

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Applications of Tribune Media Company and
Nexstar Media Group, Inc. for Consent to
Transfer Control of Licenses and
Authorizations

MB Docket No. 19-30

COMMENTS OF THE AMERICAN TELEVISION ALLIANCE

The American Television Alliance (“ATVA”) wishes to raise four issues regarding the applications by Nexstar Media Group, Inc. (“Nexstar”) and Tribune Media Company (“Tribune”) to create the country’s largest television broadcast company.¹

- First, the applications are not yet ripe for review. This transaction cannot meaningfully be reviewed until the Applicants disclose the stations Nexstar proposes to divest, the parties to whom it proposes to divest, and the terms under which it proposes to divest. We ask the Commission to issue a Public Notice and permit a reasonable time period to comment on the transaction in its entirety once the Applicants provide this information.
- Second, the proposed transaction will raise retransmission consent prices. The Applicants admit as much, and even tout this as a benefit of the transaction.² But increased retransmission consent fees are not a benefit; they are a public harm, as MVPD customers foot the bill for fees imposed by broadcasters. This harm to the public clearly outweighs any alleged benefits from these higher fees.

¹ *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of Tribune Media Company to Nexstar Media Group, Inc. and Permit-but-Disclose Ex Parte Status for the Proceeding*, Public Notice, DA No. 19-82, MB Docket No. 19-30 (rel. Feb. 14, 2019).

² File No. BTC - 20190107ADI, Comprehensive Exhibit at 15 (“Comprehensive Exhibit”) (admitting that the transaction will result in “increased revenue” to Nexstar from retransmission-consent fees)., available at https://licensing.fcc.gov/cgi-bin/ws.exe/prod/cdbs/forms/prod/cdbsmenu.htm?context=25&appn=101796969&formid=315&fac_num=72114.

- Third, the Applicants assert that MVPDs benefit by paying more in retransmission fees to obtain one-stop shopping. As an entity representing MVPDs, we can say with confidence that the harm of higher consumer prices dwarfs whatever slight benefit MVPDs gain from the transaction’s alleged efficiencies.
- Fourth, MVPDs do not act as “gatekeepers” between broadcasters and their audiences. Broadcasters, since their inception, have had the ability to reach the public directly through spectrum that they license, free of charge, from the government.

Ripeness. To begin with, the applications are not yet ripe for review. The Applicants seek approval “subject to” certain divestitures designed to comply with the local and national ownership rules.³ Yet Applicants have not stated (1) which stations Nexstar proposes to divest; (2) the parties to whom it proposes to divest; or (3) the terms under which it proposes to divest. Without this information, the Commission cannot conclude that the transfer will serve “the public interest, convenience, and necessity.”⁴ Indeed, without detailed information about the relationship, if any, between Nexstar and the buyers of the stations Nexstar proposes to divest, the Commission cannot even conclude that the transaction complies with the local and national ownership rules.

The Commission, in other words, needs to review the *entire* transaction—including divestitures—before it can determine that granting the Applications serves the public interest. As the Applicants themselves appear to realize, the divestitures in large part define the transaction. If the divestitures themselves cause public interest harms or raise other issues, the transaction cannot stand.⁵

³ Comprehensive Exhibit at 2-3

⁴ 47 U.S.C. § 310(d); *AT&T Inc. and DIRECTV*, 30 FCC Rcd. 9131, ¶ 2 (2015) (“*AT&T-DIRECTV*”).

⁵ For example, divestitures to sidecar entities such as Dreamcatcher could raise issues, depending on how they are structured. Likewise, divestitures to Apollo Global Management could raise issues related to the implementation of after-acquired station clauses. Nabila Ahmed and Kiel Porter, *Apollo Is Nearing Deal for Group of Nexstar Stations*, Bloomberg (Feb. 13, 2019),

In short, the Commission cannot meaningfully evaluate this Application without significant additional information. We ask the Commission to issue a second Public Notice once the Applicants provide this information, giving the public the opportunity to fully review and comment on any submissions.

Conceded Harm. This transaction will cause public-interest harms by raising retransmission consent prices for consumers. The Media Bureau recently dismissed concerns that broadcaster consolidation would raise retransmission consent prices as too “generalized” and not sufficiently transaction specific.⁶ Here, however, the Applicants themselves state that price increases will occur—and, indeed, describe this as a purported “benefit” of the transaction.

The Applicants claim that they will realize “more than \$160 million in synergies and efficiencies within the first year of closing the Transaction.”⁷ Much of this, we know from Nexstar’s Wall Street presentations, will come simply from “applying Nexstar rates to Tribune subscriber counts.”⁸ Thus, the day after the transaction is consummated, consumers will pay more—as much as \$75 million more—for the exact same programming. This is, of course, an undeniable public-interest harm. The Applicants suggest that they will use increased MVPD fees

<https://www.bloomberg.com/news/articles/2019-02-13/apollo-is-said-to-be-nearing-deal-for-group-of-nexstar-stations>. The Applicants could also structure their divestitures such that lower-priced Tribune stations are temporarily controlled by higher-priced Nexstar stations prior to divestiture, potentially triggering after-acquired clauses and raising retransmission consent rates. In the *Gray-Raycom* transaction, the Commission relied on the applicants’ representations that they would not structure their divestitures in such a manner. *Raycom Media, Inc. and Gray Television, Inc.*, No. BALCDT-20180709ACVBA, 2018 WL 6722650, ¶ 8 (Med. Bur. Dec. 20, 2018)

⁶ *Id.* ¶ 16.

⁷ Comprehensive Exhibit at 13.

⁸ *Acquisition of Tribune Media Company*, Nexstar Media Group, Inc., 10 (Dec. 3, 2018), <https://www.nexstar.tv/wp-content/uploads/2018/12/Nexstar-Tribune-Investor-Presentation-FINAL-12-3-18.pdf>.

to improve programming.⁹ Even if such claims were true, we do not believe that such benefits would outweigh the manifest consumer harm of higher retransmission consent fees.

Another portion of the claimed \$160 million in synergies and efficiencies will come from “increased revenue Nexstar derives as a result of delivering more value to MVPDs.”¹⁰ That is, Nexstar intends to charge more for retransmission consent,¹¹ purportedly because it will deliver “more value” to MVPDs by permitting them to negotiate with a single entity (Nexstar) instead of two entities (Nexstar and Tribune).¹²

We are unaware that the Commission has ever held retail price increases to be a public-interest benefit. To the contrary, whether a transaction will create or enhance pricing power, leading to consumer price increases and related harms, ranks among the foremost “public-

⁹ Comprehensive Exhibit at 12-13.

¹⁰ *Id.* at 15.

¹¹ Applicants also state that broadcasters must excel at “revenue growth” in a world of declining advertising revenues—growth that logically can only come from retransmission consent fees. *See id.* at 21; compare *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, DA No. 17-71, MB Docket No. 16-247 at Tbl. III.B.4 (rel. Jan. 17, 2017) (advertising revenue was 76% of overall revenue in 2014 and retransmission consent was 18% of overall revenue) with *2018 Communications Marketplace Report*, FCC at Fig. B-5 (rel. Nov. 21, 2018), <https://docs.fcc.gov/public/attachments/DOC-355217A1.pdf> (advertising revenue dropped to 61% in 2017 and retransmission consent was 31% of overall revenue.); *see also Nexstar Overall Revenue Up for Fourth Quarter Despite Declines in Local, National Ad Revenue*, All Access Music Group (Feb. 26, 2019), <https://www.allaccess.com/net-news/archive/story/184358/nexstar-overall-revenue-up-for-fourth-quarter-desp> (showing that Nexstar’s retransmission consent revenue exceeded its advertising revenue for the first time). As advertising revenues decline, broadcasters may seek to make up these losses by charging higher retransmission consent fees, harming MVPD customers in the process.

¹² Comprehensive Exhibit at 15 (describing purported MVPD reduced transaction costs).

interest harms” of concern to the Commission.¹³ Likewise, a powerful public-interest benefit of a transaction is the possibility that a transaction will *decrease* retail prices.¹⁴

The Applicants themselves, in other words, have conceded that the proposed transaction will create a significant public interest harm. In the end, the purported benefits of the transaction simply do not outweigh these recognized harms.¹⁵

Alleged “Increased Value.” The Applicants’ claim that price increases are a benefit because the combined entity will deliver “more value”¹⁶ to MVPDs through one-stop shopping is not credible because the efficiency, if it exists, is so small. The claimed efficiency involves nothing more than the ability to negotiate with one station group instead of two. Not one member of ATVA would be willing to subject its customers to significantly higher

¹³ See, e.g., *EchoStar Commc’ns Corp., Gen. Motors Corp. and Hughes Elecs. Corp.*, 17 FCC Rcd. 20559, ¶ 169 (2002) (“[The evidence] strongly suggests that, in the absence of any significant savings in marginal cost, the merger will result in a large increase in post-merger equilibrium prices. Given this likelihood, we cannot find that the Applicants have met their burden of demonstrating that the proposed merger will produce merger-specific public interest benefits of the magnitude the Applicants allege.”); *XM Satellite Radio Holdings Inc. to Sirius Satellite Radio Inc.*, 23 FCC Rcd. 12348, ¶ 6 (2008) (“We also conclude that, absent Applicants’ voluntary commitments and other conditions discussed below, the proposed transaction would increase the likelihood of harms to competition and diversity. As discussed below, assuming a satellite radio product market, Applicants would have the incentive and ability to raise prices for an extended period of time.”); *Adelphia Commc’ns Corp. to Time Warner Cable Inc. and Comcast Corp.*, 21 FCC Rcd. 8203, ¶ 116 (2006) (“[W]e find that the transactions may increase the likelihood of harm in markets in which Comcast or Time Warner now hold, or may in the future hold, an ownership interest in RSNs, *which ultimately could increase retail prices for consumers* and limit consumer MVPD choice. We impose remedial conditions to mitigate these potential harms.”) (emphasis added).

¹⁴ *AT&T-DIRECTV* ¶ 4 (“We find that the combined AT&T-DIRECTV will increase competition for bundles of video and broadband, which, in turn, will stimulate lower prices, not only for the Applicants’ bundles, but also for competitors’ bundled products—benefiting consumers and serving the public interest.”).

¹⁵ See, e.g., *Media General, Inc. and Nexstar Media Grp., Inc.*, 32 FCC Rcd. 183, ¶ 19 (2017) (In this review, the Commission “employs a balancing process, weighing any potential public interest benefits of the proposed transaction against any potential public interest harms.”).

¹⁶ Comprehensive Exhibit at 15.

retransmission consent fees to obtain the paltry “efficiencies” in negotiating retransmission consent deals proffered by the Applicants here.

Alleged “Gatekeeper” Control. The Applicants also claim that retransmission consent issues do not matter because MVPDs “act as the gatekeepers between broadcasters and viewers in a majority of households.” Yet broadcasters have always had the ability to reach their audience directly using the valuable spectrum the government licenses them to use for free. If MVPDs truly stood as “gatekeepers” between broadcasters and their audiences, then presumably MVPDs would be charging broadcasters for the privilege of retransmission, not the other way around. Instead, and contrary to their gatekeeper argument, the Applicants intend for the prices paid by these so-called “gatekeepers” to go up because of this transaction.

* * *

When the record in this proceeding is complete, the Commission should reject the novel claim that price increases that are paid by the public are a benefit, not a harm. And in any event, these harms are not outweighed by any alleged negotiating efficiencies to MVPDs. Finally, the Commission should reject claims that MVPDs act as “gatekeepers” between broadcasters and their viewers.

Respectfully Submitted,



Mike Chappell
THE AMERICAN
TELEVISION ALLIANCE
1155 F Street, N.W.
Suite 950
Washington, DC 20004
(202) 333-8667

Michael Nilsson
Mark Davis
HARRIS, WILTSHIRE & GRANNIS LLP
1919 M Street, N.W.
The Eighth Floor
Washington, DC 20036
(202) 730-1300
*Counsel for the
American Television Alliance*

March 18, 2019

CERTIFICATE OF SERVICE

I, Michael Nilsson, hereby certify that on March 18, 2019, I caused true and correct copies of the foregoing to be served by overnight or first-class or (where indicated by an asterisk) electronic mail upon the following:

David Brown*
Federal Communications Commission
Video Division, Media Bureau
Room 2-A662
445 12th Street, SW
Washington, DC 20554
David.Brown@fcc.gov

Jim Bird*
Federal Communications Commission
Office of General Counsel
Room 8-C862
445 12th Street, SW
Washington, DC 20554
Jim.Bird@fcc.gov

Chris Robbins*
Federal Communications Commission
Video Division, Media Bureau
Room 2-A847
445 12th Street, SW
Washington, DC 20554
Chris.Robbins@fcc.gov

Mace Rosenstein
Covington & Burling LLP
One CityCenter
850 Tenth Street
Washington, DC 20001
mrostein@cov.com

Darren Fernandez*
Federal Communications Commission
Video Division, Media Bureau
Room 2-A768
445 12th Street, SW
Washington, DC 20554
Darren.Fernandez@fcc.gov

Gregory Masters
Wiley Rein LLP
1776 K Street, NW
Washington, DC 20006
gmasters@wileyrein.com

/s/ Michael Nilsson
Harris, Wiltshire & Grannis LLP