation marks omitted). From these statements, the district court did not clearly err in concluding that Nielsen intended to "put up barriers or obstacles to . . . competition" in the local ratings data markets. *See Schneiderman*, 787 F.3d at 658 (quotation marks omitted).

We are likewise unpersuaded by Nielsen's final argument that, at most, the record shows "mixed motives," which it claims are insufficient to establish pretext. Appellant's Br. at 29. True, the district court acknowledged that some record evidence supported Nielsen's intention to recoup costs as well as "prevent networks from getting data through the back door." *Cumulus*, 2026 WL 63294, at *15 (quotation marks omitted). But "[t]he fact that [Nielsen] acted to benefit its own economic interests is hardly a reason to overturn the . . . finding that it violated § 2 of the Sherman Act" precisely because "[i]t can be assumed that a monopolist seeks to further its economic interests and does so when it engages in exclusionary conduct." *LePage's*, 324 F.3d at 164. Though Nielsen may have had some economic interest in the Network Policy and pricing for standalone Nationwide separate from excluding competition, the district court crediting such evidence does not undermine its findings of pretext, let alone preclude such findings. Indeed, Nielsen musters no argument that its conduct in any way enhanced competition or efficiency in the local ratings data markets. *See Microsoft*, 253 F.3d at 59 (noting "greater efficiency or enhanced consumer appeal" as examples of acceptable, nonpretextual procompetitive justifications).

Nor do Nielsen's cases advance its mixed-motive argument. *Watson Laboratories*, for example, concerned the pleading standard for a plaintiff to allege an "unjustified" reverse payment in violation of the antitrust laws, not the degree of anticompetitive intent sufficient to establish that a proffered procompetitive justification is pretextual. *See Watson Lab'ys, Inc. v. Forest Lab'ys Inc.*, 101 F.4th 223, 239 & n.7 (2d Cir. 2024); *see also AD/SAT v. AP*, 181 F.3d 216, 231 (2d Cir. 1999) (describing insufficient allegations for a monopoly leveraging claim—without having alleged tying—as "normal business development" (quotation marks omitted)). And *Ostrowski*, concerning the standard for retaliation in an employment discrimination case, is even further afield. *See Ostrowski v. Atl. Mut. Ins. Cos.*, 968 F.2d 171, 185 (2d Cir. 1992). Though we do not hold that the coexistence of procompetitive and anticompetitive motives are always insufficient to shift the burden back to the plaintiff in a Section 2 case, *see Microsoft*, 253 F.3d at 59, here the district court's reliance on Nielsen's repeated statements about excluding competition in the local ratings data markets well support the pretext finding.

Thus, we hold that the district court did not abuse its discretion in concluding that Cumulus made a substantial showing it was likely to succeed on the merits of its Section 2 tying claim.

B. Strong Showing of Irreparable Harm

Past likelihood of success, Nielsen argues Cumulus failed to make a strong showing of irreparable harm, and that at most Cumulus is likely to suffer "financial" injuries. Appellant's Br. at 29 (quotation marks omitted and alteration accepted). Though we do not agree with all of the district court's reasoning on this score, we conclude that Cumulus made such a showing.

A showing of irreparable harm is "the single most important prerequisite for the issuance of a preliminary injunction," and for the issuance of a *mandatory* preliminary injunction, the showing must be "strong." *Daileader v. Certain Underwriters at Lloyds Lond. Syndicate 1861*, 96 F.4th 351, 358 (2d Cir. 2024) (quotation marks omitted). "To establish irreparable harm, a party . . . must show that there is a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation." *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quotation marks omitted). But though we often say in shorthand that "financial loss" does not constitute irreparable harm, *see, e.g., Borey v. Nat'l Union Fire Ins. Co. of Pittsburgh*, 934 F.2d 30, 34 (2d Cir. 1991), "a perhaps more accurate description of the circumstances that constitute irreparable harm is that where, but for the grant of equitable relief, there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied," *Brenntag Int'l Chems., Inc. v. Bank of India*, 175 F.3d 245, 249 (2d Cir. 1999). It is against this backdrop that Nielsen's financial-injury-only argument comes apart.

The district court found credible Cumulus's representations that it would suffer "immediate consequences" were it to lose access to current national ratings data, including an inability to "develop credible advertising proposals" causing "long-standing" customers to "shift some or all of their advertising inventory purchases to competitors." *Cumulus*, 2026 WL 63294, at *16. This, the district court determined, would "result[] in an immediate decrease in Westwood One's market share." *Id.* In the district court's view, these types of harms can be irreparable for purposes of obtaining a preliminary injunction. *Id*. at *15 (quotation marks omitted). Nielsen disagrees, arguing that all of these harms "still trace back to a compensable overcharge that damages can address," and that any risks of major disruption, loss of goodwill, or loss of market share are "merely speculative." Appellant's Br. 30–31 (quotation marks omitted). We find Nielsen's arguments unavailing.

First, as a factual matter, we find no clear error in the district court crediting Cumulus's expectations of imminent loss of customers, good will, and market share. In particular, the district court credited Jones's declaration that switching some local ratings data purchases from Nielsen to Eastlan would be "crucial for maintaining sufficient cash for continued operations." Appellee's Suppl. Sealed App'x 201. If Cumulus lost access to affordable, up-to-date ratings data, it would face both imminent risks from its creditors and an inability to retain longtime customers in a highly competitive advertising market with thin margins. *See id*. at 202–04. Nielsen's complaints that this evidence came "on the eve of an evidentiary hearing" from "the self-serving statements of an executive responsible for negotiating pricing with Nielsen," Appellant's Br. at 31, go to weight, rather than clear error.

Second, on *de novo* review, we affirm the district court's legal conclusions that "loss of good will[,] customers, . . . [and] current or future market share suffices to show irreparable harm." *Cumulus*, 2026 WL 63294, at *15 (quotation marks omitted). Though Nielsen protests that these types of injuries flow from financial loss, financial losses can be irreparable if "there is a substantial chance that upon final resolution of the action the parties cannot be returned to the positions they previously occupied." *Brenntag Int'l Chems.*, 175 F.3d at 249. Thus, we have held that loss of good will, loss of longtime customers, and a substantial loss in market share—although theoretically merely financial—can constitute irreparable harms. *See, e.g.*, *Reuters Ltd. v. United Press Int'l, Inc.*, 903 F.2d 904, 907–08 (2d Cir. 1990) (loss of good will and loss of customers); *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 67 (2d Cir. 2007) (loss of meaningful market share).

Nielsen's remaining arguments are equally meritless. Even though Cumulus may not have collapsed in the time since filing suit, the district court did not err in crediting evidence showing that Cumulus's business would face irreparable losses without interim relief. *See Cumulus*, 2026 WL 63294, at *15–16. And though Nielsen argues in reply that Cumulus's subsequent bankruptcy renders the preliminary injunction either insufficient or unnecessary, "the [d]istrict [c]ourt should determine in the first instance the effect of this supervening event upon the appropriateness of injunctive relief." *McLeod v. Gen. Elec. Co.*, 385 U.S. 533, 535 (1967).[8] Nielsen is free to move to modify or vacate the preliminary injunction in the district court on the basis of Cumulus's intervening bankruptcy.

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[8] To be clear, the district court's findings of irreparable harm remain relevant to our analysis, Cumulus's bankruptcy filing notwithstanding. While bankruptcy is one basis for finding irreparable harm, *see Tucker Anthony Realty Corp. v. Schlesinger*, 888 F.2d 969, 975 (2d Cir. 1989), it does not necessarily negate or subsume the other bases asserted here. For example, customer good will continues to exist—and can be a relevant consideration—during bankruptcy proceedings themselves. *Cf. In re Windstream Holdings, Inc.*, 105 F.4th 488, 497 (2d Cir. 2024).

Finally, though we affirm the district court's finding of a strong likelihood of irreparable harm in the form of loss of customers, good will, and market share, we conclude that it erred in finding two other forms of irreparable harm. First, we do not agree with the district court that mere "[t]hreatened economic harm to consumers is plainly sufficient to authorize injunctive relief"—a conclusion the district court drew from an antitrust enforcement action maintained by state officials. *Cumulus*, 2026 WL 63294, at *15 (alteration adopted) (quoting *Schneiderman*, 787 F.3d at 661). In that context, consumer economic harm may well be irreparable because non-party consumers cannot recover damages, *see, e.g., California v. Am. Stores Co.*, 495 U.S. 271, 295–96 (1990), but the same is not necessarily true in cases between private parties. Second, we disagree with the district court that "a reduction in competition due to an antitrust injury also constitutes irreparable harm"—a conclusion drawn from cases about the public interest in antitrust enforcement more generally. *Cumulus*, 2026 WL 63294, at *16 (citing *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 257–58 (2d Cir. 1989), and *F. & M. Schaefer Corp. v. C. Schmidt & Sons, Inc.*, 597 F.2d 814, 819 (2d Cir. 1979)). As the Supreme Court has held more recently, a "private litigant . . . must have standing—in the words of § 16, he must prove 'threatened loss or damage' to *his own interests* in order to obtain relief." *Am. Stores*, 495 U.S. at 296 (emphasis added). These errors notwithstanding, however, the district court did not ultimately err in concluding that Cumulus made a strong showing of irreparable harm in the form of lost consumers, decreased good will, and diminished market share.

C. Balance of the Equities and the Public Interest

Nielsen's next set of arguments concerns the remaining requirements for preliminary injunctive relief—"that the balance of equities tips in [the movant's] favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Nielsen argues that it will be irreparably harmed by enforcement of the preliminary injunction because it will be forced to negotiate, with Cumulus and others, "at a competitive disadvantage." Appellant's Br. at 35 (quotation marks omitted). Nielsen claims, also, that it will be unable to recoup the costs it incurs producing its local ratings data, and that the "breadth and vagueness" of the preliminary injunction risks "overcompliance." *Id*. at 37 (quotation marks omitted). And Nielsen contends that the public interest will be served by vacating the preliminary injunction because, under the district court's order, "Nielsen cannot offer better terms to others without risking contempt, even if those customers stand in very different situations than Cumulus." *Id*. at 39. We are unpersuaded.

First, in balancing the potential harms faced by both parties, the district court concluded that Nielsen's fears about losing negotiating leverage and cost recoupment "are purely speculative," compared to the "short term" inability for Cumulus to "absorb the costs of Nielsen's policies." *Cumulus*, 2026 WL 63294, at *16. While Cumulus demonstrated that it was likely to suffer irreparable harms in a matter of months, Nielsen musters only generalized concerns about its operations disconnected from any loss of business or irreparable financial strain. Even if Nielsen's "arguments evince plausible disagreement with the district court's balancing of the hardships," "the balance reached by the district court falls squarely within its discretion." *State Farm Mut. Auto. Ins. Co. v. Tri-Borough NY Med. Prac. P.C.*, 120 F.4th 59, 85 (2d Cir. 2024).

Second, the district court did not err in concluding that the public interest is served by preliminary enforcement of the antitrust laws. *See Cumulus*, 2026 WL 63294, at *16. We regularly hold that the public benefits from preliminarily enjoining conduct found likely to be anticompetitive. *See, e.g., Schneiderman*, 787 F.3d at 662 (collecting cases). Nielsen's arguments to the contrary assume that its conduct is not anticompetitive; Nielsen does not dispute that enforcing the antitrust laws serves the public. And Nielsen's backup argument, that its other customers will be required to pay higher prices for Nationwide else Nielsen risks setting the presumptively reasonable price too low, is entirely speculative and unsupported by any record evidence. Whatever influence the preliminary injunction has on Nielsen's other contract negotiations is hypothetical, unquantified, and outweighed by the public's interest in the maintenance of a competitive market for local ratings data.

We hold that the district court did not abuse its discretion in concluding that Cumulus satisfied the requirements to obtain a mandatory preliminary injunction.

III. Propriety of the Preliminary Injunction

Finally, Nielsen takes issue with the design of the district court's injunction. We review this challenge *de novo*. *See Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 103 (2d Cir. 2009). The injunction reads, in relevant part:

> The Court hereby ORDERS . . . that (i) Nielsen (including Nielsen's officers, employees, and agents) is enjoined and restrained from enforcing its Network Policy; and (ii) Nielsen is enjoined and restrained from charging a commercially unreasonable rate for its Nationwide Report as a complete, standalone product. For purposes of this Order, a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable.

Cumulus, 2026 WL 63294, at *18. Nielsen specifically disputes the latter half of the order, which prohibits it from charging "a commercially unreasonable rate" for standalone Nationwide. *Id*. It claims that this prohibition is insufficient for two reasons: it both violates the specificity requirement of Federal Rule of Civil Procedure 65(d) and fails to remedy Cumulus's claimed irreparable harm. We disagree with both challenges.

First, Rule 65(d). That Rule requires "[e]very order granting an injunction" to "describe in reasonable detail . . . the act or acts restrained or required." Fed. R. Civ. P. 65(d)(1). We refer to this mandate as the "specificity requirement." *Sanders v. Air Line Pilots Ass'n, Int'l*, 473 F.2d 244, 247 (2d Cir. 1972). "The normal standard of specificity [under the Rule] is that the party enjoined must be able to ascertain from the four corners of the order precisely what acts are forbidden." *Id*. Compliance with the specificity requirement is particularly important because "basic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed" before they risk incurring contempt. *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974).

Nielsen argues that it lacks explicit notice of what constitutes an "unreasonable rate" for Nationwide. While we note that similar "reasonable rate" injunctions have been upheld before, *see, e.g., United States v. Glaxo Grp. Ltd.*, 410 U.S. 52, 64 (1973), we need not decide whether a prohibition on charging an "unreasonable" price may be too ambiguous on its own, because we find that the district court's safe harbor provision lends this injunction sufficient clarity. The safe harbor provision states that "a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable." *Cumulus*, 2026 WL 63294, at *18. Nielsen can thus determine a presumptively reasonable rate to charge Cumulus by surveying the prices it charges other large network clients, either under current contracts or based on contracts negotiated this year.[9] While Nielsen is concerned that it will not know its highest 2026 rate for Nationwide until after the year is through, counsel for Cumulus noted at oral argument that contracts for services in 2026 are typically negotiated well in advance. Moreover, Nielsen failed to describe in its briefs or at oral argument what a more specific version of the district court's injunction

[9] The record demonstrates that Cumulus is not Nielsen's only large network client for Nationwide. While Nielsen claims that "Cumulus is a significantly larger customer than any other that purchases the standalone Nationwide report," Appellant's Br. at 44, the district court found only that Cumulus is one of "the three largest companies in radio," *Cumulus*, 2026 WL 63294, at *4, and further found that at least one of those three large companies (apart from Cumulus) also purchases Nationwide from Nielsen, *see id*. at *6.

would look like. That inability to articulate a more precise injunction further demonstrates that the district court's remedy does fulfill the specificity requirement of Rule 65(d). Finally, we are not persuaded by Nielsen's argument that relief in this context cannot regulate a product's price, since "[t]o ensure . . . that relief is effectual, otherwise permissible practices connected with the acts found to be illegal must sometimes be enjoined." *Lowe's*, 371 U.S. at 53.

We conclude that the district court's injunction does not violate the specificity requirement of Rule 65(d). A district court need not "describe all possible, permissible future" prices that Nielsen can charge in order to satisfy that Rule; instead, a district court's injunction must merely "assist [Nielsen] in determining whether a proposed" price is unreasonable. *See S.C. Johnson & Son, Inc. v. Clorox Co.*, 241 F.3d 232, 241 (2d Cir. 2001). The district court's safe harbor provision does just that.

Finally, we disagree with Nielsen that the district court's injunction will not remedy Cumulus's claimed harms. In effect, Nielsen argues that only a forced sale of Nationwide will certainly alleviate the irreparable harm that flows from Cumulus's impending loss of access to that product. But Cumulus alleges precisely that the Network Policy impeded its ability to properly negotiate and thereby obtain that product. In the Sherman Act context, "the precise *practices* found to have violated the Act should be specifically enjoined." *United States v. Grinnell Corp.*, 384 U.S. 563, 579–80 (1966) (emphasis added). Here, the district court's injunction is tailored to the conduct it found to be unlawful: Nielsen's express and constructive enforcement of its Network Policy.

Prohibiting Nielsen from engaging in "the precise practices found to have violated the Act" will assuage the serious risk of Cumulus's harm coming to pass by barring Nielsen from engaging in anticompetitive conduct during negotiations. *Id.* We think the district court's injunction is sufficiently tailored to remedy Cumulus's harm.

CONCLUSION

This interlocutory appeal raises a number of complicated and novel issues. We resolve many of them not for all time, but on a preliminary basis and with considerable deference to the district court's factual findings and discretionary decisions. Still, we hold as a threshold matter that we may proceed with this appeal notwithstanding Nielsen's counterclaims against Cumulus below, because Section 362(a)(1) of the Bankruptcy Code automatically stays only discrete claims against debtors, rather than the entire actions in which they are asserted. Further, we hold as a matter of law that "constructive tying"—the pricing of two products that has the effect of conditioning the sale of one product on the other—can in some cases violate Section 2 of the Sherman Act. Finally, we reject Nielsen's several remaining charges of error, and we hold instead that the district court properly (1) found that Cumulus was coerced based on Nielsen's constructive tie, (2) found anticompetitive effects of Nielsen's conduct, (3) discounted Nielsen's procompetitive justification, (4) concluded that Cumulus made a strong showing of irreparable harm absent interim relief, (5) weighed the relative hardships and public interest in Cumulus's favor, and (6) issued an appropriately specific and tailored preliminary injunction.

The December 30, 2025 order of the district court granting Cumulus's motion for a preliminary injunction is **AFFIRMED**. The February 3, 2026 order of this court granting Nielsen's motion for a stay is **VACATED**, and the case is **REMANDED** for further proceedings consistent with this Opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CUMULUS MEDIA NEW HOLDINGS, INC., Plaintiff, -v- THE NIELSEN COMPANY (US) LLC, Defendants.	X : : : : : : : : : : X	25-CV-08581 (JAV) <u>OPINION AND ORDER</u>

JEANNETTE A. VARGAS, United States District Judge:

Plaintiff Cumulus Media New Holdings, Inc. ("Plaintiff" or "Cumulus") brings this antitrust action against Defendant The Nielsen Company (US) LLC ("Defendant" or "Nielsen") for purported violations of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2. Cumulus alleges that Nielsen has enacted an anticompetitive "tying policy" to illegally maintain its monopoly power over both local and national radio ratings data markets. ECF No. 1 ("Complaint" or "Compl.") ¶¶ 3, 9, 23, 166-180. Nielsen maintains that no antitrust injury has occurred and that this suit is nothing more than "a contract dispute about money." ECF No. 62 ("Opp'n Mem.") at 1. Presently before the Court is Plaintiff's motion for a preliminary injunction, which requests that the Court (1) enjoin Nielsen from imposing any tie or constructive tie in connection with its provision of national ratings data; (2) require Nielsen to continue providing its nationwide product to Cumulus's national radio network subsidiary, Westwood One, under currently existing contract terms for that product; and (3) prohibit Nielsen from retaliatory conduct related to this litigation. ECF No. 8 ("Pl. Mem. of Law") at 27. For the following reasons, Plaintiff's motion for a preliminary injunction is GRANTED.

BACKGROUND

A. Procedural History

Cumulus filed both the Complaint and the motion for preliminary injunction on October 16, 2025. On October 29, 2025, the Court granted in part Cumulus's motion for expedited discovery in connection with the preliminary injunction motion. ECF No. 49.

The Court held an evidentiary hearing on Plaintiff's motion on December 8, 9, and 11, 2025. The Court received into evidence testimony of Nielsen's economics expert Dr. Jonathan Orszag, Cumulus's economics expert Dr. Harold Furchtgott-Roth, Managing Director of Nielsen Audio Rich Tunkel, Co-President of Cumulus Operations Dave Milner, Westwood One President and Vice President of Cumulus Corporate Strategy & Development Collin Jones, Eastlan Ratings ("Eastlan") President and Chief Executive Officer Michael Gould, and executives from other broadcasting companies.[1]

[1] The Court ordered that affidavits of party-controlled witnesses would serve as their direct testimony. ECF No. 49. The parties also submitted deposition transcripts for certain witnesses, which were received into evidence without objection.

B. Findings of Fact

"In deciding a motion for preliminary injunction, a court may consider the entire record including affidavits and other hearsay evidence." *Park Irmat Drug Corp. v. Optumrx, Inc.*, 152 F. Supp. 3d 127, 132 (S.D.N.Y. 2016) (citation omitted); *see Mullins v. City of New York*, 626 F.3d 47, 52 (2d Cir. 2010) (holding that "hearsay evidence may be considered by a district court in determining whether to grant a preliminary injunction"). Accordingly, the following findings of fact are drawn from the entire record in this action, including, *inter alia*, the Complaint, documents cited in the Complaint, and deposition testimony and declarations submitted by the parties. *See Banco San Juan Internacional, Inc. v. Fed. Rsrv. Bank of New York*, 700 F. Supp. 3d 86, 92 (S.D.N.Y. 2023) (citation omitted) (relying upon operative complaint as well as party affidavits in making findings of fact); *Pawelsky v. Cnty. of Nassau, New York*, 684 F. Supp. 3d 73, 78 n.1 (E.D.N.Y. 2023) (citation omitted) (same).

1. The Radio Broadcast Industry

The radio broadcast industry includes both national networks, which are large-scale content producers that distribute syndicated radio programming to stations across the United States, and local radio stations, which serve a specific region. PX-277 (ECF No. 61-1) ("Furchtgott-Roth Expert Report") ¶¶ 19, 24; PX-263 (ECF No. 9) ("First Jones Decl.") ¶ 5; PX-264 (ECF No. 10) ("Milner Decl.") ¶ 3; Compl. ¶ 40. There are 275 geographic areas, referred to as "Radio Markets," in which local radio stations operate. Compl. ¶ 43. Local radio stations broadcast both original content designed to match the interest and demographics of listeners in the region, and syndicated programming provided by a national network. Milner Decl. ¶ 3.

Plaintiff Cumulus is one of the largest audio media companies in the United States, operating 395 radio stations and audio content networks across 84 separate local markets. Furchtgott-Roth Expert Report ¶¶ 7-8. Cumulus also distributes national audio content—including sports, news, and entertainment programming—to over 9,500 affiliated stations nationwide through its national syndication network, Westwood One, "the largest audio network in America." *Id.* ¶ 9.

Defendant Nielsen helped pioneer market research over a century ago and maintains global leadership in the space, providing audience measurement and consumer research across a variety of media platforms. PX-278 (ECF No. 66) ("Orszag Decl.") ¶ 13; Furchtgott-Roth Expert Report ¶ 11. Most pertinent to Plaintiff Cumulus and to this action, Nielsen provides radio ratings products that measure and analyze broadcast radio audiences in the United States. Its data operate at the local level across more than 270 distinct geographic areas, as well as at the national level through an amalgamation of its local ratings data known as the "Nationwide Report" or "Nationwide." Orszag Decl. ¶¶ 13, 15; Furchtgott-Roth Expert Report ¶ 11.

Nielsen collects audio ratings data and designs panels of radio listeners at the local level, Hr'g Tr. 212:22–213:20 (Tunkel); DX-3 ("Tunkel Dep. Tr.") 13:11-23, such that Nielsen's costs arise predominantly from surveying listeners in each individual local market. Tunkel Dep. Tr. 98:15-18, 100:1-5, 123:24–124:7; PX-024. These costs include shipping hardware to radio stations in Portable

People Meter ("PPM") markets, in which compensated listeners detect codes that Nielsen has embedded in stations' live or streamed audio, and distributing hundreds of thousands of paper and electronic diaries in "Diary Markets," in which compensated listeners' habits are recorded over a period of twelve weeks. Hr'g Tr. 209:19-21, 211:3-17, 211:25–212:39 (Tunkel); Compl. ¶ 72. Nielsen then validates, de-duplicates, and weights collected observations to population and demographic benchmarks. Hr'g Tr. 209:19–212:20 (Tunkel).

To create the Nationwide Report, Nielsen compiles local ratings data gathered for 250 designated market areas ("DMAs"), including DMAs where Nielsen no longer sells local radio ratings data, into a comprehensive data set. PX-274 (ECF No. 63) ("Tunkel Decl.") ¶ 5; Tunkel Dep. Tr. 28:3-10, 33:25–34:4; PX-168; Jones Decl. ¶ 7. Nielsen's Nationwide product is published biannually. Tunkel Decl. ¶ 5.

2. Radio Advertising

Radio ratings data, both national and local, are crucial for broadcasters and advertisers alike. Furchtgott-Roth Expert Report ¶ 32. Both national networks and local radio stations generate revenue by selling advertising inventory (radio commercial time) to advertisers and advertising agencies. Furchtgott-Roth Expert Report ¶ 34; PX-272 (ECF No. 83) ("Jones Suppl. Decl.") ¶ 5; Compl. ¶¶ 48-49. Radio stations and advertisers rely on ratings data to determine the pricing and allocation of advertisements on broadcast radio. PX-276 ("Furchtgott-Roth Decl.") ¶¶ 16-18.

Local radio stations that broadcast their own original content sell advertising inventory directly to advertisers or through advertising agencies. PX-271

(ECF No. 68) ("Milner Suppl. Decl.") n.6. A local radio station that broadcasts syndicated national programming typically splits the advertising inventory with the national network. Furchtgott-Roth Expert Report ¶ 34.

In order to market that inventory, networks and stations rely on radio ratings that measure audience size, demographics, time spent listening, and other characteristics (the "reach" of a broadcast), as advertisers "need to see the delivery [of their content] by market" to identify worthwhile purchases. Furchtgott-Roth Expert Report ¶ 28; Hr'g Tr. 216:25–217:4 (Tunkel); *see also* Milner Decl. ¶ 9; Jones Decl. ¶ 35; PX-281 ("Jones Dep. Tr.") 107:12–108:4. Advertising agencies act as intermediaries in the buying and selling of advertising inventory, assisting national and local advertisers in determining what advertising inventory to purchase, how that inventory should be priced, and the advertising campaign's length. Compl. ¶ 54.

Advertisers and advertising agencies use media-buying platforms, which incorporate radio ratings data, to compare and purchase advertising inventory. Compl. ¶ 57. These media-buying platforms facilitate the sale of advertising inventory, allowing advertisers to make purchases based on national radio ratings data and local radio ratings data. *Id*.

Whereas advertisers and advertising agencies that purchase national advertising inventory seek to assess a radio broadcast's performance nationwide and accordingly rely on national radio ratings data, advertisers and advertising agencies that purchase local advertising inventory only need to assess performance in a particular region and thus rely on local radio ratings data. Furchtgott-Roth Expert

Report ¶¶ 30, 41. Local radio stations and advertising agencies typically purchase local radio ratings data only for the geographies in which they operate because advertising preferences—such as target demographics, like age and gender—often differ by geography. Compl. ¶ 90. Accordingly, local radio stations seeking to sell to local advertisers and agencies purchase local radio ratings data, and national networks like Cumulus's Westwood One purchase national radio ratings data. Furchtgott-Roth Expert Report ¶ 41.

Nielsen has one competitor in the local radio ratings space: another ratings company called Eastlan, which is primarily present in smaller-sized radio markets and in geographic markets where Nielsen does not operate. *Id*. ¶ 49, n.92. Of the 80 local markets where Cumulus owns local radio stations and Nielsen provides ratings data, Nielsen is the only provider of local radio ratings data in 75. Furchtgott-Roth Expert Report ¶ 50; Milner Decl. ¶ 11. However, Eastlan's willingness to quickly enter new markets with sufficient demand has contributed to its growth into larger markets, allowing it to start competing directly with Nielsen. PX-267 (ECF No. 61-2) ("Gould Decl.") ¶¶ 3, 11, 13; Milner Decl. ¶ 11; PX-067 at 1-2; Hr'g Tr. 286:8-287:6 (Gould). Further, "in recent years, Eastlan's been coming in and focusing directly on those larger markets [that Nielsen is in] and been entering and succeeding." Hr'g Tr. 114:13-18 (Orszag).

In contrast, Nielsen is the only provider of comprehensive national radio ratings data in the United States. Furchtgott-Roth Expert Report ¶¶ 46-48; Jones Decl. ¶ 7; Jones Dep. Tr. 311:12-16; PX-266 (Small Decl.) ¶ 3. National advertisers and advertising agencies rely on software that is only compatible with Nielsen data and media-buying platforms that do not accept Eastlan data, necessitating that networks purchase Nielsen data to compete for national advertising. Hr'g Tr. 321:1-5 (Gould); Compl. ¶¶ 58, 75-77; Jones Decl. ¶ 8; Jones Suppl. Decl. ¶ 17. Accordingly, Nielsen's Nationwide product is essential to Westwood One's ability to sell national advertising. Furchtgott-Roth Expert Report ¶ 65.

3. Challenged Nielsen Policies

As declines in radio broadcast listenership have translated to declines in radio advertising revenue in recent years, PX-285 (Furchtgott-Roth Dep. Tr.) 81:21–82:2, the industry has shifted, and Nielsen has had to "increase [its prices] beyond historical levels." Tunkel Dep. Tr. 155:18–156:7; *see also*, Hr'g Tr. 214:23-25 (Tunkel) ("it gets more difficult . . . every single year, to get the same number of people to participate in [Nielsen's] surveys at historic levels"). Additionally, because in 2024 Nielsen had to retire its secondary national data service, which brought in significant revenue, Nielsen now relies on its "local ratings service [to] subsidize[] Nationwide." Tunkel Dep. Tr. 36:15-20, 155:5-24. As Nielsen's prices have increased, radio broadcasters have, in turn, looked to Eastlan as a viable cheaper alternative for their ratings data. Milner Decl. ¶ 20; PX-269 ("Decl. of Third-Party Broadcaster 1") ¶¶ 5, 11; PX-270 ("Decl. of Third-Party Broadcaster 2") ¶ 5.

a. The Network Policy (the alleged "Tying Policy")

In September 2024, Nielsen announced its "Network Policy," Compl. ¶ 7; PX-045; PX-046; PX-047;

Tunkel Dep. Tr. 76:4–77:7; Hr'g Tr. 129:13-15 (Tunkel), which applies only to customers who operate both a national network and local radio stations. Hr'g Tr. 163:18–164:8 (Tunkel); Tunkel Decl. ¶ 6; DX-4 at 1. The Policy states as follows:

> [I]f a network or any other type of sales entity owns, manages, operates, or has a sales or operating agreement or other similar business relationship with a local station in a Nielsen-measured market that does not currently subscribe to the local market in that Metro, Nielsen Audio will no longer provide DMA or Metro data in Nielsen's National Regional Database (NRD), Act One, or via any Software Solution Provider (SSP) for that specific market to the network or such other applicable entities.

Id.; *see also* Hr'g Tr. 129:16-20 (Tunkel). In other words, if a customer owns both a national network and a local radio station, but that customer declines to purchase *local* Nielsen data for its local stations, Nielsen will exclude local data for the pertinent geographies from its *national* product to that customer. In effect, customers receive incomplete national data unless they elect to purchase local data as well. National radio ratings data that "have holes" do not represent a "real" or "useful" product, since the lack of comprehensive data would prevent national networks like Westwood One from accurately and reliably evaluating national radio shows and effectively engaging with advertisers and advertising agencies. Furchtgott-Roth Expert Report ¶ 56; *see also* Tunkel Dep. Tr. 193:16-20.

Nielsen maintains that the Network Policy is designed to prevent two types of free riding. One anticipated free riding issue is when national radio broadcast customers that own or have a sales relationship with a local station; purchase the Nationwide report; and either (1) make decisions for their local stations based on information from the report, or (2) share the local data aggregated in the Nationwide report with their commonly owned and controlled local market stations that do not pay for local Nielsen data. Hr'g Tr. 161:17-162:2, 217:21-218:7; Tunkel Decl. ¶ 7; Tunkel Dep. Tr. 82:5-16; Orszag Decl. ¶ 11.

The second free riding problem arises as a result of the nature of Nationwide as an amalgamation of local radio ratings data. The fixed costs of creating Nationwide are largely borne by those who purchase local radio ratings data. Orszag Decl. ¶¶ 61-62. Accordingly, "the national networks that rely on national data benefit from every station owner who contributes to covering the cost of local data." *Id.* ¶ 63.

Of Nielsen's hundreds of customers renewing their contracts in 2025, only 12 operate both a national network and local radio stations and are thereby subject to the alleged tying policy. Tunkel Dep. Tr. 73:24–74:5; Tunkel Decl. ¶ 8. This limited subset, however, includes "the three largest companies in radio"—Cumulus, Audacy, and iHeart—together controlling about a third of all radio advertising dollars. Hr'g Tr. 277:22-278:11 (Gould). Further, in many of the Top 100 radio markets, the 12 subscribers subject to this Policy account for over 75% of radio advertising revenue, including in New Orleans, LA (where 17 of 25 total stations are owned by one of the 12 vertically integrated subscribers, and those 17 stations generate 92% of the market's radio advertising revenue); Houston-Galveston, TX;

Stockton, CA; Harrisburg-Lebanon-Carlisle, PA; Memphis, TN; Indianapolis, IN; Los Angeles, CA; Detroit, MI; and San Francisco, CA. PX-283; PX-284; Hrg Tr. 98:3-6 (Orszag); Hr'g Tr. 292:7-9 (Gould); Furchtgott-Roth Dep. Tr. 126:12-17 ("[T]here are some markets . . . where there's hardly any advertising revenue left after you take iHeart and Cumulus and Audacy and the other vertically-integrated firms out of the market.").

b. Subscriber First Policy

In 2022, Nielsen implemented its "Subscriber First" Policy, which excludes local radio stations from Nielsen's summary-level local radio ratings data unless those stations purchase Nielsen's local radio ratings data for the geography in which they are located. Whereas the Network Policy prevents noncompliant customers from *receiving* Nielsen data, the Subscriber First Policy prevents noncompliant customers from *appearing in* Nielsen data. Advertisers and advertising agencies purchase Nielsen's summary-level local radio ratings data (and often, only that data) to compare local radio station audiences in any given geography and, in turn, make advertising inventory purchases. Compl. ¶ 64. Consequently, local stations must purchase Nielsen's local data or face significant lost revenue. Gould Decl. ¶ 23.

Eastlan, Nielsen's sole local radio ratings competitor, lost approximately five or six existing customers as result of Subscriber First Policy, as well as a number of other prospects that chose not to engage with Eastlan after the Subscriber First Policy was announced. Hr'g Tr. 272:17-20 (Gould). Customers cite the Subscriber First Policy as the reason they cannot subscribe to Eastlan's data over

Nielsen's. *Id*. 271:20–272:20 (Gould). Cumulus claims the Subscriber First Policy is anticompetitive because it (1) compels radio stations to purchase ratings data that, at a given price, they might otherwise not purchase, and (2) discourages local radio stations from purchasing radio ratings data from Nielsen's competitors. Compl. ¶ 20.

4. Cumulus's Contract Negotiations with Nielsen

The operative contract between Cumulus and Nielsen has a [REDACTED] year term running from January 1,[REDACTED] through December 31, [REDACTED] PX-001 § 6.1. Under that contract, Cumulus paid Nielsen [REDACTED] for [REDACTED] local markets and the Nationwide service for the 2025 calendar year. PX-007; Tunkel Decl. ¶ 10. This contract was negotiated and signed prior to development of the Network Policy. PX-091; PX-001; Compl. ¶ 7.

Cumulus initially approached Nielsen to begin negotiations for a new contract in May 2025. PX-006; PX-071 at 3; *see* PX-075 at 1. In connection with those contract negotiations, Nielsen conducted a market-by-market price analysis of its existing contract with Cumulus. Hr'g Tr. 152:3–153:9 (Tunkel); PX-167; PX-014 at 2. Nielsen compared the rates paid by Cumulus with the rates paid by comparable subscribers. This analysis showed that Cumulus's current contracted rates on a cost per share basis were above those paid by other subscribers in 33 of its 76 markets. *See* PX-014 at 2. Cumulus simultaneously conducted its own analyses and determined that in a majority of local radio markets, the cost of Nielsen's local radio ratings data had outstripped the value Cumulus would receive in advertising revenue.

Milner Suppl. Decl. ¶¶ 7-9; *id*. Ex. 2. For example, Cumulus calculated that in Minneapolis, Minnesota, it paid Nielsen approximately [REDACTED] for local ratings data and associated products, while Eastlan's product would cost approximately [REDACTED] Milner Suppl. Decl. ¶¶ 9-10. While Cumulus estimated that it could lose as much as [REDACTED] in advertising revenue by not purchasing Nielsen data, switching from Nielsen to Eastlan would still result in a net benefit. *Id*. Accordingly, Cumulus determined that it would drop Nielsen's local radio ratings data for all local markets except in [REDACTED] geographies, for which it wanted to obtain current pricing to help conduct a further cost-benefit analysis. Jones Decl. ¶ 24; DX-18 at 3.

In the course of negotiating a new contract, Nielsen has put eight separate offers on the table. Nielsen's first offer to Cumulus, on June 27, 2025, and revised on July 24, 2025, incorporated full Nationwide service, plus local service in every local market in which Cumulus operates radio stations (including markets where Cumulus had already unsubscribed, like Memphis, TN, Amarillo, TX, and New Orleans, LA), for an annual price of [REDACTED] in the first year with a [REDACTED] for the remaining term of the contract. DX-12 at 2-3; Tunkel Dep. Tr. 132:24-133:10; PX-007; PX-008 at 2; Tunkel Decl., Ex. A at 2-3; Jones Suppl. Decl. ¶¶ 21, 24. This offer, just [REDACTED] off the prior contract price, included ratings services for local geographies that Cumulus wanted to unsubscribe from (and some it had already unsubscribed from) but removed ancillary services in certain geographies to which the company wanted to subscribe and would have to purchase elsewhere. Jones Suppl. Decl. ¶ 21. This offer would also effectively prevent Cumulus from purchasing

Eastlan's local radio ratings data because it would be buying all local radio ratings data in all its geographies from Nielsen. Jones Suppl. Decl., Ex. 4; Furchtgott-Roth Expert Report ¶ 55.

On July 24, 2025, Nielsen alternatively offered to provide e-book only subscriptions for all of Cumulus's local markets, alongside Nationwide, for an annual price of [REDACTED] in the first year with a [REDACTED] for the remaining term of the contract. PX-007; DX-12 at 1-2; Tunkel Decl. Ex. A at 2-3; Jones Suppl. Decl. Ex. 4. E-book only data is unusable standing alone, and therefore would have required Cumulus to subscribe to other peripheral services to render usable by advertisers, at additional cost. Jones Suppl. Decl. ¶ 24; Jones Dep. Tr. 237:25–239:17. This offer would also effectively prevent Cumulus from purchasing Eastlan's local radio ratings data because, as with the first offer, it would be buying all local radio ratings data in all its geographies from Nielsen. Jones Suppl. Decl. ¶ 9; Jones Decl. ¶ 20.

Also on July 24, 2025, Nielsen offered Cumulus [REDACTED] local markets and the incomplete Nationwide product to Westwood One (excluding ratings data for DMAs where a Cumulus-associated local station did not subscribe to Nielsen services) for an annual rate of [REDACTED] for the [REDACTED] local markets and [REDACTED] for Nationwide) with the option to expand the Nationwide service at [REDACTED]. DX-12 at 2. Nielsen refused at that time to provide a price for Nationwide as a standalone product, stating that "it [was] not possible to achieve in light of our policy on local subscription." *Id*. at 1.

The Nationwide product being offered in this deal would be incomplete, and in Nielsen's own words, "Swiss cheese." Hr'g Tr. 130:1-7. Because Cumulus owns radio stations in [REDACTED] markets where Nielsen provides local radio ratings data, Furchtgott-Roth Expert Decl. ¶ 50, this national radio ratings data product would be missing data from [REDACTED] geographies, including major markets such as San Francisco, CA, Los Angeles, CA, and New York, NY. *See* Jones Suppl. Decl. ¶ 24(c); DX-18; *see also* Tunkel Dep. Tr. 193:16-20 ("This is the option that I made sure Collin understood was like Swiss cheese, because they would not be receiving all markets in the Nationwide service, so I wanted to make sure he understood what he was asking for"). Nielsen supplemented this offer by telling Cumulus it could expand the Nationwide product at [REDACTED]: in other words, by purchasing local radio ratings data in all of Cumulus's local markets. Hr'g Tr. 182:2-15. Thus, under the terms of this offer, if Cumulus wanted a bonafide Nationwide product, it would have to subscribe to Nielsen local radio ratings data in every market where it has a station.

In light of Nielsen's refusal to put forward a price for the standalone Nationwide product, on August 1, 2025, Cumulus issued a counteroffer to purchase local ratings data in [REDACTED] markets for a flat [REDACTED] DX-12 at 1. On August 18, 2025, however, counsel for Cumulus sent Nielsen a letter stating that its Network Policy violated antitrust laws by unlawfully conditioning the sale of Nationwide on the "purchase of uneconomic local products." DX-14 at 1. Cumulus demanded that Nielsen withdraw its policy and threatened legal action if it failed to do so. *Id*. at 2-3.

On September 15, 2025, Nielsen offered Westwood One a complete Nationwide standalone product for [REDACTED] Jones Suppl. Decl. ¶ 35(a); Tunkel Decl., Ex. A at 2. Cumulus's economic expert opines that Nationwide was priced so exorbitantly that this offer was the effective equivalent of the June/July offer of [REDACTED] for Nationwide and all local markets. Furchtgott-Roth Expert Report ¶ 65. Indeed, this was exponentially more than what any other network pays for Nationwide as a standalone product: other than one company ([REDACTED]), which as of April 2024 pays between [REDACTED] annually for Nationwide, no other national network pays more than [REDACTED] annually for Nationwide, and national networks without local stations pay [REDACTED]. Tunkel Dep. Tr. 46:14-48:2, 50:23-51:4; Hr'g Tr. 174:10-24 (Tunkel); Furchtgott-Roth Dep. Tr. 131:12-15; Furchtgott-Roth Expert Report ¶ 65; PX-005 at 5. It was also ten times more than what Cumulus was paying for Nationwide under its existing contract. Jones Suppl. Decl. ¶ 25; Tunkel Dep. Tr. 171:9-12. *See also* Furchtgott-Roth Expert Report ¶ 69 ("Indeed, at the price Nielsen is offering for Nationwide as a standalone product, it forecloses Eastlan from selling Cumulus local radio ratings data not only for the [REDACTED] markets in Nielsen's September 15 offer . . . but also for the full set of [REDACTED] markets in Nielsen's July 24 offer. If Cumulus purchased Nationwide as a standalone product (September 15, Option 1) for [REDACTED] it would only make economic sense for Cumulus to purchase local radio ratings data for the [REDACTED] markets from Eastlan if it were able to purchase an Eastlan-based alternative at a price of, at most, [REDACTED]. If not, Cumulus would be better off with Nielsen's July 24 proposal priced at [REDACTED]. Documentary evidence indicates that Cumulus would have to pay at least [REDACTED] for such an alternative product in those [REDACTED] local markets").

On the same day, Nielsen also offered a local-only package to Cumulus for [REDACTED]. Jones Suppl. Decl. ¶ 35(b); Tunkel Decl. Ex. A at 2. The offer did not include Nielsen's Nationwide product. Furchtgott-Roth Expert Report ¶ 65 ("Local radio ratings data alone are not a viable option because Nationwide data are indispensable for Westwood One to sell advertising . . . and Nielsen is the monopoly provider of this product.").

Also on September 15, 2025, Nielsen offered local ratings data in 32 geographies, plus a complete Nationwide product, for the total amount of [REDACTED] Tunkel Decl., Ex. A at 2. This offer is priced 64% times higher than what Cumulus currently pays for Nationwide and those same geographies in its current contract, not accounting for additional costs Cumulus would incur to purchase local radio ratings data from an alternative provider in its remaining geographies. Jones Suppl. Decl. ¶ 35(c). It is also only roughly [REDACTED] lower than Nielsen's initial offer for ratings data for all Cumulus local markets plus Nationwide. *Id*.

On October 16, 2025, Nielsen offered to provide Cumulus with Nationwide and local radio ratings data in all 80 markets with existing services at a price [REDACTED]. Tunkel Decl., Ex. A at 2.

On October 22, 2025, shortly after Cumulus filed its Complaint, Nielsen offered to maintain all existing services with Cumulus for the duration of litigation at current prices [REDACTED] *Id*.

LEGAL STANDARDS

Section 16 of the Clayton Act authorizes injunctive relief against "threatened loss or damage by a violation of the antitrust laws," such as Section 2 of the Sherman Act. 15 U.S.C. § 26. In determining whether to grant injunctive relief under this provision, the Court applies the traditional criteria that governs applications for preliminary relief under Rule 65. *fuboTV Inc v. Walt Disney Co.*, 745 F. Supp. 3d 109, 132-133 (S.D.N.Y. 2024). Specifically, "[a] plaintiff seeking a preliminary injunction must establish that [it] is likely to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is in the public interest." *JTH Tax, LLC v. Agnant*, 62 F.4th 658, 667 (2d Cir. 2023) (cleaned up).

A movant is held to a heightened standard, however, where "(i) an injunction is mandatory, or (ii) the injunction will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits." *N.Y. ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 650 (2d Cir. 2015) (cleaned up). "When either condition is met, the movant must show a clear or substantial likelihood of success on the merits and make a 'strong showing' of irreparable harm." *Id*. (cleaned up).

"Section 16 should be construed and applied with the purpose of enforcing the antitrust laws in mind, and with the knowledge that the remedy it affords, like other equitable remedies, is flexible and capable of nice adjustment and reconciliation between the public interest and private needs as well as between competing private claims. Its availability should be conditioned by the necessities of the public interest which Congress has sought to protect." *Consol. Gold Fields PLC v. Minorco, S.A.*, 871 F.2d 252, 259 n.6 (2d

Cir. 1989), *amended on unrelated grounds*, 890 F.2d 569 (2d Cir. 1989) (cleaned up).

DISCUSSION

The parties dispute whether Plaintiff's motion seeks to maintain the status quo or whether the heightened standard applicable to mandatory injunctions should apply. The Court agrees that the relief Plaintiff seeks through this action is not maintenance of the status quo, but mandatory relief. Yet that does not preclude Plaintiff from obtaining relief. Plaintiff has made a strong showing of irreparable harm and a substantial likelihood of success on the merits sufficient to satisfy the heightened standard for mandatory injunctions. Accordingly, for the reasons set forth below, Plaintiff is entitled to a preliminary injunction to prevent.

A. Likelihood of Success on the Merits

Cumulus has shown a substantial likelihood of success on the merits of its Section 2 claims alleging the anti-competitiveness of Nielsen's conduct as a monopolist in the local and national radio ratings data markets.

1. Antitrust Standing

To successfully bring suit under the Sherman Act, a private plaintiff must demonstrate both constitutional standing and antitrust standing. *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d 151, 157 (2d Cir. 2016); *see also Consol. Gold Fields*, 871 F.2d at 257-258. "Harm to the antitrust plaintiff is sufficient to satisfy the constitutional standing requirement of injury in fact, but the court must make a further determination whether the plaintiff is a proper party to bring a private antitrust action." *Associated Gen. Contractors of California, Inc. v.*

California State Council of Carpenters, 459 U.S. 519, 535 n.31 (1983). A plaintiff seeking injunctive relief under Section 16 of the Clayton Act must therefore show a threat of antitrust injury, *Cargill, Inc. v. Monfort of Colorado, Inc.*, 479 U.S. 104, 122 (1986), and that it is an acceptable plaintiff to pursue the alleged antitrust violations, *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d at 157.

Antitrust injury is an "injury of the type the antitrust laws were intended to prevent and that flows from that which makes defendants' acts unlawful." *Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc.*, 429 U.S. 477, 489 (1977). The relevant inquiry is thus whether the challenged action threatens competition in the relevant market. *Arcesium, LLC v. Advent Software, Inc.*, No. 20-cv-04389 (MKV), 2021 WL 1225446, at *7 (S.D.N.Y. Mar. 31, 2021). "Insisting on proof of harm to the whole market fulfills the broad purpose of the antitrust law that was enacted to ensure competition in general, not narrowly focused to protect individual competitors." *Capital Imaging Assocs., P.C. v. Mohawk Valley Med. Assocs.*, Inc., 996 F.2d 537, 543 (2d Cir. 1993). In contrast, "a plaintiff does not suffer an antitrust injury when the plaintiff's injury was consistent with free competition." *In re Libor-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262 NRB, 2015 WL 4634541, at *77 (S.D.N.Y. Aug. 4, 2015), *amended sub nom. In re LIBOR-Based Fin. Instruments Antitrust Litig.*, No. 11 MDL 2262 (NRB), 2015 WL 13122396 (S.D.N.Y. Oct. 19, 2015).

Cumulus is likely to succeed in demonstrating the threat of an antitrust injury. Cumulus and Westwood One are consumers of Nielsen's products. *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d at

158 ("Generally, only those that are participants in the defendants' market can be said to have suffered antitrust injury."). They have adduced evidence that Nielsen's anticompetitive conduct has permitted it to sharply raise prices for Nationwide as a standalone product, to more than ten times what Cumulus was paying for Nationwide under its prior contract, and far more than it charges other consumers for Nationwide when packaged with local market ratings data. *See, e.g.*, PX-005 at 5; PX-007; Furchtgott-Roth Expert Report ¶¶ 54, 69; Furchtgott-Roth Dep. Tr. 131:12-15; Tunkel Decl., Ex. A at 2-3; Tunkel Dep. Tr. 46:14–47:7, 50:23–51:4, 132:24–133:10, 171:9-12; Hr'g Tr. 174:10-24 (Tunkel); Jones Suppl. Decl. ¶¶ 21, 24.

Moreover, Nielsen's refusal to adequately disaggregate its Nationwide and local radio ratings products for purchase not only prevents Cumulus from contracting with Nielsen's competitor, Eastlan, to the detriment of its subsidiary, Westwood One, but also adversely affects local radio ratings markets more broadly. Westwood One's constrained choice in radio ratings providers, as evidenced by its latest contract negotiations with Nielsen, is indicative of Nielsen's restrictions on broadcasters in local radio ratings markets at large. Even in the local areas in which Nielsen is currently the only provider of radio ratings data, Nielsen's behavior has been historically constrained by the credible threat of Eastlan's (or other competitors') entry. As such, relative to the national radio ratings data market, local radio ratings data have been more competitively provided thanks to the presence, or potential entry, of Eastlan. Furchtgott-Roth Expert Report ¶¶ 50-51.

By effectively foreclosing Eastlan's ability to compete in local markets through the Subscriber First

Policy and Network Policy, Nielsen causes an "injury of the type the antitrust laws [that] were intended to prevent" and that "flows from [the conduct] that . . . makes defendants' acts unlawful." *Brunswick Corp.*, 429 U.S. at 489. The record suggests Nielsen has directly inhibited Eastlan from gaining subscribers in the local radio ratings market by conditioning subscribers' appearance in ratings data on their local radio ratings purchases. *See* Decl. of Third-Party Broadcaster 1 ¶¶ 7-9 (commercial media company became "effectively invisible" to advertisers after its station ended local Nielsen contract and was excluded from summary-level data, such that they lost advertising revenue); Decl. of Third-Party Broadcaster 2 ¶ 6 (media company sees Eastlan as "viable option for ratings services in some of our markets," but "advertising agencies continue to rely exclusively on Nielsen's ratings," and if "we unsubscribe in these markets advertisers would not see our stations in Nielsen data at all, even if these stations are top ranked stations," so company "remains locked into purchasing Nielsen's ratings in all markets in which we operate radio stations"). Indeed, Eastlan has already lost existing clients and potential clients from the Subscriber First Policy. *See* Hr'g Tr. 271:22–272:7 (Gould) (yearslong existing clients left Eastlan for fear that advertisers would not do business with them if they did not appear in Nielsen's summary-level data, and "strong prospect[s]" made an "eleventh-hour decision to switch [to Nielsen] when the information came out about the Subscriber First Policy").

The Network Policy similarly contributes to Nielsen's monopolization of local radio ratings data markets. Furchtgott-Roth Dep. Tr. 210:16-21 (the Network Policy is "anticompetitive on its face"), *Id*. at

157:2-13 ("[T]he tying policy creates an additional barrier to entry" that "make[s] it very difficult for a local radio station to switch away from Nielsen to Eastlan. But [Eastlan is] a potential entrant. They could enter, but these policies of Nielsen made that much more difficult."). Eastlan has heard from other broadcasters that they would prefer Eastlan in certain markets but are worried that they will be unable to purchase Nationwide if they no longer purchase Nielsen's local radio ratings data in that market because of the Network Policy. Gould Decl. ¶ 21; *see also* Decl. of Third-Party Broadcaster 2 ¶ 6; PX-265 (ECF No. 61-2) ("Decl. of Third-Party Broadcaster 3") ¶¶ 4-5. (National broadcasting company with local stations and a national network attesting it "would not be able to sell network advertising without Nielsen's comprehensive national radio ratings data," such that this policy "would prevent" the company "from considering in the future alternative providers of rating services"). The Network Policy is "limiting" to Eastlan because it "makes it difficult for [broadcasters] to make some of the choices . . . at a time when money is tough and return on investment becomes even more critical." Hr'g Tr. 278:24-279:4 (Gould). By conditioning access to Nationwide on the purchase of local radio ratings data, Niesen also impedes Eastlan and other potential rivals from competing for the largest and most influential radio groups' business. Hr'g Tr. 276:24-277:2 (Gould); Gould Decl. ¶ 21; Furchtgott-Roth Decl. ¶ 31. That the 12 broadcasters subject to the Network Policy cannot freely purchase Eastlan's local radio ratings data also makes it difficult for Eastlan to sell its local radio ratings data to smaller broadcasters, because these smaller broadcasters tend to follow the lead of those larger industry leaders broadcasters such as iHeart, Audacy, and Cumulus. Hr'g Tr. 276:6-280:6 (Gould); *see also id*. 288:4-7 (Gould) ("So not having access to those three companies [iHeart, Audacy, and Cumulus], because the tying policy is certainly part of it, makes it difficult to grow in local markets and makes us less likely to target a market like that."); Furchtgott-Roth Expert Report ¶¶ 58-62. This results in harm to competition. *See* Hr'g Tr. 87:19-88:1 (Orszag) ("As a matter of economic theory," Nielsen's expert agrees that tying harms competition "if a rival is diminished in its ability to compete . . . even when a rival is not completely excluded from the market.").

Cumulus is also an appropriate party to bring the instant claims. The antitrust standing requirement "originates in the Supreme Court's recognition that . . . 'Congress did not intend the antitrust laws to provide a remedy in damages for all injuries that might conceivably be traced to an antitrust violation.'" *In re Platinum & Palladium Antitrust Litig.*, 61 F.4th 242, 258 (2d Cir. 2023), *cert. denied sub nom. BASF Metals Ltd. v. KPFF Inv., Inc.*, 144 S. Ct. 681 (2024). Whether a private plaintiff has antitrust standing to pursue a damages claim under Section 4 of the Clayton Act is generally assessed under the four "efficient enforcer" factors, which look to (1) the directness or indirectness of the asserted injury; (2) the existence of more direct victims of the alleged anticompetitive conduct; (3) whether the asserted damages are speculative; and (4) the risk of duplicate recoveries or complex apportionment of damages. *See, e.g., Gelboim v. Bank of Am. Corp.*, 823 F.3d 759, 778 (2d Cir. 2016). Application of these factors is "less rigorous" in the Section 16 context, however, *Consol. Gold Fields*, 871 F.2d at 260 n.6, because claims for injunctive relief do not raise the same risks of multiple lawsuits or duplicative recoveries as do claims for treble damages.

Cargill, 479 U.S. at 111 n.6; *see also Daniel v. Am. Bd. of Emergency Med.*, 428 F.3d 408, 443 (2d Cir. 2005) ("[T]he weight to be given the various factors will necessarily vary with the circumstances of particular cases."). Cumulus, as a consumer in the relevant markets, easily satisfies this relaxed test. The injury to Cumulus is directly caused by the alleged anticompetitive policies, and Cumulus is well placed to represent other market consumers who are similarly affected by Nielsen's policies.

2. Section 2 Claims

Section 2 of the Sherman Act prohibits a company from using anticompetitive conduct to maintain or protect its market power in a relevant market through: "(1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966); *see also Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 274 (2d Cir. 1979) ("Even if that power has been legitimately acquired, the monopolist may not wield it to prevent or impede competition."). The primary point of contention between the parties is whether Plaintiff has adequately shown that Nielsen engaged in an unlawful tying arrangement through its Network Policy in order to maintain its market power in the relevant markets. *In re Google Digital Advert. Antitrust Litig.*, 627 F. Supp. 3d 346, 369 (S.D.N.Y. 2022). While "[t]he mere possession of monopoly power, and the concomitant charging of monopoly prices is not . . . unlawful," *Verizon Commc'ns Inc. v. L. Offs. of Curtis V. Trinko, LLP*, 540 U.S. 398, 407 (2004), Cumulus has made a significant showing that

Nielsen is relying on anticompetitive conduct to maintain its power in the national and local radio ratings markets.

a. Monopoly Power in Relevant Market

"As an initial matter, it is necessary to define the relevant product and geographic market [Nielsen] is alleged to be monopolizing." *PepsiCo, Inc. v. Coca-Cola Co.*, 315 F.3d 101, 105 (2d Cir. 2002). "A relevant product market consists of products that have reasonable interchangeability for the purposes for which they are produced—price, use and qualities considered." *Id*. (cleaned up). For purposes of this preliminary injunction motion, the parties are in agreement that the relevant product markets are for local radio ratings data and national radio ratings data. *See* Hr'g Tr. 55:25–56:2; *id*. at 249:4-12; *see also* ECF No. 129 at 10 (Nielsen not contesting definition of relevant markets). It is also not disputed that these are distinct products that are used differently by industry participants, are recognized as different products by the industry, are accessed through different platforms, have distinct customers, and have separate prices. *See* Furchtgott-Roth Expert Report ¶¶ 39-41; Hr'g Tr. 56:3-9.

Geographically, the market for the Nationwide product is the United States. The market for local radio ratings data is each local geographic area for which a ratings report is generated. Compl. ¶ 96.

"The core element of a monopolization claim is market power, which is defined as 'the ability to raise price by restricting output.'" *PepsiCo*, 315 F.3d at 107 (citation omitted). Monopoly power "can be proven directly through evidence of control over prices or the exclusion of competition, or it may be inferred from a firm's large percentage share of the relevant market." *Geneva Pharms. Tech. Corp. v. Barr Lab'ys Inc.*, 386 F.3d 485, 500 (2d Cir. 2004). For purposes of this motion, Nielsen has accepted as true Cumulus's allegations with respect to market power. Hr'g Tr. 24:1-4; ECF No. 129 at 10; Opp'n Mem. at 26.

Cumulus has adduced both direct and indirect evidence that Nielsen has market power with respect to the market for national radio ratings data, for which it has a 100% market share, and the market for local radio ratings data, for which it has a dominant market share in each of the geographies at issue. Orszag Decl. ¶ 25; Furchtgott-Roth Expert Report, ¶¶ 46-49; *see also* Compl. ¶ 98 (alleging that, in 75 of the 80 local radio ratings data markets, "Nielsen is the only provider of local radio ratings data and possesses a 100% market share"). "[A] share above 70% is usually strong evidence of monopoly power." *New York v. Actavis, PLC*, No. 14 CIV. 7473, 2014 WL 7015198, at *36 (S.D.N.Y. Dec. 11, 2014) (citation omitted); *see also Maxon Hyundai Mazda v. Carfax, Inc.*, No. 13-CV-2680 (AJN), 2014 WL 4988268, at *15 (S.D.N.Y. Sep. 29, 2014) (finding that complaint plausibly alleged defendant's monopoly power based on allegation that the defendant's market share in the relevant market was 90%). Plaintiff has therefore satisfied its burden of showing that Nielsen has a monopoly in the market for nationwide radio ratings data and substantial market power in the market for local radio ratings data.

b. Willful Maintenance of Monopoly Power Through Anticompetitive Conduct

Cumulus alleges that the Network Policy constitutes an unlawful and anticompetitive tying arrangement. A tying arrangement is "an agreement by a party to sell one product[,] but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier." *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461 (1992). "[T]he essential characteristic of an invalid tying arrangement lies in the seller's exploitation of its control over the tying product to force the buyer into the purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms. When such 'forcing' is present, competition on the merits in the market for the tied item is restrained and the Sherman Act is violated." *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984), *abrogated in part on other grounds by Illinois Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28 (2006); *see also* Furchtgott-Roth Expert Report ¶ 44 ("[T]ying is considered anticompetitive when a firm uses its market power in the tying-product market to coerce customers into purchasing a tied product sold in an otherwise more competitive and contestable market, thereby reducing competition in the tied product market."). In contrast, "if each of the products may be purchased separately in a competitive market, one seller's decision to sell the two in a single package imposes no unreasonable restraint on either market." *Jackson Parish*, 466 U.S. at 11.

The Supreme Court has explained the anticompetitive harms inherent in unlawful tying arrangements. Competition is hindered when such arrangements insulate inferior products from competitive pressures or create barriers to entry of new competitors in the market for the tied product. *Id.* at 14. And for consumers, "the freedom to select the best bargain in the second market is impaired by his need to purchase the tying product, and perhaps by an inability to evaluate the true cost of either product when they are available only as a package." *Id*. at 15.

To establish an unlawful tying arrangement, Plaintiff must show:

> [(1)] a tying and a tied product;
>
> [(2)] evidence of actual coercion by the seller that forced the buyer to accept the tied product;
>
> [(3)] sufficient economic power in the tying product market to coerce purchaser acceptance of the tied product;
>
> [(4)] anticompetitive effects in the tied market; and
>
> [(5)] the involvement of a not insubstantial amount of interstate commerce in the tied market.

Gonzalez v. St. Margaret's House Hous. Dev. Fund Corp., 880 F.2d 1514, 1516-17 (2d Cir. 1989) (cleaned up). "If monopoly power (or sufficient market power) is alleged and proven, the tying arrangement may be unlawful *per se* without the need to prove anticompetitive effects or other market conditions." *In re Google Digital*, 627 F. Supp. 3d at 368. The application of a *per se* rule is appropriate, for example, "when the seller's share of the market is high or when the seller offers a unique product that competitors are not able to offer." *Jefferson Parish*, 466 U.S. at 17.

The Court concludes that Nielsen's Network Policy is an anticompetitive tying policy. Three of the five prongs of the tying test are unchallenged. It is undisputed that Nielsen has explicitly tied its dominant and essential Nationwide product ("tying product") to its costly local products ("tied products"). Nielsen concedes that, as the exclusive purveyor of Nationwide, it possesses sufficient market power to force customers to purchase local radio ratings data that they would otherwise forego. Hr'g Tr. 23:20–24:4 (counsel); 56:10-13, 57:4-17 (Orszag). Indeed, Nielsen's express purpose in adopting the Network Policy was to bring networks that were seeking to drop subscriptions to local ratings data "back to the negotiation table and protect against future potential losses" of such customers to Eastlan. PX-005; *see also* PX-003. Finally, it is not disputed that countrywide radio ratings markets involve a "not insubstantial amount of interstate commerce." *Gonzalez*, 880 F.2d at 1517 (cleaned up).

c. Coercion

Nielsen does, however, contest that the Network Policy is coercive. Nielsen attempts to recast its Network Policy as a "bundling arrangement" that merely offers Nationwide at a discounted rate when purchased with local ratings data. Opp'n Mem. at 20-21. The record does not bear out this characterization. "[W]here the buyer is free to take either product by itself[,] there is no tying problem[,] even though the seller may also offer the two items as a unit at a single price." *In re Google Digital*, 627 F. Supp. 3d at 368 (citation omitted). The Network Policy does not refer to any discounts or bundling arrangements, however. Nor does it permit a national radio network "to take [Nationwide] by itself." It categorically states that if a national network with a "relationship with a local station in a Nielsen-measured market . . . does not currently subscribe to the local market in that Metro, Nielsen Audio will no longer provide DMA or Metro data in Nielsen's [Nationwide Report]." DX-4. In other words, the Network Policy flatly prohibits the sale of the complete Nationwide product unless purchased with all local ratings data. *Id*. Indeed, until Cumulus threatened to file the instant suit, Nielsen refused to even provide a price to Westwood One for a complete standalone Nationwide product, insisting that it could only be purchased together with all local ratings data for the markets in which Cumulus operated. DX-12 at 2. Nielsen is therefore "[u]sing monopoly power to boost sales through consumer coercion—as opposed to persuasion—[which] constitutes improper conduct." *In re Google Digital*, 627 F. Supp. 3d at 380 n.20.

The fact that Nielsen, after being accused by Cumulus of violating the antitrust laws, finally offered to sell Nationwide to Westwood One as a standalone product, Opp'n Mem. at 1; Jones Suppl. Decl. ¶ 35(a); Tunkel Decl. Ex. A at 2, does not negate the anticompetitive effects of its Network Policy. Even in the absence of an explicit tie, if "the individual products are priced such that the buyer is coerced to accept both products in a discounted package, then a tying arrangement may result." *Synergetics USA, Inc. v. Alcon Lab'ys, Inc.*, No. 08-CV-3669 (DLC), 2009 WL 435299, at *3 (S.D.N.Y. Feb. 23, 2009); *see also Am. Mfrs. Mut. Ins. Co. v. Am. Broad. Paramount Theatres, Inc.*, 388 F.2d 272, 283 (2d Cir. 1967) (pricing with "the effect of conditioning the sale of the single product to the sale of the entire package" amounts to unlawful constructive tying).

The price that Nielsen offered Cumulus for a standalone Nationwide—ten times more than it currently pays—is so exorbitant as to make it economically unfeasible to purchase Nationwide as a separate product. Furchtgott-Roth Expert Report ¶ 65. This pricing therefore served as a constructive tie.

d. Anticompetitive Effect on Local Radio Ratings Market

In light of Nielsen's monopolist status as the only seller of the Nationwide product, its coercive tying policy is *per se* unlawful. *Jefferson Parish*, 466 U.S. at 17. But even were it not, Plaintiff has adequately demonstrated that the Network Policy directly inhibits competition in the market for local radio ratings data. *See supra* at Discussion.A.1.

Relying on cases from outside the Second Circuit, Nielsen contends that to prevail on a Section 2 claim, Cumulus must demonstrate that its conduct "actually foreclosed competition." Opp'n Mem. at 22 (citing *Cascade Health Sols. v. PeaceHealth*, 515 F.3d 883, 898 (9th Cir. 2008) and *LePage's Inc. v. 3M*, 324 F.3d 141, 155 (3d Cir. 2003)). Nielsen argues that Eastlan is hardly foreclosed from competing with Nielsen in all local radio markets, as it can enter any market with a single customer, and there are many local radio stations that are not impacted by the Network Policy that could potentially turn to Eastlan for ratings data. Opp'n Mem. at 22. Yet complete foreclosure of competition is not the appropriate legal standard. "Rather than requiring proof of foreclosure, the crux of a Section 2 claim is a showing of anticompetitive conduct. Foreclosure is instead just one way of showing anticompetitive conduct." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 729 F. Supp. 3d 298, 328 (E.D.N.Y. 2024); *see also United States v. Microsoft Corp.*, 253 F.3d 34, 58 (D.C. Cir. 2001) ('[T]o be condemned as exclusionary, a monopolist's act must have an 'anticompetitive effect.'

That is, it must harm the competitive *process* and thereby harm consumers.").[2]

The record evidence overwhelmingly indicates that the Network Policy poses a significant barrier to entry, preventing Eastlan from achieving any measure of scale or industry-wide acceptance. Furchtgott-Roth Expert Report ¶¶ 55-60. While Eastlan theoretically could enter any local market with just one customer, Orszag Decl. ¶¶ 37-41, that is not a sustainable business model long term. Hr'g Tr. 287:1-21 (Gould) (explaining the difficulties of entering markets with a single customer, including the thin profit margin). Moreover, the Network Policy is targeted at the largest national broadcasters, the very subscribers who would otherwise be the most likely to avail themselves of Eastlan's products. Hr'g Tr. 292:15-18 (Gould) ("You've got the large three companies that are tied up with the [T]ying [P]olicy that they can't access. So my opportunity to come into this market is with those smaller companies, and the return on investment isn't there for them [to purchase local data]."). Indeed, in local markets where the broadcasters subject to the Network Policy own a majority of the radio stations, Eastlan is effectively foreclosed from competing as a result of the Network Policy. *See* PX-283 at 7, 38; *see also* Hr'g Tr. 287:24-288:12 (Gould) ("There are many markets, many markets in America where those three large companies [iHeart, Audacy, and Cumulus] control the

[2] The cases cited by Nielsen are not to the contrary. In *LePage's*, the Third Circuit upheld a claim of exclusionary dealing under Section 2 based upon evidence of foreclosure of competition, without suggesting that foreclosure was a necessary component of a Section 2 claim. 324 F.3d at 155-59. *Cascade Health Sols*. in turn merely described the holding of *LePage's*, and then rejected its reasoning. 515 F.3d at 898-909.

vast majority of the audience . . . because they have the vast majority of the audience, they have the vast majority of the advertising dollars. So not having access to those three companies . . . makes it difficult to grow in local markets and makes us less likely to target a market like that."); *id*. 287:1-21 (Gould) (explaining that Eastlan, if entering a new local market, must charge both large and small stations the same rate for its product given its cost of entry, while Nielsen can offer smaller stations discounts that would make its product cheaper in local markets).

For example, Eastlan's President and CEO testified that in New Orleans, Louisiana, where iHeart, Audacy, and Cumulus comprise 92% of the radio advertising revenue in the market, "[i]t's very unlikely that any of these ones that are not among those three would come [to Eastlan] because the advertising revenue isn't there to support it." Hr'g Tr. 292:23-293:2 (Gould). Nielsen's expert opines that Eastlan can enter new local markets by targeting as potential customers smaller local stations that are not subject to the Network Policy. Orszag Decl., ¶¶ 37-41. But the record indicates that many such stations would not earn enough in advertising revenue to make purchase of Eastlan's product feasible. *See e.g.*, Hr'g Tr. 88:4-89:19 (noting that one of the smaller stations in New Orleans earned less in annual revenue in 2024 than the cost of Eastlan's local ratings data); Hr'g Tr. 292:19-22 (Gould). The Network Policy therefore has an adverse effect on the competitive process in the market for local radio ratings data.

e. Procompetitive Justification

"[O]nce a plaintiff establishes that a monopolist's conduct is anticompetitive or exclusionary, the monopolist may proffer 'nonpretextual' procompetitive justifications for its conduct." *Schneiderman*, 787 F.3d at 652. "If the monopolist asserts a procompetitive justification—a nonpretextual claim that its conduct is indeed a form of competition on the merits because it involves, for example, greater efficiency or enhanced consumer appeal—then the burden shifts back to the plaintiff to rebut that claim." *Microsoft Corp.*, 253 F.3d at 59. Nielsen offers three procompetitive justifications for its tying policy. The Court examines each in turn.

First, Nielsen suggests that the policy is intended to reduce unlicensed data-sharing by local stations that do not subscribe to Nationwide. Orszag Decl. ¶ 59. The Court concludes that this proffered explanation is pretextual. Under Cumulus's current contract with Nielsen, sharing this data with local affiliates is already a breach of contract. PX-001 at § 3.1. ("For the avoidance of doubt, Westwood One LLC is not permitted to disclose any Nielsen information to any Cumulus Affiliate which does not have a license to the same Nielsen information."). Per Nielsen's expert, contractual provisions to prevent national networks from sharing Nationwide data with common-ownership local stations "would tend to minimize or tend to attenuate . . . the free riding issue that would arise as an economic issue." Hr'g Tr. 78:3-5 (Orszag).[3]

Second, Nielsen's economic expert has also suggested that "tying conduct by a monopolist could be considered competition on the merits," and

[3] While Nielsen was able to point to one suspected example of prohibited data-sharing, Hr'g Tr. 172:6-19 (Tunkel), the circumstances there were unique and not indicative of an industry-wide issue.

therefore legal, where "the hypothetical monopolist . . . has a great product in the tied market and . . . consumers like to buy the product in the tying and the tied market together and there's an efficiency and they could buy them together cheaper than they could buy them separately." PX-287 ("Orszag Dep. Tr.") 23:18–24:9. The record demonstrates that this is not the case in today's local radio ratings data markets. Cumulus has determined that the cost of Nielsen's local radio ratings data is higher than the value Cumulus would receive in revenue in a majority of local geographies, which is why it and other broadcasters want to be able to switch to Eastlan in those markets. Milner Decl. ¶ 20; Milner Suppl. Decl. ¶ 7; Decl. of Third-Party Broadcaster 1 ¶¶ 5, 6, 11; Decl. of Third-Party Broadcaster 2 ¶¶ 5-6.

Finally, and perhaps most substantially, Nielsen asserts that its Network Policy is an economically sensible means of recovering the substantial fixed costs that Nielsen incurs in developing the Nationwide Report. Orszag Decl. ¶ 59. Nielsen's Nationwide product is unique in that it is compiled from local ratings data. Nielsen's cost in collecting that local data that does not vary by the number of customers served. Orszag Decl. ¶ 61. That cost has also increased in recent years due to the decline in the radio industry generally. *Id*. ¶ 68. In contrast, creating the national ratings data can be done at relatively low incremental cost. *Id*. ¶ 61. Nielsen sets and allocates prices for all of its products in a way that covers these fixed costs. *Id*. at ¶ 62. But in the radio broadcasting space, Nielsen's revenues are driven by local ratings subscriptions, not the purchase of its Nationwide product. *Id*. In other words, the purchase of local ratings data essentially subsidizes the creation of the Nationwide Report. This creates a potential free riding issue apart from Nielsen's data-sharing concern. *Id.* "[T]he national networks that rely on national data benefit from every station owner who contributes to covering the cost of local data." *Id.* ¶ 63. They therefore have an incentive to rely on others to subsidize the costs of local ratings data collection, while reaping the benefits of the resulting Nationwide Report. *Id.* Nielsen's expert opines that, by demanding that national networks either subsidize the costs of the Nationwide product by purchasing local ratings data or pay an increased price for Nationwide as a standalone product, Nielsen has acted in an economically efficient manner. *Id.* ¶¶ 61-66. Nielsen's Network Policy decreases incentives to free ride and "increases overall output by making [Nationwide] available to more consumers." *Id.* ¶ 66.

Cumulus's expert, conversely, opines that "Nielsen's high price for standalone Nationwide data cannot be justified as a necessary price reflecting the costs of providing Nationwide data unbundled from local ratings. Indeed, Nielsen sells standalone Nationwide data to other customers for an amount similar to, or lower than, what Cumulus is currently paying for the Nationwide product . . . and substantially less than the price that Nielsen has proposed to Cumulus." Furchtgott-Roth Expert Report ¶ 67.

While the Court finds credible that Nielsen's fixed operating costs for collecting local radio ratings data are sizable, Orszag Decl. ¶¶ 12, 61, Nielsen has made no effort to quantify these costs or correlate them with its price for standalone Nationwide. The dearth of evidence on this point makes it impossible to assess the extent to which legitimate efforts to combat free riding justify Nielsen's conduct. Moreover, where the evidence indicates that a Defendant's actual motive was to impede competition, the Court can reject proffered procompetitive justifications as pretextual. *Schneiderman*, 787 F.3d at 658. Cumulus has offered compelling evidence that Nielsen's intention behind the Network Policy was, at least in part, anticompetitive. PX-016 at 2, 23; PX-118; PX-003 at 1 (policy intended to "command subscriptions in local markets" and "bring groups with non-subscribing markets back to the negotiation table"); Hr'g Tr. 167:21-25 (Tunkel), PX-005 at 2 ("[The policy] will help reinforce the value of Nielsen local market measurement and secure local subscription."); *Id.* at 5 ("We will drive local subscription through this network policy."). *But see* PX-003 ("[T]his is a small but important way we can continue to command subscriptions in local markets and prevent networks from getting data through the back door."); PX-005 at 7 ("Introducing this policy increases the importance of our local service and aligns with our cost structure. It will bring these players back to the negotiation table and protect against future potential losses.").

To the extent Nielsen's Network Policy would generate any procompetitive benefits, based on the current record the Court concludes that these benefits "cannot overcome the substantial harm to competition that [Plaintiff] has shown is likely to arise." *FTC v. IQVIA Holdings Inc.*, 710 F. Supp. 3d 329, 400 (S.D.N.Y. 2024). The benefits that Nielsen has outlined are largely unquantified and hypothetical, while the harms caused by the policy are imminent and substantial.

Accordingly, Cumulus has demonstrated significant likelihood of succeeding on the merits of its anticompetitive tying claim. Because the Court has found that Cumulus is likely to succeed on its tying claim, it does not reach the remaining claims, including Plaintiff's claim based on the Subscribers First Policy.

B. Irreparable Harm

Establishing irreparable harm is the "single most important prerequisite for the issuance of a preliminary injunction." *Faiveley Transp. Malmo AB v. Wabtec Corp.*, 559 F.3d 110, 118 (2d Cir. 2009) (citation omitted). "Irreparable harm is injury that is neither remote nor speculative, but actual and imminent and that cannot be remedied by an award of monetary damages." *Schneiderman*, 787 F.3d at 660 (cleaned up). Moreover, to grant an injunction under Section 16, such injury must constitute an antitrust injury. *Id*.

"Threaten[ed] economic harm to consumers is plainly sufficient to authorize injunctive relief" under Section 16. *Schneiderman*, 787 F.3d at 661 (cleaned up). Moreover, it is well settled in this Circuit that "major disruption" of a business can constitute irreparable harm, as can "a threatened loss of good will and customers, both present and potential." *trueEX, LLC v. MarkitSERV Ltd.*, 266 F. Supp. 3d 705, 727 (S.D.N.Y. 2017) (citing cases); *see also N. Am. Soccer League, LLC v. United States Soccer Fed'n, Inc.*, 296 F. Supp. 3d 442, 457 (E.D.N.Y. 2017), *aff'd*, 883 F.3d 32 (2d Cir. 2018). Additionally, a loss of current or future market share suffices to show irreparable harm. *Grand River Enter. Six Nations, Ltd. v. Pryor*, 481 F.3d 60, 67 (2d Cir. 2007).

The Court finds credible Westwood One's representations that a loss of access to Nationwide would cause each of these harms. Nielsen's monopoly in the national radio ratings market prevents Westwood One from being able to forgo Nationwide in its refusal of local ratings data. Jones Suppl. Decl. ¶ 9. Yet the current pricing level for either the standalone Nationwide Report or Nationwide coupled with all local markets is not one Westwood One can currently bear. *Id.* ¶ 21. Westwood One's President, Collin Jones, has detailed the immediate consequences the company would suffer from a loss of access to Nationwide. *Id.* ¶¶ 9-15. Westwood One relies on Nielsen's national radio ratings data to demonstrate audience reach and other metrics in selling advertising inventory. *Id.* ¶ 31. Without Nationwide, Westwood One cannot develop credible advertising proposals for advertisers or advertising agencies for the upcoming year. *Id.* Advertisers and advertising companies, including those with long-standing relationships with Westwood One, are all but guaranteed to shift some or all of their advertising inventory purchases to competitors or refrain from purchasing advertising inventory from Westwood One at all, resulting in an immediate decrease in Westwood One's market share. *Id.* ¶ 32; Furchtgott-Roth Expert Report ¶ 56. Cumulus has made a sufficient showing of the ensuing financial consequences for Westwood One.

To be sure, Westwood One's dire financial state is not Nielsen's problem. The antitrust laws do not require Nielsen to provide Plaintiff with a product it can afford. However, where a monopolist's anticompetitive conduct results in supracompetitive prices far above what the market would otherwise bear, an antitrust injury is present.

Financial harm to Westwood One, irreparable though it may be, is not the only harm caused by

Nielsen's anticompetitive policies. Courts in this Circuit have found that a reduction in competition due to an antitrust injury also constitutes irreparable harm. *Consol. Gold Fields*, 871 F.2d at 257-58 (finding irreparable harm where competition in the relevant market would be reduced because this type of "threatened injury is precisely the type that the antitrust laws were designed to protect against" (citation omitted)); *F. & M. Schaefer Corp. v. C. Schmidt & Sons, Inc.*, 597 F.2d 814, 819 (2d Cir. 1979) (customers are irreparably harmed when price competition is eliminated, "leading to higher prices and profits . . . at the expense of a large segment of the . . . public"); *fuboTV*, 745 F. Supp. 3d at 150 (finding that anticompetitive behavior "greatly increase[s] the risk that consumers will be vulnerable to price increases, decreased quality, and decreased options in the market").

The Network Policy does not just harm Cumulus, nor even just all vertically integrated broadcasting companies, nor even just Eastlan as a potential competitor to Nielsen:

> It also affects the non-vertically integrated companies that will suffer from the loss of competitive alternatives in the local ratings market, and it will affect advertisers because they'll have less efficient alternatives available for ratings data in a local market. The higher prices for local ratings data and ultimately the American consumer suffers because with sort of a shrinking ratings data, alternatives will have less efficient, less innovation in local ratings data.

Furchtgott-Roth Dep. Tr. 211:13–212:2. Accordingly, Cumulus has made a strong showing of irreparable harm.

C. Balance of Hardships

"[T]he balance of hardships inquiry asks which of the two parties would suffer most grievously if the preliminary injunction motion were wrongly decided." *Goldman, Sachs & Co. v. Golden Empire Schs. Fin. Auth.*, 922 F. Supp. 2d 435, 444 (S.D.N.Y. 2013) (citation omitted), *aff'd*, 764 F.3d 210 (2d Cir. 2014). Whereas the economic harms Nielsen has predicted from a preliminary injunction are purely speculative, Cumulus has demonstrated that in the short term, it cannot absorb the costs of Nielsen's policies. Additionally, competition in the relevant markets is likely to continue to suffer. Accordingly, the balance of hardships favors Cumulus.

D. The Public Interest

The public interest is best served by a preliminary injunction halting Nielsen's anticompetitive behavior. Although "[t]here is a well-recognized public interest in enforcing contracts and upholding the rule of law," *Empower Energies, Inc. v. SolarBlue, LLC*, 16-CV-3220 (DLC), 2016 WL 5338555, at *13 (S.D.N.Y. Sept. 23, 2016), "[t]he public [also] has an interest in enforcement of the antitrust laws and in the preservation of competition." *trueEX, LLC*, 266 F. Supp. 3d at 726; *see also United States v. Columbia Pictures Indus., Inc.*, 507 F. Supp. 412, 434 (S.D.N.Y. 1980) ("Far more important than the interests of either the defendants or the existing industry . . . is the public's interest in enforcement of the antitrust laws and in the preservation of competition."). While courts often decline to interfere with the natural lifecycle of a contract where an injunction would "simply delay the harm caused by the bargained-for expiration of the [a]greement," *Expedia, Inc. v. United Airlines, Inc.*, 2019 WL 1499269, at *5 (S.D.N.Y. Apr. 5, 2019), the harm caused by an expiration of this contract is vastly different with an anticompetitive tying policy by a monopolist party than without. Because Cumulus has shown a likelihood of success in demonstrating that Nielsen's Network Policy violates Section 2 of the Sherman Act by harming competition to preserve Nielsen's monopolies in the relevant markets, "the threatened injury to the public interest weighs heavily" in favor of a preliminary injunction. *Grumman Corp. v. LTV Corp.*, 527 F. Supp. 86, 105 (E.D.N.Y. 1981), *aff'd*, 665 F.2d 10 (2d Cir. 1981).

E. Relief Sought

While preliminary injunctions can be used to preserve the "status quo" or "the last actual, peaceable uncontested status which preceded the pending controversy," *Mastrio v. Sebelius*, 768 F.3d 116, 120 (2d Cir. 2014) (quotations and citation omitted), "[t]he 'status quo' in preliminary-injunction parlance is really a 'status quo ante'" that "shuts out defendants seeking shelter under a current 'status quo' precipitated by their wrongdoing." *Gen. Mills, Inc. v. Champion Petfoods USA, Inc.*, No. 20-CV-181, 2020 WL 915824, at *8 (S.D.N.Y. Feb. 26, 2020) (citation omitted). Accordingly, "[p]reserving the status quo is not confined to ordering the parties to do nothing: it may require parties to take action[.]" *Mastrio*, 768 F.3d at 120-21. Moreover, where Defendant "has altered the status quo" and "expos[ed Plaintiff] to irreparable harm, the prohibitory standard properly applies, and may require that [Defendant] take action to restore the status quo pending a decision on the merits." *Williamson v. Maciol*, 839 F. App'x 633, 635 (2d Cir. 2021).

In the instant case, Cumulus claims that it seeks a preliminary injunction to preserve the status quo during the pendency of this litigation. Yet the status quo as it existed prior to Nielsen's adoption of the Network Policy was the contract between Cumulus and Nielsen [REDACTED]. Cumulus does not seek to have the term of that contract extended through the course of this litigation. Indeed, Nielsen has already offered Cumulus such relief and been rejected.

What Cumulus seeks instead is a new contract with Nielsen that includes both Nationwide and ratings data for a smaller subset of local markets than provided for under its existing contract, at the prices allocated for each local market under its prior contract. Yet Cumulus cannot cherry-pick those provisions of its prior contract that it wishes to keep and those that it wishes to drop. Moreover, the Court finds credible Nielsen's representations that the prices offered to Cumulus under its prior contract constituted a bundled rate for all included markets and services. *See, e.g.*, PX-189; Hr'g Tr. 126:14-22, 141:25–142:18 (Tunkel). Cumulus is not entitled to dictate the terms of a new contract with Nielsen for a different range of products and services.

In crafting appropriate relief, the Court is mindful that "the purpose of relief in an antitrust case is so far as practicable, to cure the ill effects of the illegal conduct, and assure the public freedom from its continuance." *United States v. Glaxo Grp. Ltd.*, 410 U.S. 52, 64 (1973). The harm to be remedied here is the anticompetitive effects of the Network Policy, i.e., a policy conditioning—both expressly and constructively—the purchase of Nationwide on the purchase of all local ratings data. An order (i) enjoining Nielsen from enforcing its Network Policy and (ii) requiring Nielsen to charge reasonable rates to customers for Nationwide as a standalone product is consistent with injunctive relief ordered in other antitrust cases and cases more broadly. *See, e.g.*, *Glaxo Grp.*, 410 U.S. at 64 (reversing district court's refusal to order "[m]andatory selling on specified terms . . . at reasonable charges [because they] are recognized antitrust remedies"); *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 951 (9th Cir. 2025) (affirming district court's decision to mandate a "reasonable fee" at "the right price level to ensure the pro-competitive function of the app-store distribution remedy"); *Rosebrough Monument Co. v. Mem'l Park Cemetery Ass'n*, 736 F.2d 441, 445 (8th Cir. 1984) (explaining that "it was incumbent upon the district court to fashion an order which would . . . effectively open to competition the market that had been closed by [Defendants'] illegal restraints [i.e., illegal tying]").

CONCLUSION

Accordingly, Plaintiff's motion for a preliminary injunction is GRANTED.

The Court hereby ORDERS, pursuant to its authority under Section 16 of the Clayton Act, 15 U.S.C. § 26, and Rule 65 of the Federal Rules of Civil Procedure that (i) Nielsen (including Nielsen's officers, employees, and agents) is enjoined and restrained from enforcing its Network Policy; and (ii) Nielsen is enjoined and restrained from charging a commercially unreasonable rate for its Nationwide Report as a complete, standalone product. For purposes of this Order, a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable. This Order shall remain in effect during the pendency of this litigation, or until further Order of the Court.

Plaintiff shall post a $100,000.00 bond, which shall remain with the Court until a final disposition of this case or until this Order is terminated.

SO ORDERED.

Dated: December 30, 2025
New York, New York

/s/ Jeannette A. Vargas
JEANNETTE A. VARGAS
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CUMULUS MEDIA NEW HOLDINGS, INC., Plaintiff, -v- THE NIELSEN COMPANY (US) LLC, Defendant.	X : : : : : : : : : : X	25-CV-08581 (JAV) ORDER

JEANNETTE A. VARGAS, United States District Judge:

Before the Court is a motion for preliminary injunction by Plaintiff Cumulus Media New Holdings Inc. ("Cumulus") against Defendant The Nielsen Company (US) LLC ("Nielsen"). Cumulus alleges that Nielsen has enacted an anticompetitive "tying policy" to illegally maintain its monopoly power over both local and national radio ratings data markets in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, and seeks to preliminarily enjoin Nielsen from enforcing that policy in pending contract negotiations. ECF No. 1 ("Complaint" or "Compl.") ¶¶ 3, 9, 23, 166-180. After conducting an evidentiary hearing and considering the extensive record in this case, the Court finds that Cumulus has satisfied its burden of demonstrating that a preliminary injunction is necessary to prevent irreparable harm, that Cumulus has a strong likelihood of succeeding on the merits in this case, that the balance of hardships weighs toward Cumulus, and that the public interest weighs in favor of a preliminary injunction. Accordingly, Plaintiff's motion for a preliminary injunction is GRANTED. The Court's reasoning is set forth in an accompanying Opinion.[1]

It is hereby ORDERED, ADJUDGED, AND DECREED that, pursuant to the Court's authority under Section 16 of the Clayton Act, 15 U.S.C. § 26, and Rule 65 of the Federal Rules of Civil Procedure that:

1. Nielsen (including Nielsen's officers, employees, and agents) is hereby ENJOINED AND RESTRAINED from enforcing its Network Policy; and
2. Nielsen is ENJOINED AND RESTRAINED from charging a commercially unreasonable rate for its Nationwide Report as a complete, standalone product. For purposes of this Order, a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable.

This Order shall remain in effect during the pendency of this litigation, or until further Order of the Court. Plaintiff shall post a $100,000.00 bond, which shall remain with the Court until a final

[1] A copy of that Opinion has been docketed under seal. Because the opinion likely contains competitively sensitive information of parties and nonparties, however, the Court will delay public filing of the opinion to allow the parties to propose redactions.

disposition of this case or until this Order is terminated.

The Clerk of Court is directed to terminate ECF No. 7.

SO ORDERED.

Dated:	December 30, 2025 New York, New York	/s/ Jeannette A. Vargas JEANNETTE A. VARGAS United States District Judge

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of August, two thousand twenty-six.

Cumulus Media New Holdings Inc.,

Plaintiff - Appellee,

v.

The Nielsen Company (US), LLC,

Defendant - Appellant.

ORDER

Docket No: 26-88

Appellant, The Nielsen Company (US), LLC, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe,
Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CUMULUS MEDIA NEW HOLDINGS, INC., Plaintiff,	X : : : :	25-CV-08581 (JAV)
-v-	: :	OPINION AND ORDER
THE NIELSEN COMPANY (US) LLC, Defendants.	: : : : X	

JEANNETTE A. VARGAS, United States District Judge:

On December 30, 2025, the Court issued an order, ECF No. 131 ("Order"), and accompanying Opinion and Order, ECF No. 132 ("Opinion" or "Op."), granting a preliminary injunction motion filed by Plaintiff Cumulus Media New Holdings, Inc. ("Plaintiff" or "Cumulus"). On January 9, 2026, The Nielsen Company (US) LLC ("Defendant" or "Nielsen") filed a letter motion to stay the preliminary injunction pending appeal. ECF No. 142 ("Mot.") at 1. In the alternative, Nielsen requests an administrative stay while it promptly seeks a stay pending appeal from the Second Circuit. *Id*. For the following reasons, Defendant's motion for a stay pending appeal is DENIED, but Defendant's motion for an administrative stay is GRANTED.

DISCUSSION

The Court assumes familiarity with the facts of this case. *Cumulus Media New Holdings, Inc. v. The Nielsen Company (US) LLC*, No. 25-CV-08581 (JAV), 2026 WL 63294 (S.D.N.Y. Jan. 8, 2026). As relevant here, the Opinion preliminarily enjoined Nielsen from (1) enforcing its Network Policy and (2) from charging a commercially unreasonable rate for its Nationwide Report as a complete, standalone product. Op. at 46-47. The Court found that Cumulus was likely to succeed in its claims that Nielsen's Network Policy is a tying policy that illegally maintains Nielsen's monopoly power over local and national radio ratings data markets in violation of Section 2 of the Sherman Antitrust Act, 15 U.S.C. § 2, that Cumulus bore the balance of hardships at this juncture, that the public interest was served by a preliminary injunction, and that continued enforcement of the Network Policy would cause irreparable harm.

Courts consider four factors when assessing a motion for a stay pending appeal: (1) "the [movant's] 'strong showing that he is likely to succeed on the merits,'" (2) "irreparable injury to the [movant] in the absence of a stay," (3) "irreparable injury to the nonmoving party if a stay is issued," and (4) "the public interest." *New York v. United States Dep't of Homeland Sec.*, 974 F.3d 210, 214 (2d Cir. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). "The first two factors are the most critical, but a stay 'is not a matter of right, even if irreparable injury might otherwise result.'" *Id*. (quoting *Nken*, 556 U.S. at 434-35). Accordingly, "a stay is 'an exercise of judicial discretion,' and '[t]he party requesting a stay bears the burden of showing that the circumstances justify an exercise of discretion.'" *Id*. (quoting *Nken*, 556 U.S. at 434-35).

A. Likelihood of Success on the Merits

The first factor, which considers the movant's likelihood of success on the merits, weighs heavily in favor of denying the stay pending appeal. Nielsen proffers four reasons in support of this factor: (1) that the Court's treatment of Nielsen's pricing proposals as a constructive tie was improper in light of Nielsen's freedom as a monopolist and its offer to Cumulus of the Nationwide product on a standalone basis; (2) that the Court did not properly shift the burden back to the plaintiff once defendant articulated a non-pretextual business justification for its policy; (3) that Cumulus would not suffer "certain and imminent harm for which a monetary award" could not "adequately compensate," *Wisdom Imp. Sales Co. v. Labatt Brewing Co.*, 339 F.3d 101, 113 (2d Cir. 2003), and (4) that the order does not satisfy Rule 65's requirement that an injunction must "state its terms specifically" and "describe in reasonable detail . . . the act or acts restrained or required," Fed. R. Civ. P. 65(d)(1). Mot. at 2. The Court addresses each of these arguments in turn.

1. The Constructive Tie

In its motion, Nielsen renews its argument that the Network Policy is not a constructive tie because "[a]bsent conditioning, a duty to deal, or predatory pricing, a monopolist is 'free to charge whatever . . . price it would like,' even if those prices are high or disadvantageous to a particular customer." Mot. at 2 (citing *Pac. Bell Tel. Co. v. linkLine Comm'cns, Inc.*, 555 U.S. 438, 454 (2009). Nielsen's Network Policy is not "absent conditioning," however: it expressly and constructively conditions the purchase of its Nationwide product (the tying product) on the purchase of all local ratings data (the tied product). *See* Op. at 28-29 (quoting *Eastman Kodak Co. v. Image Tech. Servs., Inc.*, 504 U.S. 451, 461 (1992) ("A tying arrangement is 'an agreement by a party to sell one product[,] but only on the condition that the buyer also purchases a different (or tied) product, or at least agrees that he will not purchase that product from any other supplier.'" (citation omitted)). Radio networks like Cumulus's Westwood One cannot generate revenue from national advertising without Nielsen's Nationwide. Op. at 6-8, 41. As a monopolist with 100% market share in the national radio ratings data market, Nielsen undisputedly possesses the market power to force subscribers to purchase local radio ratings data that they would otherwise forgo through its Network Policy. *Id*. at 30. By "flatly prohibit[ing] the sale of the complete Nationwide product unless purchased with all local ratings data," *id*. at 31, the Network Policy is a paradigmatic tying policy. *Id*. at 29.

Further, Nielsen takes issue with the Court's treatment of Nielsen's offers to Cumulus as constructive ties because "Nielsen offered Cumulus the Nationwide Product on a standalone basis." Mot. at 2. Nielsen does not address the Opinion's analysis on this point, Op. at 32, in which the Court found that Nielsen's offered price for Nationwide—ten times more than Cumulus currently pays for the essential product—is a "price differential" that "has the effect of conditioning the sale or license of [that product] upon the sale or license of [other products]." *United States v. Loew's, Inc.*, 371 U.S. 38, 54 (1962), *abrogated on other grounds by Illinois Tool Works Inc. v. Indep. Ink, Inc.*, 547 U.S. 28 (2006); Op. at 41-42

("To be sure, Westwood One's dire financial state is not Nielsen's problem. The antitrust laws do not require Nielsen to provide Plaintiff with a product it can afford. However, where a monopolist's anticompetitive conduct results in supracompetitive prices far above what the market would otherwise bear, an antitrust injury is present").

2. Cumulus's Burden to Rebut Nielsen's Procompetitive Justification

Nielsen's letter motion argues that "the Court discounted Nielsen's procompetitive justifications and did not apply the burden-shifting framework" set forth in *United States v. Microsoft Corp.*, 253 F.3d 34, 58 (D.C. Cir. 2001). Mot. at 2. Nielsen contends that the Court erroneously applied the standard applicable to merger cases rather than Section 2 claims. *Id*. To the contrary, the Court explicitly applied the burden-shifting framework first set forth in *Microsoft Corp.*, 253 F.3d 34 at 58, and then further explicated in the Section 2 context by the Second Circuit in *New York ex rel. Schneiderman v. Actavis PLC*, 787 F.3d 638, 658 (2d Cir. 2015). Op. at 36. Nielsen complains that the Court did not shift the burden back to Plaintiff to rebut its procompetitive justifications. Mot. at 2. Nielsen ignores that the Court examined each of Nielsen's three procompetitive justifications and found that Plaintiff met its burden of proving that each was pretextual. Op. at 36-39. The Second Circuit's decision in *Schneiderman* instructs that, having found that the procompetitive justifications were pretextual, no further rebuttal or weighing is required. *Schneiderman*, 787 F.3d at 658 ("Because we have determined that Defendants' procompetitive justifications are pretextual, we need not weigh them against the anticompetitive harms."). Nielsen, which does not even cite to the Second Circuit's binding decision in *Schneiderman*, fails to demonstrate that it is likely to prevail on the merits.

3. Irreparable Harm to Cumulus

Nielsen disputes that Cumulus would suffer irreparable harm because "Cumulus could simply have paid Nielsen's price and, if ultimately successful in this litigation, recovered through damages any amount deemed unlawfully excessive." Mot. at 2. As set forth at length in this Opinion, the harm that Cumulus demonstrated it would face were a preliminary injunction denied is neither quantifiable nor reversible through compensatory damages. Op. at 40-41 (citing cases in this Circuit finding that economic harm; major disruption of business; threatened loss of good will and customers, both present and potential; and loss of current or future market share constitute irreparable harm meriting injunctive relief); *see also* PX-272 (ECF No. 83) ("Jones Suppl. Decl.") ¶¶ 9-15, 28-30, 32-34 (outlining financial harm to Westwood One, damage to business relationships and reputation); PX-277 (ECF No. 61-1) ("Furchtgott-Roth Expert Report") ¶ 56 (outlining harm to Westwood One's market share from loss of advertising relationships). Further, "[f]inancial harm to Westwood One, irreparable though it may be, is not the only harm caused by Nielsen's anticompetitive policies," as anticompetitive harm independently contributes to a showing of irreparable harm. Op. at 42-43 (citing cases).

4. Vagueness Challenge Under Rule 65(d)(1)

Nielsen challenges the Court's injunction as insufficiently specific in violation of Rule 65. Fed. R.

Civ. P. 65(d)(1). "A court is required to frame its orders so that those who must obey them will know what the court intends to forbid." *Diapulse Corp. of Am. v. Carba, Ltd.*, 626 F.2d 1108, 1111 (2d Cir. 1980) (citing *Int'l Longshoremen's Ass'n, Local 1291 v. Phila. Marine Trade Ass'n*, 389 U.S. 64, 76 (1967)). "[B]asic fairness requires that those enjoined receive explicit notice of precisely what conduct is outlawed." *Id*. (quoting *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974)).

Nielsen laments that "[a]bsent more detail on what constitutes a "commercially unreasonable" rate, the injunction is "too vague to be understood." Mot. at 2. Lucky for Nielsen, however, the Court provided more detail on this term in its Opinion: "[f]or purposes of this Order, a rate that is equal to or lower than the highest annual 2026 rate Nielsen charges any broadcaster (whether network or local) for Nationwide is presumptively reasonable." Op. at 47; *see also United States v. Glaxo Grp. Ltd.*, 410 U.S. 52, 64 (1973) (reversing district court's refusal to order "[m]andatory selling on specified terms . . . at reasonable charges [because they] are recognized antitrust remedies"); *In re Google Play Store Antitrust Litig.*, 147 F.4th 917, 951 (9th Cir. 2025) (affirming district court's decision to mandate a "reasonable fee" at "the right price level to ensure the pro-competitive function of the app-store distribution remedy").

B. Irreparable Injury to Nielsen

The second factor weighs in favor of a stay, but the Court finds that when weighed alongside factors one, three, and four, a denial of the stay pending appeal is still warranted.

Nielsen states that by "bar[ring] Nielsen from charging a 'commercially unreasonable' price for the standalone Nationwide report," the Court is "requiring Nielsen to spend time and incur costs associated with evaluating and attempting to implement that standard across its customer base." The Court does not take this proscription—and its impact on Nielsen's negotiating position—lightly. For the reasons stated in the Opinion, however, the balance of equities tips in Cumulus's favor on the current record and thus require an injunction against Nielsen's anticompetitive conduct. Op. at 43; *see also id.* at 45 (citing *Glaxo*, 410 U.S. at 64: "the purpose of relief in an antitrust case is so far as practicable, to cure the ill effects of the illegal conduct, and assure the public freedom from its continuance").

The Court understands that Nielsen's costs arise predominately from surveying its listeners in each individual local market, Op. at 4, and is thus sympathetic to Nielsen's concern that it "will be hindered in its ability to ensure that it can recover the costs of collecting the local radio-ratings data that make up the Nationwide report and spread those costs appropriately across the customers that use the products generated from those joint costs." ECF No. 142-1 ("Tunkel Decl.") ¶ 5. While Nielsen's necessarily dynamic pricing may determine that there is "no single commercially reasonable rate for the Nationwide report," Tunkel Decl. ¶ 7, Nielsen may not use its power as a monopolist to prevent or impede competition. *Berkey Photo, Inc. v. Eastman Kodak Co.*, 603 F.2d 263, 274 (2d Cir. 1979).

C. The Public Interest and Irreparable Injury to Cumulus

The Court is not persuaded by Respondents' arguments that the public interest favors granting the stay pending appeal. Even apart from the public services provided by broadcast radio that Cumulus has alleged the Network Policy threatens, ECF No. 128 at ¶ 268, the public has an interest "in enforcement of the antitrust laws and in the preservation of competition." *trueEX, LLC v. MarkitSERV Ltd.*, 266 F. Supp. 3d 705, 726 (S.D.N.Y. 2017) (citation omitted); *see also F. & M. Schaefer Corp. v. C. Schmidt & Sons, Inc.*, 597 F.2d 814, 819 (2d Cir. 1979) (consumers are irreparably harmed when price competition is eliminated, "leading to higher prices and profits . . . at the expense of a large segment of the . . . public"). As such, the Court finds that the four *Nken* factors overall weigh in favor of denying the stay pending appeal.

Accordingly, Respondents' Motion for Stay Pending Appeal is DENIED. Respondent's Motion for Administrative Stay, however, is GRANTED. Because of the timing concerns expressed by Plaintiff, and specifically the potential irreparable harm it will suffer in the absence of immediate relief, the administrative stay will be in effect only until **January 16, 2026**, to allow Respondents time to file a motion for a stay in the Second Circuit Court of Appeals. The Clerk of Court is directed to terminate ECF No. 142.

SO ORDERED.

Dated: January 12, 2026
New York, New York

/s/ Jeannette A. Vargas
JEANNETTE A. VARGAS
United States District Judge

APPENDIX F

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 3rd day of February, two thousand twenty-six.

Present:

John M. Walker, Jr.,
Barrington D. Parker,
Joseph F. Bianco,
Circuit Judges.

Cumulus Media New Holdings Inc.,

Plaintiff-Appellee,

v. 26-88

The Nielsen Company (US), LLC,

Defendant-Appellant.

Appellant moves for a stay pending resolution of this appeal from the district court's preliminary injunction entered on December 30, 2025. Appellee opposes. Appellee moves to seal its opposition to the motion, which Appellant has not opposed.

Upon due consideration, it is hereby ORDERED that the motion for a stay pending appeal is GRANTED. Appellant has met the requisite standard for a stay pending appeal. *See Nken v. Holder*, 556 U.S. 418, 434 (2009).

It is further ORDERED that Appellee's motion to seal its opposition is GRANTED.

FOR THE COURT:
Catherine O'Hagan Wolfe,
Clerk of Court