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May 5, 2016

Via ECFS and Email

Diane Cornell
Gigi Sohn
Jessica Almond
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

RE: Petition to Deny – Docket 16-57

Dear Diane, Gigi and Jessica:

Unrelated to the merits of the case, I call your attention in the attached pleading to footnote 1 and the passage which begins at the bottom of page 4 through the end. I hope that we can work with you to enable the Media Bureau to facilitate meaningful public participation in future proceedings.

Sincerely,

Andrew Jay Schwartzman

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David Brown

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Applications of	)	
Nexstar Broadcasting Group, Inc.	)	
and Media General, Inc.	)	MB Docket No. 16-57
	)	
For Consent To Transfer Control of Licenses	)	

REPLY TO CONSOLIDATED OPPOSITION TO PETITIONS TO DENY

The Communications Workers of America, Free Press, Common Cause, Public Knowledge and the Open Technology Institute at New America (OTI) (collectively, Petitioners) respectfully submit this reply to the *Consolidated Opposition to Petitions to Deny* (*Opposition*) filed on April 14, 2016 by Nexstar Broadcasting Group, Inc. and Media General, Inc. (collectively referred to as Nexstar).[1]

STANDING

Nexstar initially objects to Petitioners' standing, stating that "they have put forth nothing besides broad and conclusory assertions that the Transaction conflicts with Commission rules and policies (without specifying a single rule that the Transaction actually violates) and decreasess diversity...."[2] They also argue that Petitioners have failed to submit affidavits from viewers in each of the affected communities.[3] Finally, they claim that Petitioners have not identified how they would be injured by grant of the pending applications.[4]

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[1]On March 30, 2016, Petitioners, along with other groups filing petitions to deny in this proceeding, submitted an *Unopposed Motion for Extension of Time* asking that they have until May 4, 2016 within which to file their reply. Because it is Petitioners' understanding that it is the practice of the Media Bureau not to acknowledge, much less act upon, unopposed requests for extensions of time, but to grant them *sub silentio*, Petitioners expect that the Media Bureau will regard this reply as timely filed.

[2]*Opposition*, at p. 2.

[3]*Id.*, at p. 3.

[4]*Id.*, at pp. 3-4.

Nexstar is simply wrong. The declaration submitted by Petitioners is more than enough to establish that Petitioners and their members will be adversely affected and fully meets Commission requirements[5] as well as the judicial principle that so long as one party establishes standing, other parties will be treated as having standing as well.[6] It is basic Commission policy that reductions in diversity are contrary to the public interest. Petitioners explained the loss of ownership diversity which would result from grant of the applications and noted that Nexstar "does not mention a single way in which it will deploy its new scale to improve or extend the diversity of its programming or otherwise share its increased revenues with anyone except its shareholders."[7] While it is not necessary to show that a proposed transaction will violate any specific Commission rule, Petitioners pointed to problems the applications raise with respect to the national ownership cap and the TV doupoly rule. That is more than enough injury to establish standing.[8]

Nexstar's principal legal argument is that what it continues to refer to as "Legacy JSAs" need not be dissolved because the 2016 Appropriations Act contained a provision which extended the deadline for dissolution of JSAs in effect as of March 31, 2014 until September 30, 2025. However much Nexstar postures, the fact is that the legislation does not allude in any way to whether JSAs would survive the transfer of a license, and the Commission clearly has the

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[5]*See Shareholders of Tribune Company*, 29 FCCRcd 844, 848-849 (2014). While the Commission said "it would be prudent" to submit multiple declarations, *id.*, that does not change the fact that Petitioners have met their burden here.

[6]*See, e.g.*, *Massachusetts v. EPA*, 549 U.S. 497, 518 (2007) ("Only one of the Petitioners needs to have standing to permit us to consider the petition for review."); *Rumsfeld v. Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 53 n.2 (2006) ("[T]he presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement.").

[7]*Petition to Deny* at p. 4.

[8]*Petition to Deny* at pp. 4-5.

authority to interpret it to address this unanswered question. In light of the fact that longstanding Commission policy for radio JSAs,[9] upheld by the Third Circuit, has been that JSAs do not survive transfer of assignment of license,[10] the only rational construction of the statute is that Congress was acting with an awareness of how the Commission would treat the issue in extending it to TV JSAs. Petitioners also note that the Commission has also treated newspaper/broadcast ownership combinations in the same way.[11]

Nexstar responds only perfunctorily to Petitioners' objection to its half-hearted fallback argument that it is entitled to a "temporary" waiver of the Commission's rules. It argues that the Commission has in the past granted temporary waivers to allow orderly dissolution of combinations, citing only to the Bureau's decision in *Shareholders of Media General*, 29 FCCRcd 14798, 14805. This decision strongly supports Petitioners, not Nexstar. In that case, the Bureau reaffirmed the central principle that "legacy" JSAs must be dissolved when the licenses are transferred or assigned.[12] Again, following longstanding policy, the Bureau said that

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[9]*2002 Biennial Review*, 18 FCCRcd 13620, 13809-10 (2003) (allowing previously grandfathered combinations to be freely transferable "would hinder the Commission's efforts to promote and ensure competitive markets" and that "[g]randfathered combinations, by definition, exceed the numerical limits that...promote the public interest as related to competition.")

[10]*Petition to Deny*, pp. 6-7 (*citing Prometheus Radio Project v. FCC*, 373 F.3d 372 (3d Cir. 2014).

[11]*Amendment of Sections 73.34, 73.240, and 73.636 of the Commission's Rules Relating to Multiple Ownership of Standard, FM, and Television Broadcast Stations*, 50 FCC2d 1046,1076 ¶103 (1975). ("In addition, once a sale is to take place the rule would require a split in an existing combination. No divestiture would be effected nor hardship created since this is a voluntary action by the seller. Thus the [new NBCO] rule will apply to all applications for assignment or transfer other than those to heirs or legatees or those for pro-forma changes in ownership.")

[12]Notably, in discussing why the overall transaction was in the public interest, the Bureau pointed out that there would be no new duopolies arising from approval and that it would "result in the termination of an existing JSA and SSA...." *Id.*, 29 FCCRcd at 14804.

"the Commission has previously found that temporary waiver of its ownership rules is appropriate so long as such waiver does not undermine the goals of the Commission's ownership rules...."[13] On that basis, it granted a temporary waiver of ***one year and four days.***

Amazingly, in its *Opposition*, Nexstar does not even mention that the waiver it seeks is for ***nine and a half years.*** There is no policy rationale or even logical argument that allowing an attributable ownership interest in violation of the Commission's local ownership rules for that extended period could possibly be consistent with the Commission's policy goals. It will reduce diversity of voices in the affected communities, it will undermine competition in the advertising market and remove a local voice. Indeed, that is precisely why the Commission has determined that television JSAs should be treated as creating attributable interests and required their dissolution in circumstances such as this. It makes no sense to link the duration of any temporary waiver for a license transferree to legislation designed to ease the burden for parties that had previously entered into JSAs and which will be continuing to maintain the relationship with their original partners.

There are no public interest benefits that justify grant of the requested waivers or, for that matter, any other aspect of this transaction. Petitioners are constrained to observe in this connection that the Media Bureau's handling of this matter reflects a blatant disregard for the public's ability to participate meaningfully in this proceeding. When Petitioners filed their *Petition to Deny* on March 18, 2016, they were unaware that on or about March 16, 2016, Nexstar filed a significant amendment to its Public Interest Statement including an entirely new nine page passage purporting to extol the "Competitive and Public Interest Benefits of This

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[13] *Id.*, 29 FCCRcd at 14905.

Transaction." Although this transaction was deemed "permit but disclose" and given a docket number so documents could be electronically filed via ECFS, the amendment was not posted on ECFS.[14] Nor, as of May 3, 2016, has it been posted in the "Applications" section on the transaction page for this proceeding on the Commission's website; instead the only link there is to the original, unamended version of the Public Interest Statement.[15] Thus, members of the public, including Petitioners, had no knowledge of the filing of this amendment, just two days before the deadline for filing petitions to deny. Petitioners learned about this amendment only by reading references to it in Nexstar's *Opposition.* Having learned of this, it was still extremely difficult to locate the amendment. Only a sophisticated user, not a member of the general public, would know to search the Commission's CDBS site. Importantly, however, the amendment is NOT posted for all the affected licenses. Counsel, being reasonably sophisticated, had to start with the list of affected licenses in the Commission's February 18, 2016 *Public Notice*. Knowing what most people would not, *i.e.*, that the best way to search in this instance would be to use facility numbers, counsel had to conduct application searches. Starting from the top of the list in the Public Notice, counsel had to search through three different license applications lists to find one that was accepted at the appropriate time, *i.e.*, February 11, 2016. Counsel then had to know to click on the application and scroll all the way to the bottom to find an amended exhibit and download it.

As it happens, the additional language is nothing but hortatory descriptions of what any licensee would be expected to do to serve the public interest. As is relevant here to the requested

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[14]See Attachment A.
[15]See Attachment B.

waivers, Nexstar offers nothing that would bring additional benefit to the affected markets where it has sought waivers of the JSA divestiture requirement. Even so, in light of the Commission's claimed policy of placing principal reliance on petitions to deny to assess the validity of proposed renewals and transfers, the handling of this matter demonstrates blatant disregard of the need to insure that there is meaningful public participation. Without getting into debates over whether this constituted a major amendment within the meaning of the Commission's rules, the public deserves much better treatment. In light of the Media Bureau's failure to post the amendment on ECFS and on the transaction page, it should have extended the filing deadlines for petitions to deny in this case.

CONCLUSION

Wherefore, Petitioners respectfully ask that the Commission dismiss the applications or designate them for hearing and grant all such other relief as may be just and proper.

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Respectfully submitted,

Andrew Jay Schwartzman
Institute for Public Representation
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May 5, 2016

ATTACHMENT A

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Proceeding Number	Name of Filer	Law Firm Name	Date Received	Date Posted	Exparte	Type of Filing	Pages
16-57	Nexstar Broadcasting Group, Inc. and Media General, Inc.	Wiley Rein LLP	04/14/2016	04/15/2016	No	OPPOSITION	57
16-57	ACA, CWA et al., Cox Communications, Inc., DISH, and ITTA		03/30/2016	03/30/2016	No	MOTION FOR EXTENSION OF TIME	4
16-57	Nexstar Broadcasting Group, Inc. and Media General, Inc.	Wiley Rein LLP	03/24/2016	03/24/2016	No	MOTION FOR EXTENSION OF TIME	3
16-57	Nexstar Broadcasting Group, Inc. and Media General, Inc.	Wiley Rein LLP	03/23/2016	03/24/2016	No	MOTION FOR EXTENSION OF TIME	3
16-57	CWA, et al.	Institute for Public Representation	03/18/2016	03/21/2016	No	PETITION	13
16-57	Cox Communications, Inc.	Latham & Watkins LLP	03/18/2016	03/21/2016	No	PETITION	48
16-57	DISH Network, American Cable Association and ITTA		03/18/2016	03/21/2016	No	PETITION	21
16-57	Jack N. Goodman		03/02/2016	03/03/2016	No	LETTER	1
16-57	Media Bureau	FCC	02/26/2016	02/26/2016	No	PUBLIC NOTICE	0

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ATTACHMENT B

Nexstar and Media General, MB Docket No.16-57

Docket Number:
MB Docket No.16-57

Nexstar Broadcasting Group, Inc. (Nexstar) and Media General, Inc. (Media General) have filed applications seeking Commission approval to transfer control of or assign Media General's various broadcast television licenses to Nexstar. Media General currently holds or controls 68 full-power broadcast television station licenses. In eight television markets, Nexstar and Media General each holds a "Top Four" full-power television station license; to comply with the Commission's rules, the applicants state that if the application is approved, they will divest one of those stations in each market. In five television markets, the companies also each hold full-power broadcast television station licenses which they claim is in accordance with Commission rules. If their applications are approved, the applicants claim that after the divestitures, the combined company would hold 171 broadcast television station licenses in 100 markets, reaching 39% of all U.S. television households. Petitions to deny and comments are due on or before March 18, 2016.

180-day Timeline

Day: **77**

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ECFS Link:
Search public filings and get the RSS feed for MB Docket No.16-57

(http://apps.fcc.gov/ecfs/proceeding/view?name=16-57)

Orders, Public Notices... Record Documents Application Documents

Feb 10, 2016
Application (https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.hts?context=25&appn=101717215&formid=315&fac_num=74421)

Feb 10, 2016
Public Interest Statement (https://licensing.fcc.gov/cdbs/CDBS_Attachment/getattachment.jsp?appn=101717215&qnum=5050&copynum=1&exhcnum=1)

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General Information:

This page contains an indexed unofficial listing of and electronic links to most materials in this docket. The applications and any associated documents are also available for public inspection and copying during normal reference room hours at the FCC Reference Center (/general/fcc-reference-information-center). Copies of the applications and any subsequently-filed documents in this matter also may be obtained through the Commission's Electronic Comment Filing System (http://apps.fcc.gov/ecfs/). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov (mailto:fcc504@fcc.gov) or call the Consumer & Governmental

Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Tags:

Mergers & Acquisitions (/tags/mergers-acquisitions) - Transactions (/tags/transactions)

CERTIFICATE OF SERVICE

I certify that on this date, May 5, 2016, the foregoing Reply to Consolidated Opposition to Petitions to Deny has been served by United States Mail, postage prepaid, and by email, upon the following:

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