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November 1, 2016

Via ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

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

Dear Ms. Dortch:

On October 28, 2016, the representatives from the American Cable Association, DISH Network, L.L.C., and ITTA (“the parties”) discussed their concerns with the merger of Nexstar Broadcasting Group, Inc. (“Nexstar”) and Media General, Inc. (“Media General”) in a meeting with the following staff from the Commission’s Media Bureau: William Lake, Bureau Chief; Mary Beth Murphy, Deputy Bureau Chief; Susan Singer, Chief Economist; Barbara Kreisman, Chief, Video Division; David Brown, Deputy Division Chief, Video Division; and Jeremy Miller, Senior Attorney. The parties were represented at the meeting by the following:

- Ross J. Lieberman, Senior Vice President for Government Affairs, American Cable Association (“ACA”), Mary C. Lovejoy, Vice President for Regulatory Affairs, ACA, and the undersigned;
- Alison Minea and Hadass Kogan, on behalf of DISH Network, L.L.C.;
- 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,¹ and again asked that, should

¹ See Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA, MB Docket No. 16-57 (filed 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 (filed May 5, 2016) (“*Reply to Opposition*”); Letter from Alison Minea, DISH Network L.L.C., Mary Lovejoy, American Cable Association, and Mike Jacobs, ITTA, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 16-57 (filed Aug. 4, 2016) (“*Aug. 4, 2016 Ex Parte Letter*”). 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. 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.

the Commission decide to approve the merger, it impose conditions sufficient to cure the harms posed to the public.²

In response to questions, the parties reiterated that the merger itself will increase Nexstar's ability to harm consumers by raising retransmission consent fees and causing blackouts in the conduct of retransmission consent negotiations. Moreover, the parties also pointed out that the triggering of after-acquired station clauses is, by definition, a merger-specific harm as, but for the merger, the clauses would not be operative. As a direct result of the merger, MVPDs who have retransmission consent agreements with Media General and who have been forced to accept after-acquired station clauses in their retransmission consent agreements with Nexstar will see the retransmission consent fees they are paying for former Media General stations increase from between 11 percent to 125 percent as rates automatically reset at Nexstar agreement levels over the remaining life of the agreements.³ The parties further noted that the Commission often imposes remedial conditions based on its predictive judgment that a merger will increase the incentive and ability of the merged entity to act in ways that harm consumers.⁴ The fact that other broadcast station groups' retransmission consent contracts may also include after-acquired clauses, suggesting that consent to such provisions are common throughout the industry, was also discussed. However, the extent to which after-acquired station clauses are included in other broadcaster contracts should not be a reason to ignore the harm these clauses in Nexstar agreements will cause if this merger is approved.

The parties noted, as they did in their Petition to Deny, that the merger would give Nexstar unprecedented control over Big-4 stations, increasing the combined entities' incentive and ability to pressure MVPDs of all sizes to pay ever increasing retransmission fees, which ultimately are borne by consumers. MVPDs that make any attempt to push back on outrageous fee demands face the threat of widespread blackouts. Channel blackouts are a serious and merger-specific issue, given that both Nexstar and Media General have a history of blacking out their channels with many MVPDs.⁵ The increased leverage that would result from the merger creates greater potential upside for the merged entity to test the boundaries of the Commission's existing good faith rules for negotiating retransmission consent agreements.

If Nexstar's merger with Media General is approved, it will have 171 television stations in 100 markets, reaching close to 39 percent of all U.S. television households. As noted in the Joint Petition, the combined company would be the largest owner of Big-4 stations in the nation, and would have \$2.3 billion in annual revenue.⁶ The Commission should be wary of allowing Nexstar to grow to such a size because of structural weaknesses in the enforcement of broadcasters' compliance with the good faith rules; weaknesses that become more pronounced as station groups become larger. As an initial matter, few complaints are brought against broadcasters because current rules allow broadcasters to pull their signals during the pendency of the complaint, causing blackouts that result

² Conditions the parties have requested include a baseball-style arbitration remedy and constraints on Nexstar's ability to have retransmission consent rates reset by virtue of its after-acquired station clauses with an MVPD until the expiration of those agreements by their terms. *Joint Petition to Deny or Condition* at 14-15; *Reply to Opposition* at 2, 13; Aug. 4, 2016 *Ex Parte* Letter at 2.

³ See *Joint Petition to Deny or Condition* at 10; *Reply to Opposition* at 6.

⁴ See, e.g., *In the Matter of 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, 26 FCC Rcd 4238 (2011).

⁵ See *Joint Petition to Deny or Condition* at 12-13.

⁶ *Joint Petition to Deny or Condition* at 2, 3, 9.

in harm to the MVPD. For large station groups that can pull multiple channels at the same time, the harm to MVPDs often vastly exceeds the benefit by prevailing in a good faith complaint, as such investigations can be costly and protracted, further harming consumers.⁷

The parties discussed a potential mechanism to ensure that the merged entity complies with applicable rules and any conditions imposed as a result of this review, such as the use of an independent third-party for oversight and certification of retransmission consent agreements and any remedial conditions imposed as a result of this review, together with periodic reporting requirements, similar to conditions imposed in recent media mergers, such as AT&T-DirecTV.⁸ The goal of this compliance program is to relieve MVPDs of some of the burden of policing Nexstar's behavior post-merger. Such a "trust but verify" approach is intended to act as a backstop, bringing transparency and accountability with retransmission consent good faith rules already on the books. With such a compliance plan, consumers win, and there is no harm in asking Nexstar to demonstrate compliance with the law in exchange for the considerable economic benefits it expects to reap in acquiring Media General.

This approach is not the subject of any pending non-adjudicatory proceedings in which the parties are participating and would be a minimally intrusive means of tempering the increased incentive and ability of the merged entity to push the boundaries of good faith negotiations.

This letter is being filed electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Barbara Esbin

cc: William Lake
Mary Beth Murphy
Susan Singer
Barbara Kreisman
David Brown
Jeremy Miller

⁷ The parties noted that the Commission has disclaimed authority to require interim carriage under its retransmission consent good faith authority. See *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2727-2728, ¶ 18 (2011).

⁸ See *Applications of AT&T, Inc. and DIRECTV For Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9284-9301 (2015) (Appendix B: Conditions, Section VII, Compliance Program and Reporting).