

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )  
 )  
Applications of Tribune Media Company ) MB Docket No. 19-30  
And Nexstar Media Group, Inc. )  
For Consent to Transfer Control of )  
Licenses )

**PETITION TO DENY OF COMMON CAUSE, PUBLIC KNOWLEDGE, UNITED  
CHURCH OF CHRIST, OC INC., AND SPORTS FANS COALITION**

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## **I. INTRODUCTION AND SUMMARY**

Common Cause, Public Knowledge, United Church of Christ, OC, Inc., and Sports Fans Coalition file this Petition to Deny in response to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice regarding the applications of Tribune Media Company (“Tribune”) and Nexstar Media Group, Inc. (“Nexstar”) (collectively, “Applicants”) to transfer control of Tribune to Nexstar.<sup>1</sup> The applications should be denied. Because the Applicants have not demonstrated that the transaction will serve the public interest, they have not met the requisite burden of proof. In fact, the Applicants fail to make a convincing case the transaction will provide any public interest benefits at all. To the contrary, the transaction would bring about significant public interest harms, including harms to broadcast localism, competition, and retransmission consent leverage. Further, the transaction would exceed national ownership limits set by Congress. Because the evidence shows that this merger would harm consumers and the public interest, the Commission should dismiss the applications.

## **II. THE APPLICANTS HAVE NOT MET THE BURDEN OF PROOF**

The Applicants have the burden of proving the proposed merger serves “the public interest, convenience, and necessity.”<sup>2</sup> The Commission’s public interest analysis embodies a “deeply rooted preference for preserving and enhancing competition in relevant markets ... and ensuring

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<sup>1</sup> *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*, MB Docket No. 19-30, Public Notice, DA 19-82 (rel. Feb. 14, 2019); *Applications of Tribune Media Company and Nexstar Broadcast Group For Consent to Transfer Control of Licenses*, Comprehensive Exhibit, at 3-16 (filed Jan. 7, 2019) (“Comprehensive Exhibit”).

<sup>2</sup> 47 U.S.C. § 310(d).

a diversity of information sources and services to the public.”<sup>3</sup> While “[t]he FCC’s actions are informed by competition principles,” its “‘public interest’ standard is not limited to purely economic outcomes.”<sup>4</sup> Therefore, the Applicants must show that the transaction will not harm the public, frustrate the goals of the Communications Act, harm competition, or otherwise break the law.<sup>5</sup> In order to find that a merger is in the public interest, the Commission must “be convinced that it will enhance competition.”<sup>6</sup> In its review, the Commission must also analyze “whether the merger will affirmatively benefit what it deems underserved groups.”<sup>7</sup> The Applicants must also demonstrate that the transaction will result in positive public interest benefits, not merely attempt to rebut claims of harms to the public interest.

Based on their initial application, the Applicants have not met this burden. The proposed merger of the Applicants presents harms to the public interest in broadcast localism, competition and retransmission consent. The Applicants fail to meet their burden of proof by making no effort to address these public interest harms.

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<sup>3</sup> *Applications of Comcast Corporation, General Electric Company and NBC Universal or Consent to Assign Licenses and Transfer Control of Licensees*, Memorandum Opinion & Order, 26 FCC Rcd 4238 para. 23 (2011) (“*Comcast-NBCU Order*”).

<sup>4</sup> Jon Sallet, FCC Transaction Review: Competition and the Public Interest, FCC Blog (Aug. 12, 2014), <http://www.fcc.gov/blog/fcc-transaction-review-competition-and-public-interest>.

<sup>5</sup> See *Comcast-NBCU Order*, 26 FCC Rcd at 4247 para. 22 (explaining that the Commission “must assess whether the proposed transaction complies with the specific provisions of the Act, other applicable statutes, and the Commission’s Rules.”).

<sup>6</sup> See *Applications of NYNEX and Bell Atlantic for Consent to Transfer Control*, Memorandum Opinion & Order, 12 FCC Rcd 19985 para. 2 (1997).

<sup>7</sup> Rachel E. Barkow and Peter W. Huber, A Tale of Two Agencies: A Comparative Analysis of FCC and DOJ Review of Telecommunications Mergers, University of Chicago Legal Forum, Iss. 1, Article 4 at 47 (2000).

### **III. THE PROPOSED MERGER WOULD NEGATIVELY IMPACT BROADCAST LOCALISM AND COMPETITION**

#### **A. The Commission Has Established Broadcast Localism is Important to the Public Interest.**

In determining whether a transaction is in the public interest, the Commission must take into consideration its Congressional mandate to “promote ... diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity” as defined in Section 257(b) of the Communications Act.<sup>8</sup> The Commission has long-established that broadcasters must serve the needs and interests of the communities to which they are licensed.<sup>9</sup> In the early days of radio broadcasting, the Federal Radio Commission (“FRC”) recognized that local interests should play an important part when deciding to grant a license to a broadcaster.<sup>10</sup> Shortly after its creation, the FCC considered a broadcast applicant’s familiarity with a local area in determining whether to grant a license.<sup>11</sup> Today, when the FCC awards licenses to provide broadcast service, it does so using local

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<sup>8</sup> See, *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996, et al.*, Second Report and Order, 31 FCC Rcd 9864 para. 17 (Aug. 25, 2016) (*FCC 2014 Quadrennial Review Order*).

<sup>9</sup> See *Broadcasting and Localism: FCC Consumer Facts*, FCC, [https://transition.fcc.gov/localism/Localism\\_Fact\\_Sheet.pdf](https://transition.fcc.gov/localism/Localism_Fact_Sheet.pdf).

<sup>10</sup> See 1931 FRC Ann. Rep. at 84 (General Order 28 issued by the FRC in 1928 and revised in 1930, protected localism by ensuring the main studio of each licensee was located inside of the “borders of the city, state, District, Territory, or possession in which it is located.”); see also 1928 FRC Ann. Rep. at 168 (stating that “there should be a provision [of frequencies] for stations which are distinctly local in character and which aim to serve only the smaller towns in the United States without any attempt to reach listeners beyond the immediate vicinity of such towns.”).

<sup>11</sup> See H.K. Glass and M.C Kirkland (New), Eustis, F.L., for Construction Permit, Lake Region Broadcast Company (New), Lakeland, F.L., for Construction Permit, Robert Louis Sanders (New), Palm Beach, F.L., for Construction Permit, Hazlewood, Inc. (New), West Palm Beach, F.L., for Construction Permit, *Statement of Facts and Grounds for Decision*, 2 FCC Rcd 365, 372 (Mar. 3, 1936).

licenses relating “to the principal community or other political subdivision which it primarily serves.”<sup>12</sup> The Commission requires broadcasters to provide service within certain technical parameters to ensure that members of its community can receive the service.<sup>13</sup> Further, the Commission adopted numerous pro-localism principles in its *2008 Declaratory Ruling*.<sup>14</sup> These policies grant broadcasters increased autonomy and control over programming and other critical decisions pertaining to serving the community.<sup>15</sup>

These rules and the Commission’s overall mandate to promote broadcast localism exist because broadcast programming continues to remain a critical source of news and local information for communities. A recent Pew study found that watching television remains the preferred method of news consumption compared to reading and listening.<sup>16</sup> Further, approximately 37 percent of Americans rely on broadcast television as a primary resource for news.<sup>17</sup> Local news remains a critical resource for communities of color and other marginalized communities that over-index on broadcast television compared to their white counterparts. For instance, 41 percent of non-whites rely on local television compared to 35 percent of whites.<sup>18</sup> Low-income households earning less than \$30,000 per year and senior citizens over the age of 65

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<sup>12</sup> See 47 C.F.R. § 73.1120.

<sup>13</sup> See 47 C.F.R. § 73.1125(a)(1), (e).

<sup>14</sup> See *Network Affiliated Stations Alliance (NASA) Petition for Inquiry into Network Practices and Motion for Declaratory Ruling*, Declaratory Ruling, 23 FCC Rcd 13610 (2008).

<sup>15</sup> See *id.* at paras. 6, 8-9.

<sup>16</sup> See Amy Mitchell, *Americans Still Prefer Watching to Reading the News – and Mostly Still Through Television*, Pew Research Center (Dec. 3, 2018), <http://www.journalism.org/2018/12/03/americans-still-prefer-watching-to-reading-the-news-and-mostly-still-through-television/>.

<sup>17</sup> See Katerina Eva Matsa, *Fewer Americans Rely on TV news; what type they watch varies by who they are*, Pew Research Center (Jan. 5, 2018), <http://www.journalism.org/fact-sheet/local-tv-news/>.

<sup>18</sup> See *id.*

rely on local television more than other income and age demographics.<sup>19</sup> These numbers illustrate that even though various technologies have increased access to news and information, large swaths of the population continue to rely solely, on free, local broadcasts.

Local broadcasting is also important for its influence on civic engagement and elections. For example, a Pew study found that over half the individuals who reported as always voting in local elections said that they follow local news very closely.<sup>20</sup> Similarly, those who consider themselves highly attached to their local communities demonstrate a greater reliance on local news with 59 percent saying they follow local news very closely.<sup>21</sup> Local news also plays an important role in shaping voters' opinion of political candidates and informing the electorate.<sup>22</sup> Indeed, campaigns and other political organizations spent more than \$3 billion on local broadcast television advertising during the 2018 midterm elections.<sup>23</sup> The close link between local news viewership and voting patterns supports the Commission's public interest mandate of promoting broadcast localism.

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<sup>19</sup> *See id.*

<sup>20</sup> *See* Michael Barthel, Jesse Holcomb, Jessica Mahone, and Amy Mitchel, *Civic Engagement Strongly Tied to Local News Habits: Local voters and those who feel attached to their communities stand out*, Pew Research Center (Nov. 3, 2016), <http://www.journalism.org/2016/11/03/civic-engagement-strongly-tied-to-local-news-habits/>.

<sup>21</sup> *See id.*

<sup>22</sup> *See* Jeffrey Gottfried, Michael Barthel, and Elisa Shearer, *The 2016 Presidential Campaign – a news Event That's Hard to Miss*, Pew Research Center (Feb. 4, 2016), <http://www.journalism.org/2016/02/04/the-2016-presidential-campaign-a-news-event-thats-hard-to-miss/>.

<sup>23</sup> *See* Raz PR, *More than \$3 Billion Spent On Local Broadcast Television Advertising During 2018 Midterms*, Broadcasting and Cable (Nov. 7, 2018), <https://www.broadcastingcable.com/post-type-the-wire/more-than-3-billion-spent-on-local-tv-ads-midterms>.

Local broadcasting plays a critical role for sports programming. American sports fans' team interests tend to originate with a local community, and local broadcasting remains the dominant source of local sports news for fans.

### **B. Nexstar's Prior Acquisitions Have Reduced Broadcast Localism**

Nexstar's prior acquisitions of broadcast stations have significantly reduced broadcast localism. By its own admission, Nexstar takes a 'regional hub' approach to operating its broadcast stations.<sup>24</sup> Under this business model, Nexstar lays off employees and consolidates news production and other functions at stations located within the same market or nearby markets. For example, after Nexstar's acquisition of Newport Television, the company made significant cuts to staff in Salt Lake City, Utah television stations KTVX and KUCW.<sup>25</sup> After Nexstar's shell company Mission Broadcasting acquired KLRT and KARK-TV in Little Rock, AK, the two stations laid off employees and consolidated newsrooms.<sup>26</sup> In Syracuse, New York, Nexstar laid off employees at WSYR-TV, eliminated certain news building platforms, and transferred some of the station's core functions such as traffic, accounting, and human resources to WROC-TV, a Nexstar-owned station in Rochester, NY.<sup>27</sup> In Las Vegas, NV's KLAS-TV, Nexstar laid off employees and transferred some of the station's functions to a regional hub in

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<sup>24</sup> See Scott D Pierce, *New owners lay off KTVX and KUCW staffers*, Salt Lake Tribune (Dec. 19, 2012), <https://archive.sltrib.com/article.php?id=55491871&itype=CMSID> (explaining that "[i]t's regular procedure for the company ... to centralize business functions at regional hubs.").

<sup>25</sup> See *id.*

<sup>26</sup> *KLRT, KARK-TV cut jobs, consolidate*, Arkansas Democrat Gazette (Jan. 30, 2013), <https://www.arkansasonline.com/news/2013/jan/30/klrt-kark-tv-cut-jobs-consolidate/>; Kate Knable, *Almost 30 Lose Jobs at KARK, KLRT as TV Owners Consolidate*, Arkansas Business (Jan. 29, 2013), <https://www.arkansasbusiness.com/article/90480/at-least-25-lose-jobs-at-kark-klrt-as-tv-owners-consolidate>.

<sup>27</sup> *More Layoffs from Nexstar at NewsChannel 9*, CNYRadio (Dec. 3, 2012), <http://www.cnyradio.com/2012/12/03/layoffs-rumored-as-new-owners-arrive-at-newschannel-9/>.



Salt Lake City.<sup>28</sup> A reduction in news staff and consolidation of new functions limits original news content and leads to reporters covering the same stories. As a result, communities see the same stories and voices across multiple channels undermining broadcast localism. Nexstar's prior actions indicate the significant harms to broadcast localism consumers can expect to see if it acquires Tribune.

**C. The Proposed Merger Would Give Nexstar Control Over a Substantial Amount of Broadcast Stations Harming Broadcast Localism.**

If completed, the proposed merger would give Nexstar control of 216 stations in 118 markets making it the largest broadcast conglomerate in the nation. This level of ownership would pose significant threats to broadcast localism. First, it is likely that Nexstar will continue its business model of creating regional hubs leading to employee layoffs and consolidated newsrooms. Indeed, the transaction is set up for Nexstar to continue this model given that the company proposes to maintain duopolies in fifteen markets after acquiring Tribune.<sup>29</sup> In each of these markets, Nexstar will own two stations giving it the ability and incentive to create more regional hubs, which will lead to a reduction in locally originated news programming. For Tribune's flagship station, WGN Chicago, Nexstar CEO Perry Sook touts the creation of a regional hub, where WGN partners and coordinates with other Nexstar-owned stations in Illinois to broadcast political debates or to consolidate political operations to a single station.<sup>30</sup> Further, the Applicants assert that Nexstar will offer similar consolidated political news coverage in

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<sup>28</sup> Christopher Lawrence, *Layoffs hit Las Vegas' KLAS-TV*, Las Vegas Review Journal (June 4, 2015), <https://www.reviewjournal.com/business/layoffs-hit-las-vegass-klas-tv/>.

<sup>29</sup> Comprehensive Exhibit at 28-31.

<sup>30</sup> See Lynne Market, *Nexstar CEO expects WGN will team with other Illinois stations*, Crain's Chicago Business (Dec. 7, 2018), <https://www.chicagobusiness.com/marketing-media/nexstar-ceo-expects-wgn-will-team-other-illinois-stations>.

multiple markets along with access to Nexstar's Washington DC news bureau.<sup>31</sup> However, these regional hubs where multiple stations within the state air the same political news coverage will not enhance local news but rather diminish it.

Nexstar's business model would also undermine coverage of local sports programming. Its regional hub business model would potentially eliminate local sports reports and productions staff.

Finally, the Applicants assert Nexstar's commitment to localism is demonstrated by investments in the news and local programming of newly acquired stations.<sup>32</sup> However, these investments are primarily focused on Nexstar's Washington, DC. News bureau and a variety of state news bureaus. As a result, they do not enhance programming at the local level based on the needs and interests of the communities Nexstar serves. Nexstar also contends that stations generally produce 30% more local news once acquired by the company.<sup>33</sup> Again, this increase is more likely due to Nexstar's regional hub business model where consolidation of staff and resources allows one station to pump additional hours of programming to other stations regardless of whether or not it meets community needs. The amount of local news produced by a station is irrelevant if it is not locally-originated and catered towards that particular community. Overall, the Applicants fail to make any assurances that Nexstar's regional hub business model will not lead to reductions in news staff and a consolidation of resources. Given the unprecedented amount of control Nexstar would have in the broadcast market, the Applicants have not shown that the transaction will serve the public interest by promoting the Commission's longstanding commitment to broadcast localism.

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<sup>31</sup> See Comprehensive Exhibit at 3-5.

<sup>32</sup> *Id.* at 3-6.

<sup>33</sup> *Id.* at 5.

#### **D. The Proposed Merger Would Harm Competition in the Broadcast Market.**

The proposed merger would give Nexstar market power for broadcast television and substantially reduce competition under antitrust laws. First, as explained in the subsequent section, the transaction would give Nexstar the ability and incentive to raise prices through retransmission fees. Indeed, Nexstar has already indicated they intend to raise fees.<sup>34</sup> Second, Nexstar proposes to maintain duopolies in several markets.<sup>35</sup> These duopolies would give Nexstar increased power to control the advertising market – as a result, local businesses and other advertisers may be forced to pay higher prices. The transaction would also give Nexstar market power in at least one highly concentrated market. According to a recent analysis by the Congressional Review Service, the Indianapolis designated market area, where Nexstar seeks to maintain Tribune’s top-four duopoly, has a Herfindahl-Hirschman Index (HHI) of 3155.<sup>36</sup> Overall, the transaction raises serious concerns under antitrust analysis that would undermine competition in the broadcast market.

### **IV. THE PROPOSED MERGER WOULD FURTHER EXACERBATE THE BROKEN RETRANSMISSION CONSENT REGIME**

#### **A. Broadcasters Already Abuse the Retransmission Consent Regime.**

The current retransmission consent regime, where cable operators must negotiate in good faith with broadcasters to carry their programming, already gives undue power to large broadcasters. The retransmission consent marketplace was originally created to protect the rights

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<sup>34</sup> Mike Farrell, *Retrans Will Rise in Wake of Nexstar-Tribune Deal*, Multichannel News (Dec. 3, 2018), <https://www.multichannel.com/news/retrans-will-rise-in-wake-of-nexstar-tribune-deal>.

<sup>35</sup> Comprehensive Exhibit at 28-31.

<sup>36</sup> *Nexstar-Tribune Merger: Potential Competition Issues*, Congressional Research Service (Feb. 22, 2019), <https://fas.org/sgp/crs/misc/IF11112.pdf>.

of local broadcasters, who often lacked leverage against monopoly cable companies.<sup>37</sup> However, the marketplace has since changed.

While cable operators are still dominant, consolidation among programmers and broadcasters, along with increased video programming competition has turned carriage negotiations from routine business to high-stakes negotiations. Consequently, retransmission consent fees have increased over the years with SNL Kagan projecting those fees will reach \$12.8 billion by 2023.<sup>38</sup>

As a result, large broadcasters can extract enormous sums of money from cable operators, turning the retransmission consent process into an additional revenue stream. When retransmission consent negotiations come to a standstill, large broadcasters are able to blackout their programming.<sup>39</sup> The FCC's rules do not prevent broadcasters from timing the expiration of contracts to coincide with marquee programming events, such as the Super Bowl, or other events of significant public interest. This timing only enhances large broadcasters leverage over the retransmission consent process forcing cable providers to comply or lose their subscribers.<sup>40</sup> The

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<sup>37</sup> See *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10238 para. 2 (2015).

<sup>38</sup> *Kagan Releases Updated Retransmission Projections: U.S. TV Station Owners Retransmission Fees Expected To Reach Nearly \$12.8b by 2023*, PR Newswire (June 19, 2017), <https://www.prnewswire.com/news-releases/kagan-releases-updated-retransmission-projections-300475948.html>.

<sup>39</sup> See *Implementation of Section 103 of the STELA Reauthorization Act of 2014*, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10238 para. 2 (2015).

<sup>40</sup> See, e.g., Daniel Frankel, *Super Bowl blacked out in at least 6 markets due to retrains disputes*, ATVA says, FierceCable (Jan. 30, 2017), <http://www.fiercecable.com/cable/superbowl-blacked-out-at-least-6-markets-due-to-retrans-disputes-atva-says>; Daniel Frankel, *After 1-Day blackout, Dish and Tegna strike long-term retransmission agreement*, available at FierceCable (Oct. 12, 2015), <http://www.fiercecable.com/cable/after-1-day-blackout-dish-andteгна-strike-long-term-retransmission-agreement>; Joe Flint, *Time Warner Cable loses 306,000 subscribers, cites fight with CBS*, Los Angeles Times (Oct. 31, 2013), <http://www.latimes.com/entertainment/envelope/cotown/la-et-ct-time-warner-cable-cbs-earns20131031-story.html>.

millions of customers whose access to must-have sports, entertainment, and news programming cut off are collateral damage in the broadcasters' game of high-stakes brinksmanship.

**B. The Proposed Merger Would Give Nexstar Increased Bargaining Power in Retransmission Consent Negotiations Resulting in Higher Cable Prices for Consumers.**

The Applicants are unable to show how unrivaled market share would increase competition or consumer choice. Far from it, with control of 216 stations across 118 markets, this transaction would increase Nexstar's bargaining power in retransmission consent negotiations, which would result in higher cable prices for consumers. Indeed, soon after announcing its acquisition of Tribune, Nexstar told investors it plans to raise retransmission consent fees, which would boost its revenue by \$75 million.<sup>41</sup> Further, disputes in retransmission consent negotiations between Nexstar and cable operators could lead to programming blackouts and service disruptions depriving communities of local programming.

Nexstar's prior retransmission consent disputes have led to massive programming blackouts affecting tens of thousands of consumers. For example, in January 2019, Nexstar blacked out programming in 16 markets after retransmission negotiations with small cable operators fell through.<sup>42</sup> Nexstar has also attempted to abuse its leverage by appealing to local government officials in negotiation disputes.<sup>43</sup>

Imbalances in retransmission consent bargaining power continue to plague the video

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<sup>41</sup> Mike Farrell, *Retrans Will Rise in Wake of Nexstar-Tribune Deal*, Multichannel News (Dec. 3, 2018), <https://www.multichannel.com/news/retrans-will-rise-in-wake-of-nexstar-tribune-deal>.

<sup>42</sup> *ACA Condemns Nexstar Signal Blackouts*, TDS Connect Blog (Jan. 2, 2019), <https://blog.tdstelecom.com/news/aca-condemns-nexstar-signal-blackouts/>.

<sup>43</sup> John Eggerton, *ACA Slams Nexstar for Seeking Local Government Role in Retrans Dispute* (Jan. 22, 2019), <https://www.multichannel.com/news/aca-slams-nexstar-for-seeking-local-government-role-in-retrans-dispute>.

marketplace and harm consumers' ability to access local programming; the proposed transaction will only exacerbate this problem and harm consumers. The Applicants make no attempt to address Nexstar's prior abuses of its leverage as the owner of numerous broadcast stations in prior retransmission consent negotiations, nor do they explain how the proposed merger, which would further increase Nexstar's bargaining power, promotes, rather than harms the public interest.

## **V. THE PROPOSED MERGER RELIES ON THE TECHNOLOGICALLY OUTDATED UHF DISCOUNT**

The Applicants' transaction would give Nexstar a national audience reach of about 72 percent,<sup>44</sup> including an expanded presence in the top 50 designated market areas.<sup>45</sup> This dramatically exceeds the Congressionally established national audience reach cap of 39 percent.<sup>46</sup> The Applicants rely on the UHF discount and proposed divestitures to fall within ownership limits. The UHF discount, which permits only 50 percent of households reached by UHF stations to be counted for the purpose of assessing compliance with the national ownership cap, was originally implemented to address a now obsolete technical disparity between VHF and UHF stations.<sup>47</sup> However, the rationale for the distinction in audience measurement between

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<sup>44</sup> *Nexstar-Tribune Merger: Potential Competition Issues*, Congressional Research Service (Feb. 22, 2019), <https://fas.org/sgp/crs/misc/IF11112.pdf>.

<sup>45</sup> See Comprehensive Exhibit at 16-18; see also *Nexstar Media Group: Enhancing Nexstar's Position as North America's Leading Local Media Company*, Nexstar Tribune Investor Presentation (Dec. 3, 2018), at 3, <https://www.nexstar.tv/wp-content/uploads/2018/12/Nexstar-Tribune-Investor-Presentation-FINAL-12-3-18.pdf>.

<sup>46</sup> See 47 C.F.R. § 73.3555(e).

<sup>47</sup> *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd 3390 (4) (2017) (*Reinstatement of UHF Discount*). The rule originated in the 1980s when available technology and the physical characteristics of the UHF band presented significant barriers to its widespread adoption. Not only did consumers need to purchase and install an additional receiver to their television sets, but

UHF and VHF stations disappeared entirely in 2009 when the United States completed its transition from analog to digital television.<sup>48</sup> Now, UHF channels are “equal, if not superior” to VHF channels for the transmission of digital television signals.<sup>49</sup> Any technical disparity that once existed necessitating a regulatory favoring of UHF transmission has been eliminated and, in fact, the balance has tilted in the opposite direction.

The Commission appropriately eliminated the UHF discount in 2016, asserting that “there is no remaining technical justification” for it and it “acts only to undermine the national audience reach cap.”<sup>50</sup> Indeed, the Commission noted that by allowing this rule to continue the national ownership cap would be “effectively 78 percent for a station group that includes only UHF stations,” leaving the Congressionally mandated cap of 39 percent without teeth. And it is precisely this distortion in audience measurement that the Applicants are attempting to exploit. Without the UHF discount, the Applicants’ proposed merger would raise Nexstar’s national ownership to 72 percent, well exceeding the statutory limit.

The Commission has unequivocally stated that “the UHF discount distorts the calculation of a licensee’s national audience reach and undermines the intent of the cap.” Yet, despite the repeal of the UHF discount, the Commission reinstated this obsolete measurement gimmick, arguing in essence that the earlier *UHF Discount Repeal Order* failed to sufficiently consider whether the “*de facto* tightening of the national cap” was justified.<sup>51</sup> Because there is no

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also its transmission required more power, there were difficulties with tuning, and the reception area was limited.

<sup>48</sup> *Reinstatement of UHF Discount*, 32 FCC Rcd 3390, para 8.

<sup>49</sup> *Id.*

<sup>50</sup> *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd 10213, para. 34 (2016) (*UHF Discount Repeal Order*).

<sup>51</sup> *Reinstatement of UHF Discount*, 32 FCC Rcd 3390 at para. 1.

reasoned technological explanation for the UHF discount, its implementation distorts the calculation of national ownership and the recent reinstatement.

## **VI. CONCLUSION**

For the foregoing reasons, Common Cause, Public Knowledge, United Church of Christ, OC, Inc. and Sports Fans Coalition respectfully request that the Commission deny the Applicants' proposed transaction. The Applicants fail to meet their affirmative burden to demonstrate the contemplated merger will serve the public interest.

Respectfully submitted,

/s Yosef Getachew  
Common Cause  
805 15<sup>th</sup> St NW  
Washington DC 20005

March 18, 2019



## **DECLARATION**

Common Cause, Public Knowledge, United Church of Christ OC, Inc., and Sports Fans Coalition's Petition to Deny was prepared using facts of which I have personal knowledge or upon information provided to me. I declare, under penalty of perjury, that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed March 18, 2019

/s Yosef Getachew

Yosef Getachew  
Common Cause

### **Declaration of John W. Young, III**

1. I, John W. Young, III, am a member of Common Cause. I am the Executive Director for Common Cause Illinois.
2. I reside at 522 South Grove Street, Oak Park, Illinois 60304.
3. I am a regular viewer of the stations serving the Chicago, Illinois market which includes WGN.
4. I and viewers like me, will be harmed by Nexstar's acquisition of Tribune-owned WGN because it will reduce the broadcaster's attention to the local needs of the Chicago area. Nexstar has a track record of shuttering local newsrooms and consolidating news production in fewer areas and stations. I believe Nexstar's presence in Chicago would make local news coverage less responsive to my community's needs. I believe this would significantly reduce the quality and quantity of local news in my area.
5. This Declaration has been prepared in support of the foregoing Petition to Deny.
6. This statement is true to my personal knowledge and is made under penalty of perjury of the laws of the United States of America.



John W. Young, III

March 18, 2019

**CERTIFICATE OF SERVICE**

I, Yosef Getachew, hereby certify that on the 18<sup>th</sup> day of March, 2019, I caused a true and correct copy of the foregoing Petition to Deny via email to the following:

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/s Yosef Getachew  
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