Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Request for Clarification of the	)	MB Docket 13-50
Commission's Policies and Procedures	)	
Under 47 U.S.C. §310(b)(4)	)	

To: The Chief, Media Bureau

COMMENTS OF NEXSTAR BROADCASTING, INC.

Nexstar Broadcasting, Inc. ("Nexstar")[1] respectfully submits these comments in response to the Media Bureau's request for public comment on the August 31, 2012 letter ("Letter") submitted by the Coalition for Broadcast Investment ("Coalition"), which requests that the Media Bureau clarify that it will conduct a substantive, facts and circumstances evaluation of proposals for foreign investment in excess of 25 percent in the parent company of a broadcast licensee, consistent with and in furtherance of its authority under Section 310(b)(4) of the Communications Act, as amended (the "Communications Act").[2]

Section 310(b)(4) of the Communications states:

> (b) No broadcast or common carrier . . . license shall be granted to or held by
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> (4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government

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1 Nexstar is the licensee of 48 full-power television stations in 41 markets.

2 Media Bureau Announces Filing of Request for Clarification of the Commission's Policies and Procedures under 47 U.S.C. §310(b)(4) by the Coalition for Broadcast Investment, MB Docket No. 13-50, Public Notice, DA 13-281 (rel. Feb. 26, 2013).

> or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.[3]

Accordingly, the Communications Act expressly gives the Commission discretion to authorize more than 25 percent foreign ownership in broadcast licensees subject to a public interest showing. Yet, currently, the Commission maintains an irrebuttable presumption against even considering a proposal for indirect foreign investment in broadcast licensees in excess of the 25 percent benchmark.[4]

As the Coalition noted in its Letter, the original purpose of the 25 percent benchmark was to prevent foreign influence over radio communications in time of war, when telegraph and wireless stations were the only means of mass communications.[5] But, today, America's citizens live, work and play in a multichannel, multi-platform environment in which they can access local, national and international news and information freely from many sources, including the Internet, mobile applications, video and audio streaming services, cable programming networks, and social networking tools. Accordingly, the underlying premise of protecting American citizens from foreign "propaganda" is outdated and unsustainable in today's ever-expanding multimedia environment.

Moreover, the nearly all other of today's information sources are not subject restrictions limiting how much foreign funding may be invested in them. For example, neither multichannel video programming distributors ("MVPD") themselves, nor the ever expanding number of non-broadcast channels carried by such MVPDs are subject to foreign ownership restrictions. Over-

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3 47 U.S.C. § 310(b)(4).

4 *See e.g., Fox Television Stations, Inc.*, 11 FCC Rcd 5714 (1995), at ¶ 21.

5 Letter at p. 6.

the-top service providers (Netflix, Hulu, Aereo, Apple and the like) are not subject to foreign investment restrictions; Google, Yahoo!, Facebook and Twitter are not subject to foreign investment restrictions; Pandora, iTunes and other Internet radio services are not subject to foreign investment restrictions; and news sites such as CNN.com, MSNBC.com, and the plethora of online newspapers are not subject to foreign investment restrictions. This provides these entities with a significant competitive advantage because they are able to access capital sources for infrastructure and service enhancements that may be unavailable to Nexstar due to NBGI's foreign ownership levels.

In addition, the Commission recognized more than 15 years ago that current conditions no longer warrant strict application of a 25 percent cap on foreign investment in the telecommunications sector, and adjusted its procedures to authorize foreign investment in excess of the statutory benchmark in order to encourage a "more open and competitive U.S. telecommunications market."[6] From this the Commission has developed substantial expertise and tools to evaluate the merits of proposed foreign investment, which can be carried over to a facts and circumstances review with respect to broadcast licensees.

Nexstar also believes Commission adoption of a facts and circumstances evaluation of proposed indirect foreign investment in excess of 25 percent for broadcast licensees will be directly beneficial to Nexstar by reducing Nexstar's monitoring and compliance expenses and allowing Nexstar to demonstrate based on its specific facts and circumstances that above the benchmark indirect foreign ownership (via NBGI) will not result in excessive control by foreign governments, entities or individuals.

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[6] *Market Entry and Regulation of Foreign-Affiliated Entities*, Report and Order, 12 FCC Rcd 23891 (1995) ("ECO Order"), at ¶ 183.

Nexstar is a wholly-owned subsidiary of Nexstar Broadcasting Group, Inc. ("NBGI"), a company whose stock is publicly traded on the NASDAQ exchange. Prior to December 2012, ABRY Broadcast Partners II, L.P. and ABRY Broadcast Partners III, L.P. (collectively, "ABRY") held 89 percent of Nexstar's voting power and calculating Nexstar's foreign ownership investment was readily determinable.

In December 2012, ABRY sold approximately 9 million of its shares of NBGI stock through an underwritten shelf registration. In February 2013, ABRY sold an additional 3,450,000 shares of its NBGI stock through the shelf registration. Thus, while ABRY continues to hold voting control of NBGI, NBGI's shares have become more widely dispersed.[7]

As the number of public shareholders of NBGI has increased, obtaining information regarding these shareholders has become more difficult. This is primarily because the vast majority of NBGI's shareholders hold their shares in book entry form through Depository Trust Company's ("DTC").[8] DTC appears in the NBGI's stock records as the sole registered owner of securities deposited at DTC (i.e., the NBGI records reflect DTC as the stockholder rather than the actual beneficial owner of the shares) and holds the deposited securities such that there are no specifically identifiable shares directly owned by any one shareholder. Consequently, as more of NBGI's shares are held by DTC, it is becoming more difficult and more costly to identify the actual NBGI shareholders and, therefore, make a full assessment of NBGI's foreign ownership.

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7 The Media Bureau recently granted consent to an application to transfer control of Nexstar and NBGI from ABRY (de jure control) to ABRY (de facto control) in order to permit ABRY to commence and complete additional shares of its NBGI stock over the coming months as market conditions warrant. See File No. BTCCDT-20130301ACO et. seq.

8 Depository Trust Company is a subsidiary of the Depository Trust and Clearance Company ("DTCC"). DTCC provides clearance, settlement, and information services for equities, corporate and municipal bonds, trusts, government and mortgage-backed securities, money market instruments, and over-the-counter derivatives. It provides an efficient and safe way for buyers and sellers of securities to make their exchange (i.e. clear and settle) transactions. DTCC also provides a central custody of securities.

In order to assist Nexstar in its foreign ownership compliance, NBGI participates in the DTC's Seg 100 program whereby foreign-owned shared are deposited into a segregated account. DTC periodically reports this information to NBGI's stock transfer agent, who in turn, periodically reports this information to Nexstar. Nonetheless, the DTC Seg 100 program relies on holders of securities to properly deposit their securities in the Seg 100 account. NBGI also is able to ask Broadridge Financial Solutions, Inc. for information regarding shareholders foreign ownership in connection with Broadridge's search of the NBGI shareholder base for certain types of shareholder communications.[9] But, these searches are costly to undertake. Finally, shareholders who hold five percent or more of NBGI's voting stock are required to file annual reports with the Securities and Exchange Commission in February of each year and Nexstar tracks this information as it becomes available and may make inquiries of such shareholders under its articles of incorporation.[10]

Notwithstanding NBGI's share ownership, day-to-day management of Nexstar is invested in the company's officers, whose actions and activities are overseen by the company's board of directors. All of Nexstar's and NBGI's current officers and directors are U.S. citizens. Thus, with NBGI's share ownership widely dispersed and control vested in management and the board of directors, the Commission's outdated underlying concern regarding negative propaganda from foreign owners on Nexstar's stations is unfounded.

Commission adoption of a facts and circumstances review of indirect foreign investment in broadcast licensees such as Nexstar will allow Nexstar the opportunity to make an appropriate

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[9] Nexstar utilizes Broadridge for the processing and distribution of its proxy materials to its shareholders, as well as for distribution of its other regulatory reports.

[10] To the extent NBGI and Nexstar become aware of excessive foreign ownership holdings in NBGI, NBGI's amended articles of incorporation allow NBGI to take such remedies as it deems necessary in order to bring its foreign ownership into compliance with Section 310(b).

showing to the Commission. If limited over the benchmark foreign investment is permitted in NBGI, it will reduce Nexstar's expenses by reducing the number of costly compliance inquiries Nexstar must make; and improve NBGI's shareholder relations by allowing Nexstar to present all of the relevant information to the Commission related to any over the benchmark foreign ownership for consideration before NBGI summarily revokes shareholder voting rights.

The plain language of the Communications Act confirms that the Commission must make a public interest finding that a particular instance of indirect foreign investment in excess of the 25 percent benchmark should be prohibited. Yet, notwithstanding that the 25 percent figure was intended to be a benchmark only, the Commission anachronistically and rigidly continues to apply a 25 percent cap to limit foreign investment in broadcast licensees. It is past time for the Commission to update its procedures with respect to broadcast licensee foreign ownership. Therefore, Nexstar urges the Commission to adopt a broadcast policy in line with its other foreign ownership policies and evaluate foreign ownership of broadcast licensees based on the facts and circumstances presented.

WHEREFORE, for the foregoing reasons, Nexstar respectfully urges the Commission to adopt the Coalition's proposal that it conduct a substantive, facts and circumstances evaluation of proposals for foreign investment in excess of 25 percent in the parent company of a broadcast licensee, consistent with and in furtherance of its authority under Section 310(b)(4) of the Communications Act.

Respectfully submitted,

Nexstar Broadcasting, Inc.

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