

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Applications of Nexstar Broadcasting Group, ) MB Docket No. 16-57  
Inc. and Media General, Inc. )  
For Consent to the Transfer of Control and )  
Assignment of Licenses )

**SUPPLEMENT TO REQUEST FOR WAIVER**

Scott R. Flick  
Lauren Lynch Flick  
Jessica T. Nyman  
**PILLSBURY WINTHROP SHAW PITTMAN LLP**  
1200 Seventeenth Street, NW  
Washington, D.C. 20036  
202.663.8000  
*Counsel to Media General, Inc.*

Richard J. Bodorff  
Gregory L. Masters  
Eve Klindera Reed  
Ari S. Meltzer  
Kathleen Scott  
**WILEY REIN LLP**  
1776 K Street, NW  
Washington, DC 20006  
202.719.7000  
*Counsel to Nexstar Broadcasting Group, Inc.*

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**SUPPLEMENT TO REQUEST FOR WAIVER**

Nexstar Broadcasting Group, Inc. (“Nexstar”) and Media General, Inc. (“MEG”), applicants in the above-referenced proceeding (together, the “Applicants”), pursuant to Section 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, hereby supplement their February 10, 2016 request that the Federal Communications Commission (“FCC” or “Commission”) waive Sections 1.2204(b) and (d)(3) of the Commission’s Rules, 47 C.F.R. §§ 1.2204(b) & (d)(3), to allow the Applicants to consummate their proposed merger and related transactions (the “Transaction”) prior to the conclusion of the broadcast television spectrum incentive auction (the “Incentive Auction”).<sup>1</sup> As demonstrated below, grant of the waiver will not frustrate the underlying Commission policy and good cause exists to waive Sections 1.2204(b) and (d)(3) in the present unique circumstances of both the Transaction and the Incentive Auction.

**I. INTRODUCTION AND SUMMARY**

Under Section 1.2204(b) of the Commission’s Rules, the applicant identified in an application to participate in the reverse auction must be the licensee that would relinquish

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<sup>1</sup> [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL INFORMATION]

spectrum usage rights if it becomes the winning bidder. With the exception of two stations, the actual licensee of any Media General station will not change nor will its FCC FRN in connection with this Transaction. [BEGIN CONFIDENTIAL INFORMATION]

[END CONFIDENTIAL

INFORMATION] Section 1.2204(d)(3), meanwhile, prohibits “[m]ajor amendments” to applications to participate in the Incentive Auction after the initial filing deadline (which was on January 12, 2016). “Major amendments” include “changes in ownership of the applicant that would constitute an assignment or transfer of control.”<sup>2</sup> Because MEG filed one or more applications to participate in the Incentive Auction, and because the consummation of the Transaction will result in the transfer of control of MEG’s licensee subsidiaries (or, in one case, the merger of a MEG licensee into a Nexstar subsidiary), Sections 1.2204(b) and (d)(3) prevent the Applicants from consummating the Transaction until the Incentive Auction’s conclusion. The Commission, however, may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest without undermining the policy which the rule is intended to serve.<sup>3</sup>

Acknowledging that fact, on its own motion, the Commission previously waived these rules with regard to assignment and transfer applications that were accepted for filing by January 12, 2016, including transactions in which the actual licensee of a station changed. It granted this waiver based upon its conclusion that:

In contrast to the forward auction, for which parties may create bidding entities that are insulated from a transaction involving existing wireless licenses, an assignment or transfer of control affecting broadcast licenses would result in a

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<sup>2</sup> 47 C.F.R. § 1.2204(d)(3).

<sup>3</sup> See 47 C.F.R. § 1.3; *Wait Radio v. FCC*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

change in control of the very licenses that are the subject of bids in the reverse auction. Consequently, the bar on the assignment of a station subject to an auction application or transfer of control of a reverse auction applicant would have a greater preclusive effect on potential transactions among broadcast licensees than the similar bar necessarily does for parties with an interest in the forward auction. Moreover, while licenses offered in the forward auction may become available after the auction in the well-established secondary market for wireless licenses, there is no additional incentive auction contemplated in which the Commission would acquire a broadcaster's spectrum usage rights for later auction. Finally, application of the bar on the assignment of the station involved in the reverse auction, or the transfer of control of its licensee, might discourage broadcasters from participating in the auction, contrary to the Commission's policy of facilitating such participation in order to promote its goals for the incentive auction.<sup>4</sup>

All but the last of these reasons (encouraging reverse auction participation) apply to the Applicants' waiver request as well. Moreover, as discussed below, the basis for the underlying rules—preventing a collusive impact on the reverse auction resulting from bids or bidding strategies changing hands in the closing of a station sale—is not implicated by the Transaction, and the quantifiable public interest harms from delaying the Transaction far outweigh any conceivable theoretical public interest benefit to rigidly applying Sections 1.2204(b) and (d)(3) to the Applicants.

Also weighing in favor of a waiver here is the fact that when the FCC adopted its rules for the Incentive Auction, it declared that the “quiet period” and the corresponding prohibition on major ownership changes for stations subject to an Incentive Auction application would last “only a matter of months.”<sup>5</sup> Indeed, the Commission later found that even this short period of time merited the general waiver for pre-January 12 transactions discussed above. Accordingly, when the Applicants filed their applications for consent to the Transaction (the “Applications”)

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<sup>4</sup> *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, 30 FCC Rcd. 10794, 10804 ¶¶ 23 (2015) (“Prohibited Communications Guidance PN”).

<sup>5</sup> *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd. 6567, 6738 ¶ 399 (2014) (“Incentive Auction Order”).

in early February, they reasonably anticipated that it would be possible to consummate the Transaction late in the third quarter or early in the fourth quarter of 2016.<sup>6</sup> Nevertheless, recognizing the possibility that the Incentive Auction might not proceed as rapidly as initially expected, the Applicants included in their Applications a precautionary request for a waiver of these rules if “the applications related to this Transaction are ripe for grant prior to the conclusion of the auction.”<sup>7</sup>

More than eight months have passed since the commencement of the Incentive Auction quiet period and the prohibition on major ownership changes, and the Incentive Auction has now entered a second stage with no definitive end date in sight. Meanwhile, not only has the pleading cycle on various petitions to deny the Applications or impose conditions on their grant long since concluded, but the petition to deny window for the associated divestiture applications has also passed without any objections being filed. In addition, to facilitate the Commission’s review, Nexstar has responded to a formal Media Bureau information request with documents and additional information supporting the Transaction’s competitive and public interest benefits. Finally, the FCC’s informal transaction review “shot clock” has expired, and the Department of Justice (“DOJ”) has approved the Transaction, subject to a court-approved settlement pursuant to which Nexstar and Media General are required to divest seven TV stations for which divestiture applications were long ago filed with the Commission. The court has signed the Hold Separate

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<sup>6</sup> See Press Release, *Nexstar Broadcasting Group Enters Into Definitive Agreement To Acquire Media General For \$4.6 Billion In Accretive Cash And Stock Transaction* (Jan. 27, 2016), available at <http://www.nexstar.tv/nexstar-broadcasting-group-enters-into-definitive-agreement-to-acquire-media-general-for-4-6-billion-in-accretive-cash-and-stock-transaction/> (“Nexstar-MEG Merger Announcement”).

<sup>7</sup> Comprehensive Exhibit (March 2016) at 46, available at [https://licensing.fcc.gov/cdbs/CDBS\\_Attachment/getattachment.jsp?appn=101724323&qnum=5050&copynum=1&exhnum=3](https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101724323&qnum=5050&copynum=1&exhnum=3).

Stipulation and Order and the FTC has granted early termination under the HSR Act.<sup>8</sup> In short, the FCC now stands as the only obstacle to closing, and the Applications are ripe for grant.

Sections 1.2204(b) and (d)(3), however, unnecessarily subject the Applicants' consummation of the Transaction to the vagaries of an Incentive Auction that will last several more months in a best-case scenario and could well stretch beyond that into 2017. As detailed below, grant of a waiver will not undermine the policy the rules are intended to serve, and is particularly appropriate where, as here, the facts make strict compliance with these rules inconsistent with the public interest. There are no public interest benefits to be gained by applying these rules to the Transaction. In fact, the growing delay in concluding the Incentive Auction steadily increases the market distortion and public harm caused by strict application of these rules. Good cause therefore exists for the Commission to waive Sections 1.2204(b) and (d)(3) of the Commission's Rules to allow consummation of the Transaction promptly upon FCC approval.

## II. BACKGROUND

On January 7, 2016, Nexstar and MEG announced that they had completed negotiations on the terms of a transaction under which Nexstar would acquire MEG.<sup>9</sup> At the time, MEG remained party to a definitive merger agreement with Meredith Corporation.<sup>10</sup> The definitive merger agreement between Nexstar and MEG could not be executed until MEG's agreement

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<sup>8</sup> *United States v. Nexstar Broadcasting Group, Inc., and Media General, Inc.*, No. 1:16-cv-01772-JDB, Hold Separate Stipulation and Order (D.D.C. Sept. 14, 2016) (copy attached hereto as Exhibit A); Federal Trade Commission, *Nexstar Broadcasting Group, Inc.; Media General, Inc.*; No. 20160740, Early Termination Notice, <https://www.ftc.gov/enforcement/premerger-notification-program/early-termination-notice/20160740>.

<sup>9</sup> See Press Release, *Nexstar Broadcasting Completes Negotiation Of Transaction Terms With Media General* (Jan. 7, 2016), available at <http://www.nexstar.tv/nexstar-broadcasting-completes-negotiation-of-transaction-terms-with-media-general/>; Press Release, *Media General Completes Negotiation of Transaction Terms with Nexstar* (Jan. 7, 2016), available at [http://www.mediageneral.com/press/2016/jan7\\_2016.html](http://www.mediageneral.com/press/2016/jan7_2016.html).

<sup>10</sup> See Press Release, *Media General, Meredith to Combine to Create Meredith Media General: A New Powerful Multiplatform and Diversified Media Company* (Sept. 8, 2015), available at [http://www.mediageneral.com/press/2015/sept8\\_15.html](http://www.mediageneral.com/press/2015/sept8_15.html).

with Meredith was terminated, which occurred on January 27, 2016.<sup>11</sup> Nexstar entered into a definitive agreement to acquire MEG that same day in a deal valued at \$4.6 billion.<sup>12</sup> [BEGIN CONFIDENTIAL INFORMATION]

[END

CONFIDENTIAL INFORMATION] MEG and Nexstar, respectively, filed Form 177 applications for certain license subsidiaries to participate in the reverse auction. They subsequently filed merger Applications that included a request for waiver of the Commission's Rules prohibiting the assignment or transfer of licenses subject to a reverse auction application during the pendency of the Incentive Auction.

When the Applicants entered into their definitive merger agreement, they anticipated (and publicly announced) that they expected the Transaction to close late in the third quarter or early in the fourth quarter of 2016.<sup>13</sup> This was consistent with the Commission's prior public guidance that: (1) the reverse auction would begin on March 29, 2016 and last no more than 52 rounds;<sup>14</sup> (2) the forward auction could start as early as the second business day after the close of bidding in the reverse auction;<sup>15</sup> and (3) the period during which broadcasters who applied to participate

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<sup>11</sup> See Press Release, *Meredith and Media General Agree to Terminate Merger Agreement* (Jan. 27, 2016), available at [http://www.mediageneral.com/press/2016/jan27\\_2016mer.html](http://www.mediageneral.com/press/2016/jan27_2016mer.html).

<sup>12</sup> See Nexstar-MEG Merger Announcement.

<sup>13</sup> See *id.*

<sup>14</sup> See *Broadcast Incentive Auction Scheduled to Begin on March 29, 2016; Procedures for Competitive Bidding in Auction No. 1000, Including Initial Clearing Target Determination, Qualifying to Bid, and Bidding in Auctions 1001 (Reverse) and 1002 (Forward)*, Public Notice, 30 FCC Rcd. 8975, 8977 ¶ 1 & 9033 ¶ 109 (2015) ("Auction Procedures PN").

<sup>15</sup> *Id.* at 9042 ¶ 133.

in the auction would be unable to incur a major change in ownership would extend for a “limited period of time” and likely for “only a matter of months.”<sup>16</sup> Bidding in the reverse auction began on May 31 and concluded on June 29, 2016, but the forward auction did not begin until more than six weeks later.<sup>17</sup> On August 30, 2016, the Commission announced that bidding in the forward auction concluded without meeting the final stage rule, forcing the Incentive Auction into a second stage at a lower clearing target.<sup>18</sup> Accordingly, absent a waiver, the Applicants cannot consummate the transaction until, at a minimum, the FCC conducts a second stage reverse auction, a second stage forward auction, and an assignment round, which will not conclude until late in the fourth quarter at the earliest.<sup>19</sup> If the auction requires additional stages, it could carry well into 2017.

Meanwhile, the Applications are ripe for grant. On February 26, 2016, the Media Bureau issued a public notice announcing “permit but disclose” status for the Applications and establishing March 18, 2016 as the deadline for filing petitions to deny.<sup>20</sup> Three petitions were filed on the March 18 deadline requesting denial of the Applications and/or the imposition of

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<sup>16</sup> Incentive Auction Order at 6738 ¶ 399; *see also id.* at 6771 ¶ 493 (declaring that period between forward auction application deadline and down payment deadline would be “a matter of months, at most”).

<sup>17</sup> *Applicants Qualified to Bid in the Forward Auction (Auction 1002) of the Broadcast Television Incentive Auction; Clock Phase Bidding to Begin on Aug. 16, 2016 Announcement of Schedule for Practice & Mock Auctions & Clock Phase Bidding in the Forward Auction*, Public Notice, AU14-252, 2016 WL 3884430, at \*1 (WTB/IATF rel. July 15, 2016).

<sup>18</sup> FCC, *Incentive Auction: Forward Auction – Announcements* (Aug. 30, 2016, 17:00:22), [https://auctiondata.fcc.gov/public/projects/1000/reports/forward\\_announcements](https://auctiondata.fcc.gov/public/projects/1000/reports/forward_announcements) (last visited Aug. 31, 2016).

<sup>19</sup> The second stage of the reverse auction will begin on September 13, 2016. *See Clearing Target of 114 Megahertz Set for Stage 2 of the Broadcast Television Spectrum Incentive Auction; Stage 2 Bidding in the Reverse Auction Will Start on September 13, 2016*, Public Notice, DA 16-990 (rel. Aug. 31, 2016). Once the clock stage of the auction is complete, the assignment round cannot begin until at least five business days later. Auction Procedures PN at 9087 ¶ 240. Thus, even assuming that: (i) the second stage of the reverse and forward auctions take no longer than the first stage (30 days and 14 days, respectively), and (ii) there is no need for an extended round of the forward auction, the earliest that the Incentive Auction could conclude is mid-November, and it likely will go significantly longer.

<sup>20</sup> *See Media Bureau Announces Permit-but-Disclose Ex Parte Status for Applications Filed for the Transfer of Control and Assignment of Broadcast Television Licenses from Media General, Inc. to Nexstar Broadcasting Group, Inc.*, Public Notice, DA 16-214 (rel. Feb. 26, 2016).

conditions on their grant.<sup>21</sup> The Applicants filed a consolidated Opposition to the Petitions on April 14, 2016; the petitioners filed replies on May 5, 2016, ending the pleading cycle. On June 3, 2016, the Media Bureau issued an information request to Nexstar seeking responses to various inquiries and supporting documentation. Nexstar timely responded to the request on June 24, 2016. On July 8, 2016, MEG filed the last of twelve applications for consent to the assignment of stations that the Applicants propose to divest to ensure compliance with the FCC's media ownership rules. The petition to deny periods for all of the divestiture applications have now passed, and no petition or objection was received.<sup>22</sup> In addition, the DOJ has approved the Transaction, subject to a settlement that has been judicially approved. The court has signed the Hold Separate Stipulation and Order and the FTC has granted early termination under the HSR Act.<sup>23</sup> Thus, Sections 1.2204(b) and (d)(3) of the Commission's Rules present the only barrier to grant of the Applications and consummation of the Transaction.

### **III. GOOD CAUSE EXISTS TO WAIVE THE PROHIBITION ON OWNERSHIP CHANGES TO ALLOW FOR PROMPT CONSUMMATION OF THE PROPOSED TRANSACTION**

The FCC's prohibition on completing a transfer of control or assignment during the Incentive Auction places an unnecessary cloud of uncertainty over the Transaction and needlessly will delay realization of its numerous benefits. The Commission's 180 day transaction review "shot clock" has expired, and the Applicants have made all the filings

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<sup>21</sup> DISH Network L.L.C., the American Cable Association, and ITTA filed a "Petition to Deny or Impose Conditions," Communications Workers of America, Free Press, Common Cause, Public Knowledge, and the Open Technology Institute at New America filed a "Petition to Deny," and Cox Communications, Inc. filed a "Petition for Conditions" (together, the "Petitions").

<sup>22</sup> See FCC File Nos. BALCDT-20160517AAD; BALCDT-20160615AAV; BALCDT-20160610ABG; BALCDT-20160615AAY; BALCDT-20160610ABI; BALCDT-20160617AAW; BALCDT-20160603AAJ; BALCDT-20160617AAY; BALCDT-20160617ABH; BALCDT-20160617AAX; BALCDT-20160617AAU; and BALCDT-20160708ABF.

<sup>23</sup> See *supra* note 8.

necessary for Commission action on the Applications, but the conclusion of the Incentive Auction is nowhere in sight.

The Transaction presents myriad public interest benefits that cannot be realized until the merger is completed, and the Commission has long recognized that needlessly delaying transactions is inherently harmful to the public interest. Of more immediate import to the FCC, however, is the fact that permitting prompt consummation of the Transaction will have *no* impact on the Incentive Auction, and will therefore have far less effect on the Incentive Auction than the transactions involving pre-January 12 applications for which the FCC has already granted a blanket waiver. Even if that were not the case, strict application of Section 1.2204 to prevent timely consummation of a \$4.6 billion transaction would not serve the public interest. Accordingly, the Applicants urge the Commission to promptly waive the bar on consummating the Transaction during the pendency of the Incentive Auction and allow the Applicants to consummate the Transaction promptly upon approval.

**A. Grant of the Instant Waiver Will Not Frustrate Commission Policy**

Allowing the Applicants to timely consummate the Transaction is consistent with Commission policy generally, and consistent with the policies underlying the Incentive Auction rules. More specifically, grant of the waiver would have no impact on the Incentive Auction for at least two entirely independent reasons, either of which is sufficient on its own to support grant of the requested waiver.

**1. A Waiver Is Consistent with the Stated Rationale for the Commission's Prohibition on Major Ownership Changes**

When the agency first proposed prohibiting changes of ownership during the Incentive Auction, it explained that “[p]recluding such changes in ownership after the submission of the application would ensure that all of the relevant parties are clearly identified for the purposes of

applying the reverse auction rules, including the rule prohibiting certain communications.”<sup>24</sup> The FCC repeated this rationale when it adopted the rule in the Incentive Auction Order.<sup>25</sup> At the same time, the Commission discounted the potential disruption that this rule and its prohibition on communications would cause, reasoning that it expected the Incentive Auction quiet period to last “only a matter of months.”<sup>26</sup>

It did not take long, however, for the FCC to acknowledge that the narrow rationale behind its prohibition on ownership changes could not justify the deleterious effect of blanket rules that “effectively prevent a licensee from changing hands after the [reverse auction] application is filed until after the auction is over.”<sup>27</sup> Accordingly, in October 2015, the Commission granted, *sua sponte*, a waiver permitting the assignment or transfer of licenses subject to a reverse auction application during the pendency of the auction if certain conditions are satisfied. The Commission stated it would apply this waiver if applications for consent to the transaction had been accepted for filing as of January 12, 2016. The FCC’s stated basis for granting this waiver was that by limiting the waiver to circumstances where the transfer or assignment application was accepted for filing by January 12, 2016, the FCC could “preserve[] in the reverse auction one of the safeguards of the underlying rule by assuring that all relevant parties are identified to the Commission prior to the auction.”<sup>28</sup>

The unique circumstances of the Transaction discussed in Section II above prevented the Applicants from signing a definitive merger agreement, preparing the Applications, and having

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<sup>24</sup> *In the Matter of Expanding the Economic & Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357, 12445 ¶ 254 (2012).

<sup>25</sup> Incentive Auction Order at 6751 ¶ 443 n. 1283.

<sup>26</sup> *Id.* at 6738 ¶ 399.

<sup>27</sup> Prohibited Communications Guidance PN at 10803-04 ¶¶ 22-24.

<sup>28</sup> *Id.* at 10804 ¶ 24.

those Applications accepted for filing in the short window between January 7, 2016 (when the Applicants reached definitive terms of their merger) and January 12, 2016 (the deadline for applications to participate in the Incentive Auction). But, as noted above, the same rationale that the agency applied to justify its October 2015 *sua sponte* waiver applies to the instant Transaction. Other than falling on the other side of an unavoidably arbitrary date cutoff, there is no basis to distinguish the instant Transaction from one that was filed 29 days earlier, and thereby qualified for the Commission's general waiver.

As required of pre-January 12 assignment and transfer applicants, the Applicants have represented that they will abide by all of the conditions set forth by the FCC for licensees seeking a change in ownership during the Incentive Auction. Specifically, the Applicants have agreed, and the Merger Agreement provides, that if any of the Applicants bid to relinquish spectrum usage rights of a transferred or assigned station in the Incentive Auction, Nexstar agrees to be bound by MEG's actions in the Incentive Auction, if any, with respect to the transferred or assigned stations to the same extent and in the same manner as Nexstar would be bound had it taken such actions itself.<sup>29</sup> In addition, the Applicants have agreed that, upon consummation of the Transaction, Nexstar will use the FCC Registration Numbers ("FRN") and passwords associated with the transferred or assigned stations as of December 8, 2015 for purposes of applying for and participating in the reverse auction with respect to such stations (if any).<sup>30</sup>

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<sup>29</sup> Merger Agreement § 6.19(a)(iii); *see also* Prohibited Communications Guidance PN at 10804 ¶¶ 23-24.

<sup>30</sup> Comprehensive Exhibit (March 2016) at 46; *see also* *Guidance Regarding License Assignment and Transfers of Control During the Reverse Auction, Auction 1001*, Public Notice, 30 FCC Rcd. 14260 ¶ 2 (2015) ("Assignment/Transfer of Control PN"). The Applicants also have acknowledged that the FCC is not liable for their use of any FCC systems or information accessed as a result of a shared FRN and password. Comprehensive Exhibit (March 2016) at 46; *see also* Assignment/Transfer of Control PN at 14260 ¶ 2.

Even beyond the fact that the Applicants have made the required commitments regarding FRNs, the risk of FRN-related disruption created by the consummation of the Transaction is non-existent as a practical matter. All but one of the 28 Applications propose a Form 315 transfer of control, with no change in the identity of the licensee entity. With respect to the stations subject to the Form 315 Applications (which comprise the overwhelming majority of MEG's stations), there could be no basis for any concern whatsoever that grant of the Applications might raise issues related to FRNs, because the licensees—and thus the FRNs—will remain the same after the closing.

Only two MEG full-power stations, covered in the Transaction's only Form 314 Application, will undergo a change in licensee as a result of the merger's closing steps. But the Commission has already granted a number of applications, filed both before and after the auction quiet period began, that resulted in a change in the licensee and have been consummated during the auction.<sup>31</sup> Indeed, in March 2016 Nexstar consummated the approved acquisition of a Class A television station in Baton Rouge, Louisiana for which a Form 177 had been filed.<sup>32</sup> The Commission seemingly encountered no difficulty accommodating these transactions in terms of auction mechanics, and the change in licensee of a mere two stations resulting from the consummation of the Transaction should be no different.<sup>33</sup> Simply stated, FRN-related issues have no rational bearing on the Commission's evaluation of the instant waiver request.

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<sup>31</sup> See, e.g., FCC File Nos. BALCDT-20160106AAJ; FCC File No. BALCDT-20160108ABR; FCC File No. BALCDT-20160317ABE; FCC File No. BALCDT-20160407ABG; FCC File No. BALCDT-20160418ABZ; BALCDT-20160628ABD.

<sup>32</sup> See FCC File No. BALDTA-20160108AAD (KZUP-CD, Baton Rouge, LA; granted February 19, 2016; closed March 17, 2016).

<sup>33</sup> See, e.g., *Indep. Petrol. Ass'n v. Babbitt*, 92 F.3d 1248, 1260 (D.C. Cir. 1996); *McElroy Elec. Corp. v. FCC*, 990 F.2d 1351, 1365 (D.C. Cir. 1993); *Melody Music v. FCC*, 345 F.2d 730, 732-33 (D.C. Cir. 1965).

A waiver here also certainly would not undermine the FCC's core rationale of "assuring that all relevant parties are identified to the Commission prior to the auction." All of the Applications were submitted well in advance of the March 29 commitment deadline for participation in the Incentive Auction. Moreover, consummation of the Transaction will not bring some new, unfamiliar party to the table, nor cause the departure of the current party to any Form 177 filings by MEG. After all, control of the participating MEG entities would be acquired by Nexstar, which itself filed a Form 177, and upon consummation of the Transaction, the existing MEG shareholders will hold approximately 33.4% of the shares in the post-merger company, meaning the information that the agency previously collected will remain relevant.

The Applicants are well-known to the Commission from: (i) their respective FCC Form 177 applications; (ii) the Commission's review of their many prior assignment and/or transfer applications; (iii) their numerous biennial and post-consummation ownership reports; and (iv) the many applications associated with the Transaction itself. These filings provide extensive information on the Applicants and, in light of the Commission's extended review of the Applications, the Commission likely knows as much or more about Nexstar's structure and principals than it does about any other auction applicant. Any argument, then, that consummation of this Transaction would interfere with the agency's knowledge of an Incentive Auction participant is baseless. Moreover, the Commission has far more advance notice of post-merger Nexstar's ownership for Stage 2 of the auction than it had for any applicant in Stage 1 (at least seven months, as opposed to the 2.5 months that passed between the January 12 deadline and the March 29 commencement of Stage 1).

[BEGIN CONFIDENTIAL INFORMATION]



[END CONFIDENTIAL INFORMATION]

**B. Consummation of the Transaction Will Not Impact Other Applicants**

There is also no risk that permitting consummation of the instant Transaction will open the floodgates to other applicants seeking to change station ownership during the Incentive Auction. A search of the FCC's Consolidated Database System as of the filing of this Supplement indicates that, aside from the Transaction and related divestitures, the Commission has before it no long-form applications for transfer of control and only six applications for assignment of a full power or Class A television license that were accepted for filing after January 12, 2016 and that remain pending.<sup>35</sup> Of those, each is part of only a one or two station deal, and only one appears to possibly involve a station that applied on Form 177 to participate in the Incentive Auction.<sup>36</sup> More importantly, none request a waiver of the restriction on consummating a transaction during the auction.

This situation is unlikely to change, as there is almost no risk that any new transactions will emerge that could be subject to a similar waiver request. Due to the prohibition on certain auction-related communications, it is virtually impossible to now negotiate a deal involving a station registered for the reverse auction. Accordingly, any subsequent application would be readily distinguishable from the Transaction [BEGIN CONFIDENTIAL INFORMATION]

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<sup>35</sup> A seventh assignment application, FCC File No. BALCDT-20160421AFD, is superseded by a recent application for assignment of the same station, WAAY-TV. *See* FCC File No. BALCDT-20160902AAY.

<sup>36</sup> *See* FCC File No. BALCDT-20160518ABO (indicating that Withers Broadcasting Co. of Clarksburg, LLC has filed an application for WVFX-DT to participate in the Incentive Auction).

[END CONFIDENTIAL INFORMATION] Accordingly, the grant of a waiver in this instance will not create any precedent for future transactions.

**C. Waiver of Sections 1.2204(b) and (d)(3) Is in the Public Interest**

Allowing prompt consummation of the Transaction will serve the public interest not only because no Commission policy is undermined by grant of the requested waiver, but also because it will expedite numerous specific public interest benefits enumerated in the Applications. With regard to the first point, it is the longstanding policy of the Commission not to unnecessarily delay the prompt consummation of large transactions. In its Strategic Plan for 2015-2018, the agency committed to “expeditiously and thoroughly review applications for the transfer of control and assignment of licenses and authorizations that are included in proposed transactions and mergers between entities in the media and communications industries.”<sup>37</sup> This is consistent with the agency’s recognized obligation to review proposed transactions “as expeditiously as possible, regardless of whether or not delays in the process would result in harm to a party.”<sup>38</sup> In this spirit, the Commission has been willing to temporarily waive its media ownership rules to accommodate multi-station transactions “so long as such waiver does not undermine the underlying goals of the Commission’s ownership rules: competition, localism, and diversity.”<sup>39</sup>

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<sup>37</sup> FCC, *Strategic Plan 2015-2018*, 2015 WL 502311, at \*6 (2015).

<sup>38</sup> *Applications of AT&T Inc. & DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 29 FCC Rcd. 10318, 10321 ¶ 6 (MB 2014); *Applications of Comcast Corp. & Time Warner Cable Inc. for Consent to Assign or Transfer Control of Licenses and Authorizations and AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order on Reconsideration, 29 FCC Rcd. 13597, 13602 ¶ 10 (MB 2014); *In the Matter of Applications of Comcast Corp., Time Warner Cable Inc., Charter Communications, Inc., & Spinco for Consent to Assign or Transfer Control of Licenses and Authorizations*, Order, 29 FCC Rcd. 10099, 10101-02 ¶ 7 (MB 2014); see also *Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses or Transfer Control of Licensees*, Order, 25 FCC Rcd. 3101 ¶ 5 (MB 2010) (“The Commission has an obligation to review the proposed transaction as expeditiously as possible.”); *Echostar Communications Corp. and Hughes Electronics Corp. Seek FCC Authority to Launch and Operate New Echostar 1 DBS Satellite*, Public Notice, 17 FCC Rcd. 7246, 7248 n.8 (2002) (“The Commission has committed to expeditiously review proposed transactions by establishing an aggressive 180-day review period.”).

<sup>39</sup> *Quincy Newspapers, Inc.*, DA 15-1026 (released September 15, 2015), citing *Stockholders of CBS, Inc.*, 11 FCC Rcd. 3733, 3754 (1995).

With regard to the second point—affirmatively bringing benefits to the public sooner rather than later—the record of this proceeding reflects that the Transaction complies in all respects with FCC rules and has numerous demonstrable public interest benefits which would be unnecessarily delayed absent a waiver. The Applications identify in detail a variety of public interest benefits from completing the Transaction, including increased efficiencies that will make Nexstar more attractive to programmers and audiences while allowing Nexstar to expand its already robust investment in local news (such as by opening new state capital bureaus and expanding access to existing bureaus in state capitals and Washington, D.C.).

Moreover, as part of the Transaction, the Applicants have submitted applications for divestitures that will increase female and minority ownership of television broadcast stations, diversify programming, and preserve competition in numerous media markets. These divestitures will increase broadcast ownership by female and minority-controlled applicants through the assignment of KREG-TV, Glenwood Springs, CO (Fac. ID 70478) to female-controlled Marquee Broadcasting, Inc. and the assignment of KADN-TV, Lafayette, LA (Fac. ID 33261) and KLAF-LD, Lafayette, LA (Fac. ID 16535) to minority-owned Bayou City Broadcasting. KASA-TV, Albuquerque, New Mexico, will be assigned to Ramar Communications, Inc., an established operator of Spanish-language television stations.

In addition to delaying realization of the public interest benefits presented by the Transaction, any further delay in grant of the Applications and consummation of the Transaction will impose an unnecessary financial burden on both Nexstar and the proposed assignees of the divestiture stations. Nexstar has obtained financing commitments from lenders to consummate the Transaction, and the divestiture buyers have similarly obtained loan commitments to complete their purchases. As part of these commitments, however, lenders charge “ticking fees”

payable monthly, and sometimes even daily, by the prospective borrower. These fees represent carrying costs for the borrower which accumulate and mount as the committed financing goes unutilized. Financing fees are an anticipated cost of financing a large transaction such as this one, but such fees can alter the economics of a transaction if they continue longer than expected.

The accumulating carrying cost of financing commitments may be a bearable aggravation to a company like Nexstar for a short period, but it may be a crippling or fatal blow to the proposed assignees of the divestiture stations, particularly minority-controlled and small businesses that lack the cash flow of a larger broadcaster. Such nascent or smaller businesses cannot tolerate accumulating lender commitment fees for even a short period without impacting their operations. Moreover, minority-owned and startup divestiture purchasers are more likely to rely on financing from lenders and investors that are new to the media industry. A new investor that commits funds to a media transaction such as a Nexstar/MEG divestiture, only to see the transaction held up for an indeterminate amount of time by an unrelated FCC auction, will think long and hard before committing money in the media space again. That harms the very minority-owned and other small businesses whose participation in the television industry the Commission has long sought to expand.

#### **IV. CONCLUSION**

For the foregoing reasons, prompt consummation of the Transaction is in the public interest, and there is no reason to delay closing until after conclusion of the Incentive Auction. Accordingly, the Applicants urge the Commission to grant the instant request and waive Sections 1.2204(b) and (d)(3) of the Commission's Rules to allow the Applicants to timely consummate the Transaction upon grant of the Applications, untethered from the pacing of the Incentive Auction.

Respectfully submitted,

/s/Scott R. Flick

Scott R. Flick

Lauren Lynch Flick

Jessica T. Nyman

**PILLSBURY WINTHROP SHAW PITTMAN LLP**

1200 Seventeenth Street, NW

Washington, D.C. 20036

202.663.8000

*Counsel to Media General, Inc.*

/s/Richard J. Bodorff

Richard J. Bodorff

Gregory L. Masters

Eve Klindera Reed

Ari S. Meltzer

Kathleen Scott

**WILEY REIN LLP**

1776 K Street, NW

Washington, DC 20006

202.719.7000

*Counsel to Nexstar Broadcasting Group, Inc.*

Dated: September 21, 2016

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

NEXSTAR BROADCASTING GROUP, INC.,  
and MEDIA GENERAL, INC.,

*Defendants.*

**HOLD SEPARATE STIPULATION AND ORDER**

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

**I. DEFINITIONS**

As used in this Hold Separate Stipulation and Order:

A. “Nexstar” means Defendant Nexstar Broadcasting Group, Inc., a Delaware corporation headquartered in Irving, Texas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

B. “Media General” means Defendant Media General, Inc., a Virginia corporation headquartered in Richmond, Virginia, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

C. “Gray” means Gray Television, Inc., a Georgia corporation headquartered in Atlanta, Georgia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

D. “Graham” means Graham Holdings Company, a Delaware corporation headquartered in Arlington, Virginia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and their directors, officers, managers, agents, and employees.

E. “Bayou City” means Bayou City Broadcasting Lafayette, Inc., a privately held company headquartered in Houston, Texas, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including, but not limited to, Bayou City Broadcasting, LLC, and their directors, officers, managers, agents, and employees.

F. “USA TV” means USA Television MidAmerica Holdings, LLC, a privately held company headquartered in Atlanta, Georgia, its successor and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, including, but not limited to, MSouth Equity Partners, Heartland Media, LLC, and USA Television Holdings, LLC, and their directors, officers, managers, agents, and employees.

G. “Acquirer” means Gray, Graham, Bayou City, USA TV, or another entity to which Defendants divest any of the Divestiture Assets.

H. “DMA” means Designated Market Area as defined by A.C. Nielsen Company based upon viewing patterns and used by the *Investing in Television BIA Market Report 2016* (1st edition). DMAs are ranked according to the number of households therein and are used by broadcasters, advertisers, and advertising agencies to aid in evaluating television audience size and composition.

I. “WBAY-TV” means the ABC-affiliated broadcast television station located in the Green Bay-Appleton, Wisconsin DMA owned by Defendant Media General.

J. “WSLS-TV” means the NBC-affiliated broadcast television station located in the Roanoke-Lynchburg, Virginia DMA owned by Defendant Media General.

K. “KADN-TV” means the FOX-affiliated broadcast television station located in the Lafayette, Louisiana DMA owned by Defendant Nexstar.

L. “KLAF-LD” means the NBC-affiliated broadcast television station located in the Lafayette, Louisiana DMA owned by Defendant Nexstar.

M. “WTHI-TV” means the CBS-affiliated broadcast television station located in the Terre Haute, Indiana DMA owned by Defendant Media General.

N. “WFFT-TV” means the FOX-affiliated broadcast television station located in the Ft. Wayne, Indiana DMA owned by Defendant Nexstar.

O. “KWQC-TV” means the NBC-affiliated broadcast television station located in the Davenport, Iowa/Rock Island-Moline, Illinois DMA owned by Defendant Media General.

P. “Divestiture Assets” means the WBAY-TV, WSLS-TV, KADN-TV, KLAF-LD, WTHI-TV, WFFT-TV, and KWQC-TV broadcast television stations and all assets, tangible or intangible, principally devoted to or necessary for the operation of the stations as viable, ongoing commercial broadcast television stations, including, but not limited to, all real property (owned or leased), all broadcast equipment, office equipment, office furniture, fixtures, materials, supplies, and other tangible property; all licenses, permits, authorizations, and applications therefore issued by the Federal Communications Commission (“FCC”) and other government agencies related to the stations; all contracts (including programming contracts and rights), agreements, network affiliation agreements, leases, and commitments and understandings of

Defendants; all trademarks, service marks, trade names, copyrights, patents, slogans, programming materials, and promotional materials relating to the stations; all customer lists, contracts, accounts, and credit records; and all logs and other records maintained by Defendants in connection with the stations.

## **II. OBJECTIVES**

The Final Judgment filed in this case is meant to ensure Defendants' prompt divestiture of the Divestiture Assets for the purpose of preserving competition in the sale of broadcast television spot advertising and the licensing to multichannel video programming distributors of broadcast television programming for retransmission to subscribers in the Roanoke-Lynchburg, Virginia; Terre Haute, Indiana; Ft. Wayne, Indiana; Green Bay-Appleton, Wisconsin; Lafayette, Louisiana; and Davenport, Iowa/Rock Island-Moline, Illinois ("Quad Cities") DMAs, in order to remedy the effects that the United States alleges would otherwise result from Nexstar's acquisition of Media General. This Hold Separate Stipulation and Order ensures prior to such divestitures that the Divestiture Assets remain independent, economically viable, and ongoing business concerns that will remain independent and uninfluenced by Nexstar or by the consummation of Nexstar's acquisition of Media General, and that competition is maintained during the pendency of the ordered divestitures.

## **III. JURISDICTION AND VENUE**

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue is proper in the United States District Court for the District of Columbia. Defendants waive service of summons of the Complaint.

**IV. COMPLIANCE WITH AND ENTRY OF THE FINAL JUDGMENT**

A. The parties stipulate that a Final Judgment in the form attached hereto as Exhibit A may be filed with and entered by the Court upon the motion of any party, or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. § 16, and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on the Defendants and by filing that notice with the Court.

B. Defendants agree to arrange, at their expense, publication as quickly as possible of the newspaper notice required by the APPA, which shall be drafted by the United States in its sole discretion. The publication shall be arranged no later than three (3) business days after Defendants' receipt from the United States of the text of the notice and identity of the newspaper within which the publication shall be made. Defendants shall promptly send to the United States (1) confirmation that publication of the newspaper notice has been arranged, and (2) the certification of the publication prepared by the newspaper within which the notice was published.

C. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Hold Separate Stipulation and Order by the parties, comply with all the terms and provisions of the proposed Final Judgment. The United States shall have the full rights and enforcement powers in the proposed Final Judgment, including Section X, as though the same were in full force and effect as the final order of the Court.

D. Defendants shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

E. This Hold Separate Stipulation and Order shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

F. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Hold Separate Stipulation and Order, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Hold Separate Stipulation and Order, and the making of this Hold Separate Stipulation and Order shall be without prejudice to any party in this or any other proceeding.

G. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made and that Defendants will later raise no claim of mistake, hardship, or difficulty of compliance as grounds for asking the Court to modify any of the provisions contained therein.

#### **V. HOLD SEPARATE PROVISIONS**

Until the divestitures required by the Final Judgment have been accomplished:

A. Defendants shall preserve, maintain, and continue to operate the Divestiture Assets as independent, ongoing, economically viable, competitive businesses, with management, sales, and operations of such assets held entirely separate, distinct, and apart from those of Defendants' other operations. Defendants shall not coordinate its production, marketing, or

terms of sale of any products with those produced by or sold under any of the Divestiture Assets. Defendants shall take all steps necessary to preserve and maintain the value and goodwill of the Divestiture Assets. Within twenty (20) calendar days after the entry of the Hold Separate Stipulation and Order, Defendants will inform the United States of the steps Defendants have taken to comply with this Hold Separate Stipulation and Order.

B. Defendants shall take all steps necessary to ensure that (1) the Divestiture Assets will be maintained and operated as independent, ongoing, economically viable, and active competitors in the broadcast television spot advertising business; (2) management of the Divestiture Assets will not be influenced by Defendants; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning production, distribution, or sales of products by or under any of the Divestiture Assets will be kept separate and apart from Defendants' other operations.

C. Defendants shall preserve, in accordance with current practice, the existing relationships with each broadcast television spot advertising customer and with others doing business with any of the Divestiture Assets.

D. Defendants shall use all reasonable efforts to maintain and increase the sales and revenues of the Divestiture Assets and shall maintain at 2016 levels or previously approved levels for 2016 or 2017, whichever are higher, all promotional, advertising, sales, technical assistance, marketing, and merchandising support for the Divestiture Assets.

E. To the extent permitted by the terms and conditions of the FCC's Equity-Debt Plus rule (47 C.F.R. § 73.3555, note 2(i)), Defendants shall provide sufficient working capital and lines and sources of credit to continue to maintain the Divestiture Assets as economically viable and competitive ongoing businesses.

F. Defendants shall take all steps necessary to ensure that the Divestiture Assets are fully maintained in operable condition at no less than current capacity and sales and shall maintain and adhere to normal repair and maintenance schedules for the Divestiture Assets.

G. Defendants shall not, except as part of a divestiture approved by the United States in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge, or otherwise dispose of any of the Divestiture Assets.

H. Defendants shall provide such support services for the Divestiture Assets as the Divestiture Assets require to operate as economically viable, competitive, and ongoing providers of broadcast television spot advertising in the following DMAs: Roanoke-Lynchburg, Virginia; Terre Haute, Indiana; Ft. Wayne, Indiana; Green Bay-Appleton, Wisconsin; Lafayette, Louisiana; and Quad Cities. These support services may include federal, state, and local municipal regulatory compliance; human resources; legal; finance; software and computer operations support; and such other services as are required to operate the Divestiture Assets.

I. Defendants shall maintain, in accordance with sound accounting principles, separate, accurate, and complete financial ledgers, books, and records that report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues, and income of the Divestiture Assets.

J. Defendants shall take no action that would jeopardize, delay, or impede the sale of the Divestiture Assets.

K. Defendants' employees with primary responsibility for the Divestiture Assets shall not be transferred or reassigned to other areas within Defendants' business, except for transfer bids initiated by employees pursuant to Defendants' regular, established, job posting

policy. Defendants shall provide the United States with ten (10) calendar days notice of such transfer.

L. Defendants, subject to the approval of the United States, shall appoint a person or persons to oversee the Divestiture Assets, and who will be responsible for compliance with Section V. This person shall have complete managerial responsibility for the Divestiture Assets, subject to the provisions of this Hold Separate Stipulation and Order. In the event such person is unable to perform his or her duties, Defendants shall appoint, subject to the approval of the United States, a replacement within ten (10) working days. Should Defendants fail to appoint a replacement acceptable to the United States within this time period, the United States shall appoint a replacement.

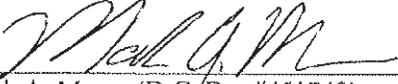
M. Defendants shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to an Acquirer or Acquirers acceptable to the United States.

#### **VI. DURATION OF HOLD SEPARATE OBLIGATIONS**

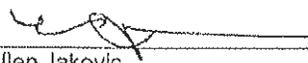
Defendants' obligations under Section V of this Hold Separate Stipulation and Order shall remain in effect until (1) consummation of all of the divestitures required by the proposed Final Judgment or (2) until further order of the Court. If the United States voluntarily dismisses the Complaint in this matter, Defendants are released from all further obligations under the Hold Separate Stipulation and Order.

Respectfully submitted,

**FOR PLAINTIFF  
UNITED STATES OF AMERICA**

  
\_\_\_\_\_  
Mark A. Merva (D.C. Bar #451743)  
United States Department of Justice  
Antitrust Division  
Litigation III Section  
450 Fifth Street, N.W., Suite 4000  
Washington, D.C. 20530  
Phone: 202-616-1398  
Mark.merva@usdoj.gov

**FOR DEFENDANT  
NEXSTAR BROADCASTING GROUP,  
INC.**

  
\_\_\_\_\_  
Ellen Jakovic  
Ian Conner  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
ian.conner@kirkland.com

Ian G. John  
601 Lexington Avenue  
New York, NY 10022-4611  
Phone: 212-446-4665  
ian.john@kirkland.com

**FOR DEFENDANT  
MEDIA GENERAL, INC.**

\_\_\_\_\_  
Bernard A. Nigro Jr. (D.C. Bar #412357)  
Fried Frank  
801 17<sup>th</sup> Street, NW  
Washington DC 20006  
Phone: 202-639-7373  
Barry.Nigro@friedfrank.com

**ORDER**

IT IS SO ORDERED by the Court, this \_\_\_\_ day of September, 2016.

\_\_\_\_\_  
United States District Judge

Respectfully submitted,

**FOR PLAINTIFF  
UNITED STATES OF AMERICA**

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Mark A. Merva (D.C. Bar #451743)  
United States Department of Justice  
Antitrust Division  
Litigation III Section  
450 Fifth Street, N.W., Suite 4000  
Washington, D.C. 20530  
Phone: 202-616-1398  
Mark.merva@usdoj.gov

**FOR DEFENDANT  
NEXSTAR BROADCASTING GROUP,  
INC.**

---

Ellen Jakovic  
Ian Conner  
Kirkland & Ellis LLP  
655 Fifteenth Street, N.W.  
Washington, D.C. 20005  
ian.conner@kirkland.com

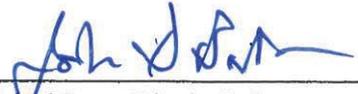
Ian G. John  
601 Lexington Avenue  
New York, NY 10022-4611  
Phone: 212-446-4665  
ian.john@kirkland.com

**FOR DEFENDANT  
MEDIA GENERAL, INC.**

  
Bernard A. Nigro Jr. (D.C. Bar #422357)  
Fried Frank  
801 17<sup>th</sup> Street, NW  
Washington DC 20006  
Phone: 202-639-7373  
Barry.Nigro@friedfrank.com

**ORDER**

IT IS SO ORDERED by the Court, this 14<sup>th</sup> day of September, 2016.

  
United States District Judge