

August 4, 2016

**EX PARTE PRESENTATION**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: MB Docket No. 16-57, *Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc. for Consent to Transfer Control of Licenses*

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission’s rules, 47 C.F.R. § 1.1206, the below representatives (collectively, the “parties”) submit this letter summarizing a meeting on Tuesday August 2, 2016 with the following Commission staff: Bill Lake, Chief, Media Bureau; Mary Beth Murphy, Deputy Bureau Chief, Media Bureau; Susan Singer, Chief Economist, Media Bureau; David Brown, Video Division, Media Bureau; and Alex Armbruster, Intern, Media Bureau.

- Alison Minea, Hadass Kogan, and Melisa Ordonez (by telephone) on behalf of DISH Network L.L.C.;
- Mary Lovejoy and Barbara Esbin on behalf of the American Cable Association; and
- Mike Jacobs on behalf of ITTA.

During the meeting, the parties reiterated their concerns with the Nexstar/Media General merger, consistent with their filings in the above-captioned proceeding.<sup>1</sup> Among other things, if approved, this transaction would create a new broadcast ownership conglomerate of unprecedented size and scope, one which will control the highest number of the Big-4 local broadcast stations in the country and have the power to threaten service blackouts to millions of consumers if any pay-TV distributor tries to hold the line on retransmission consent fees, which have risen more than 22,000 percent since 2005.<sup>2</sup> Moreover, approval of the merger will allow Nexstar to immediately profit from so-called “after-acquired station” clauses, which will result in dramatically higher fees for MVPDs and their customers without any offsetting benefit.

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<sup>1</sup> See Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57 (Mar. 18, 2016) (“*Joint Petition to Deny or Condition*”); Reply to Opposition of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57 (May 5, 2016) (“*Reply to Opposition*”).

<sup>2</sup> See Comments of the American Television Alliance, MB Docket No. 15-216, p. ii (Dec. 1, 2015).

The parties explained that because the merger will enable two broadcast groups to combine their stations to increase negotiating leverage, threaten massive blackouts to pay-TV subscribers, and raise prices, and because the Applications present no merger-specific benefits, the transaction as presented does not serve the public interest. The parties urged the Commission to designate the Applications for a hearing. If the Commission does decide to approve the merger, however, it must impose conditions sufficient to cure the harms posed to the public. Consistent with their filings,<sup>3</sup> the parties explained that the Commission should, at a minimum, adopt the conditions enumerated below if it decides to approve the merger.

**Baseball-style arbitration:** Consistent with the condition imposed in the Comcast-NBC Universal merger,<sup>4</sup> the Commission should allow any MVPD to pursue baseball-style arbitration in order to arrive at a new contract for retransmission consent for Nexstar’s local broadcast stations. During any arbitration, Nexstar would be prevented from blacking out its stations on the MVPD with which it is negotiating, with a true-up reflecting rates decided upon by the arbitrator dating back to the previous contract’s expiration date.

**After-acquired station clauses:** Nexstar should be required to refrain from exercising its right to have retransmission consent rates under existing MEG agreements reset to Nexstar rates by virtue of its after-acquired station clauses with an MVPD until expiration of those agreements by their terms.

The Applicants have argued that these conditions are not appropriate because they involve issues that are “unrelated to this transaction, and [that] are already the subject of pending non-adjudicatory proceedings in which the Petitioners are participating.”<sup>5</sup> The parties explained, consistent with their filings, that this view is incorrect. Among other things, this merger presents an opportunity for the Commission to evaluate and address the potential harms that could befall consumers via the retransmission consent process as a *direct consequence* of Nexstar’s aggregation of market power and the resulting increased negotiating leverage the combined entity will have.<sup>6</sup> In addition, these conditions are especially necessary to protect consumers, given the Chairman’s decision not to move forward with updates to the good faith rules at this time.

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<sup>3</sup> *Joint Petition to Deny or Condition* at 14-15; *Reply to Opposition* at 12-16.

<sup>4</sup> See Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, MB Docket No. 10-56, 26 FCC Rcd. 4238, 4259 (2011). (“We establish in Appendix A a mechanism whereby an aggrieved MVPD may choose to submit a dispute with Comcast-NBCU over the terms and conditions of carriage of Comcast-NBCU affiliated programming to commercial arbitration. As in prior transactions, the arbitrator is directed to pick between the final contract offers...based on which offer best reflects the fair market value of the programming at issue.”).

<sup>5</sup> See Consolidated Opposition to Petitions to Deny filed by Nexstar Broadcasting Group, Inc. and Media General, Inc., MB Docket No. 16-57, p. i (Apr. 14, 2016).

<sup>6</sup> See *Joint Petition to Deny or Condition* at 9-13; *Reply to Opposition* at 4-6.

In addition to the foregoing, the parties discussed other potential mechanisms to ensure the merged entity complies with applicable rules and any other conditions imposed as a result of this review. Specifically, the Commission has recently imposed merger conditions and compliance plans involving, among other things, independent third-party oversight and certification and reporting requirements.

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The parties therefore urged the Commission to designate the Applications for a hearing, or in the alternative impose the conditions requested herein.

Respectfully submitted,

/s/  
Alison Minea, DISH Network L.L.C.

/s/  
Mary Lovejoy, American Cable Association

/s/  
Mike Jacobs, ITTA

cc: Bill Lake  
Mary Beth Murphy  
Susan Singer  
David Brown  
Alex Armbruster