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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 Nov. 22, 2016, I spoke with Jessica Almond, Legal Advisor to Chairman Wheeler, to discuss the position of the American Cable Association ("ACA") regarding the merger of Nexstar Broadcasting, Inc. ("Nexstar") and Media General, Inc. ("Media General"), consistent with ACA's previous filings in the above referenced docket.[1] I reiterated that, if approved, the Commission must adopt a condition limiting the triggering of so-called "after-acquired station" clauses found in Nexstar's existing retransmission consent agreements, which will force dozens of MVPDs and millions of consumers to immediately pay dramatically higher fees and be saddled with other more onerous terms and conditions, totaling at least $24 million in just the first year. ACA urged the Commission to avoid causing these consumer harms by conditioning any approval of this transaction in a manner that prevents this merger-specific harm from occurring.

As ACA has previously explained,[2] Nexstar's retransmission consent agreements with MVPDs are structured so that if the station group acquires another broadcast station that is already carried by that MVPD, the rates, terms, and, conditions of the MVPD's agreement with the acquired station will be replaced by the rates, terms, and conditions contained in the MVPD's agreement with Nexstar. These after-acquired station clauses thus permit Nexstar to acquire stations in new markets and replace lower retransmission consent rates and less onerous terms and conditions an MVPD had previously negotiated in good faith with the station's owner prior to its acquisition with Nexstar's own much higher rates and

[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").

[2] *Joint Petition to Deny or Condition* at 7; *see also* Implementation of Section 103 of the STELA Reauthorization Act of 2014, Mb Docket No. 15-216, Comments of the American Cable Association at 73-74 (filed Dec. 2, 2015); Letter from Barbara Esbin, Counsel to the American Cable Association, to Marlene Dortch, Secretary, FCC, MB Docket No. 15-216, (filed Mar. 7, 2016).

more onerous terms and conditions. Market data demonstrates how station acquisition is a very profitable activity for Nexstar. According to SNL Kagan, on a station/network basis, Nexstar led all TV station groups with an average retransmission consent rate of $1.67 per sub per month, whereas the total/weighted average of the industry is an estimated $0.88.[3] This data also reveals Nexstar's strong financial interest in getting deals approved as quickly as possible – even reasonable delays mean the loss of additional retransmission consent revenue increases.

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.[4] This is consistent with SNL Kagan estimates which show that Nexstar receives an estimated average monthly per subscriber retransmission consent fee of $0.29 greater than Media General's estimated average subscriber fee on a per station basis of $1.36.[5] It is also consistent with Nexstar and Media General's own estimate that it will realize approximately $24 million in net retransmission consent revenue in year one because MVPDs will be immediately billed for Media General stations at Nexstar rates.[6] The triggering of after-acquired station clauses is, by definition, a merger-specific harm, because but for approval of the merger, the clauses would not be operative.[7]

This merger presents an opportunity for the Commission to protect consumers from paying higher cable rates as a ***direct consequence*** of the merger's triggering of numerous after-acquired station clauses.[8] To ameliorate the direct harm resulting from this transaction, the Commission should condition approval of any license transfers on Nexstar's commitment not to exercise its right to trigger harmful after-acquired station clauses for the duration of its agreement with an MVPD.

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[3] Peter Leitzinger, *Retrans per sub rates grow 28.3% in H1, Nexstar leading,* SNL Kagan (Sept. 28, 2016), https://www.snl.com/interactivex/article.aspx?id=37849648&KPLT=6&s_data=si%3d1%26kpa%3d1184b2e3-336e-42bd-9f65-f8ec50b2f943%26sa%3d ("*Leitzinger*").

[4] *See Joint Petition to Deny or Condition* at 10; *Reply to Opposition* at 6.

[5] *Leitzinger.*

[6] Nexstar Broadcast Group – Media General, Supplemental Information, *A Compelling Combination to Become Nexstar Media Group: A Pure-Play Broadcasting and Digital Media Leader,* at 7 (Jan. 27, 2016) ("~$24m – Media General Sub counts will be billed at Nexstar rates"), *available at* http://www.nexstar.tv/wp-content/uploads/2016/07/Nexstar-MEG-Transaction-with-Supplemental-Information-2-8-16.pdf.

[7] After-acquired station clauses cause harm to MVPDs and consumers. They nullify existing agreements that MVPDs have budgeted for and relied on in determining the fees charged to subscribers, as well as how to allocate resources. It is unfair and destabilizing to operator finances to be faced with such sudden and unpredictable increases, which are not reflective of any improvement in the service being offered to the MVPD or customers to justify a rate increase, but simply due to a formal name change in the license's owner. These burdens are ultimately passed along to consumers.

[8] *See Joint Petition to Deny or Condition* at 9-13; *Reply to Opposition* at 4-6.

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

Sincerely,

Ross J. Lieberman

cc: Jessica Almond
David Grossman
Robin Colwell
Matthew Berry
Marc Paul
William Lake
David Brown
Jeremy Miller