BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of	)	
	)	
Applications of Raycom Media, Inc. and Gray Television, Inc.	)	MB Docket No. 18-230
	)	
For Consent to Transfer Control of Licenses and Authorizations	)	
	)	

REPLY COMMENTS OF DISH NETWORK L.L.C.

DISH Network L.L.C. ("DISH")[1] respectfully submits these reply comments in response to the joint response to comments filed by Gray Television, Inc. and Raycom Media, Inc. (collectively, the "Applicants") in the above-captioned proceeding.[2]

I. INTRODUCTION AND SUMMARY

The Applicants' Joint Response is heavy on rhetoric but light on the facts. The Applicants do not substantiate the speculative benefit claims they made in their Public Interest Statement. And, they dismiss DISH's arguments related to the harms that would result from their proposed consolidation as irrelevant and unsupported. But, DISH's arguments are empirical and transaction specific. Indeed, DISH has studied the relationship between broadcaster fees and broadcaster size, as well as the relationship between broadcast mergers and

[1] DISH is a multichannel video programming distributor ("MVPD") that retransmits local broadcast stations in every one of the 210 designated market areas in the United States. DISH today has retransmission consent agreements with both Applicants, allowing it to retransmit certain local broadcast stations owned by the Applicants. DISH expects to negotiate with both Applicants in the future for continued retransmission of their stations. For these and other reasons described herein, DISH is a party in interest under Section 309(d)(1) of the Communications Act. *See* 47 U.S.C. § 309(d)(l).

[2] *See* Joint Response to Comments of Raycom Media, Inc. and Gray Television, Inc., MB Docket No. 18-230 (Sept. 11, 2018) ("Joint Response").

retransmission fees. The conclusions from these studies are stark: the greater a broadcaster's size, the higher the fees it extracts; and mergers lead to fee increases beyond industry-standard retransmission fee rises. The Applicants maintain that these conclusions do not apply to them because Gray is smaller than other broadcasters. But the two links—between size and fee levels and between mergers and fee increases—have been found to exist no matter where the broadcaster is situated on the size ladder.[3] And, increased fees, which likely will result in higher prices for consumers, have a direct bearing on the public interest impact of a proposed merger.

Finally, all but one of the supposed benefits listed by the Applicants are euphemisms for reducing or eliminating local content, hardly a benefit in the Commission's public interest calculus. And, the remaining alleged benefit is unsubstantiated. For these and other reasons, the proposed transaction does not serve the public interest.

II. THE APPLICANTS FAIL TO ADDRESS CONSOLIDATION CONCERNS

This proposed transaction will likely lead to higher retransmission fees for MVPDs, leading to higher prices for American consumers. Among other evidence, in the context of the Sinclair-Tribune transaction, DISH's economists reviewed retransmission contracts that DISH signed with 43 broadcast groups in the past ten years.[4] Using those contracts, DISH's experts connected retransmission fees to the overall size of the broadcast group and to the number of markets where the group controls more than one station. That empirical and econometric work concluded that, other things being equal, the larger the broadcast group, the higher the

[3] *See* Declarations of Janusz A. Ordover and William P. Zarakas and Jeremy A. Verlinda, attached as Exhibits D and E to Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179 (Aug. 7, 2017).

[4] *Id.*

retransmission fee paid by the MVPD.[5] Larger broadcast groups—i.e., groups with annual revenues of over $500 million—overcharge by a difference of more than a few percentage points.[6] And that difference is even more pronounced when the broadcast group's size is measured by the total number of DISH subscribers that each reaches.[7]

Gray will acquire Raycom for $3.647 billion.[8] The Gray-Raycom transaction will create the third-largest broadcast group in the country, behind only Sinclair and Nexstar, and will own 124 TV stations across 92 DMAs.[9] Gray's position as third instead of first in national size does not make the link between broadcaster size and fee level established by DISH any less relevant. Indeed, the mergers examined by DISH included the acquisition of a number of relatively small broadcast groups, including News-Press and Gazette Company and Block Communications, Inc.[10] In short, Applicants try to discount the evidence as belonging to the "familiar" "bigger broadcaster is bad" argument.[11] But, whether or not bigger broadcasters are "bad," the evidence shows that they charge MVPDs higher retransmission fees, to the detriment of consumers and the public interest. The Applicants have not provided evidence to the contrary.

[5] Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179, at 3-4 (Aug. 7, 2017).

[6] *Id*.

[7] *Id*. at 22.

[8] Comprehensive Exhibit, Application of Raycom Media, Inc. and Gray Television, MB Docket No. 18-230, at 2 (July 11, 2018).

[9] *Id*. at 3 (including separate Gray transactions pending before the Commission).

[10] Declaration of William P. Zarakas and Jeremy A. Verlinda, attached as Exhibit E to Petition to Deny of DISH Network L.L.C., MB Docket No. 17-179, at 4, Table 1 (Aug. 7, 2017).

[11] Joint Response at 5.

III. THE APPLICANTS HAVE NOT MET THEIR BURDEN OF PROVING THE TRANSACTION IS IN THE PUBLIC INTEREST

All but one of the benefits that the Applicants allege in their Joint Response are thinly veiled references to attacks on local content. For example, the Applicants argue that the merger will create "statewide and regional news networks," provide "the legacy Raycom stations with news and information from Gray's Washington, DC news bureau," expand "the number of journalists that work in the Washington, DC news bureau and the national investigative unit," and "realiz[e] economies of scope and scale to invest more in the stations' physical plant and programming production assets than Gray could without the merger."[12]

Their common denominator is consolidation in statewide, regional, and, in the majority of cases, nationwide newsrooms. But, replacing local programming with content pushed down from as far as the Washington, D.C. news bureau goes against the grain of localism, the Commission's most important policy in broadcast matters.

Only one alleged benefit remains: the merger will supposedly help fund "news bureaus in underserved areas, like Vernon Parish, Louisiana, that Gray will serve after the transaction."[13] But the Applicants offer no evidence of any kind, violating a bedrock principle of merger review—that "each claimed benefit must be verifiable."[14]

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[12] Joint Response at 10-11.

[13] *Id*. at 10.

[14] Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc., to Nexstar Media Group, Inc., *Memorandum Opinion and Order*, 32 FCC Rcd. 183, 193 ¶ 23 (2017).

IV. CONCLUSION

The Joint Response provides no evidence to alleviate concerns that Gray's proposed acquisition of Raycom would raise prices for American consumers and reduce localism. As a result of these and other harms, this proposed transaction does not serve the public interest.

Respectfully submitted,

/s/

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