

April 5, 2023

The Honorable Jessica Rosenworcel
Chairwoman
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Dear Chairwoman Rosenworcel:

Almost three decades ago, Congress charged the Federal Communications Commission (“Commission” or “FCC”) with the authority to “promote competition and reduce regulation” in the communications marketplace.¹ That mandate should be carried out in a manner that is accountable and fair to all parties. However, the Commission’s review of Standard General’s proposed \$5.4 billion acquisition of TV station operator TEGNA Inc. (the “Standard General-TEGNA transaction”) appears to violate those principles.

On February 24, 2023, Standard General’s plans to acquire TEGNA’s 61 full-power TV stations and two full-power radio stations were thwarted when the FCC’s Media Bureau, purportedly acting under Commission-delegated authority, issued a Hearing Designation Order (“HDO”) that referred the transaction to an Administrative Law Judge (“ALJ”) hearing. In the past 30 years, no broadcast license transfer has gone through the hearing process in less than 358 days (the average time is 799 days). With the deadline for financing of the Standard General-TEGNA deal expiring on May 22, 2023,² the Media Bureau’s action effectively kills the transaction.

The Media Bureau’s decision to send the transaction to an ALJ hearing violates Commission rules and precedents in several ways. First, to keep the Commission accountable to Congress and the public, a full Commission vote is required for certain matters, particularly those involving novel issues and/or significant legal or policy consequences.³ Designating a multi-billion-dollar transaction such as the Standard General-TEGNA transaction for an ALJ hearing is precisely the type of serious decision for which commissioners must take responsibility. The last time the FCC referred a major transaction to an ALJ, the decision was made at the Commission level, and the FCC should not have departed from that precedent.⁴ Second, the Media Bureau’s HDO relied on novel interpretations of the Commission’s public interest standard and appeared to ignore—if not contradict—the Commission’s precedent that “an increase in retransmission consent rates, by itself”

¹ Telecommunications Act of 1996, Pub. LA. No. 104-104, 110 Stat. 56 (1996).

² *Form 8-K*, TEGNA Inc. (Feb. 22, 2022),

<https://www.sec.gov/ix?doc=/Archives/edgar/data/0000039899/000119312522048646/d276532d8k.htm>; *Skullduggery at the FCC*, THE WALL ST. JOURNAL (Mar. 8, 2023), <https://www.wsj.com/articles/gigi-sohn-federal-communications-commission-jessica-rosenworcel-merger-standard-general-tegna-d4a5979e>.

³ *See, e.g.*, 47 CFR §0.283(c).

⁴ *Applications of Tribune Media Company and Sinclair Broadcast Group, Inc. et al*, MB Docket No. 17-179, et al, Hearing Designation Order, FCC 18-100 (Jul. 19, 2018).

does not constitute a public interest harm.⁵ Third, under Commission precedent, the Media Bureau should have provided the full Commission 48 hours' notice before issuing the HDO on February 24, 2023. It did not.

Given these departures from precedent, it is no surprise that the decision has raised questions about the Commission's fairness. According to numerous public reports, outside interests pushed Commission officials to block this transaction in order to pave the way for an alternative buyer, namely Byron Allen.⁶ For example, the *Wall Street Journal* reported that Mr. Allen's Allen Media Group had previously tried, unsuccessfully, to acquire TEGNA in the fall of 2021.⁷ Coincidentally, Mr. Allen is a major Democratic donor. In 2021, he donated \$2,900 to Nancy Pelosi's campaign fund, \$5,000 to PAC to the Future, \$44,000 to the Nancy Pelosi Victory Fund, and \$255,500 to the Democratic Congressional Campaign Committee, among others.⁸ After the Standard General-TEGNA transaction was announced in 2022, he donated \$250,000 to the House Majority PAC and \$100,000 to the Senate Majority PAC. Some have observed that the well-connected Mr. Allen is "the most likely beneficiary if the Standard General deal falls through."⁹

Such reporting has elicited further charges by some, including New York NAACP President Hazel Dukes, that the Commission blocked the transaction because Standard General's managing partner, Soo Kim, "is not the right type of minority."¹⁰ The accusation that the Commission may be abandoning its rules and precedents based on the color of someone's skin is deeply problematic on its own. In addition, the law strictly prohibits the Commission from even considering alternative buyers.¹¹ Regardless, these accusations are concerning because even the appearance of impropriety harms the Commission's reputation as a fair arbiter.¹²

To better understand the Commission's actions regarding the Standard General-TEGNA transaction, please provide written responses to the following questions no later than April 19, 2023. In your response, please identify the question to which each section of your response relates.

⁵ *Applications of Tribune Media Company and Nexstar Media Group, Inc. et al.*, MB Docket No. 19-30, et al, Memorandum Opinion and Order, FCC 19-89 ¶ 29 (Sept. 19, 2019).

⁶ See, e.g. Hazel Trice Edney, *Deal That Could Increase Minority Media Ownership Hits 'Brick Wall,'* NEW PITTSBURGH COURIER (Mar. 23, 2023), <https://newpittsburghcourier.com/2023/03/23/deal-that-could-increase-minority-media-ownership-hits-brick-wall/>; *A Big Donor, Nancy Pelosi and the FCC*, THE WALL ST. JOURNAL (Mar. 21, 2023), <https://www.wsj.com/articles/a-big-donor-nancy-pelosi-and-the-fcc-jessica-rosenworcel-tegna-inc-democrats-pac-donated-victory-fund-byron-allen-d751c89a>; Bret Swanson, *The FCC's Quiet Power Grab*, AEI (Mar. 24, 2023), <https://www.aei.org/technology-and-innovation/the-fccs-quiet-power-grab/>.

⁷ *A Big Donor, Nancy Pelosi and the FCC*, *supra* note 6.

⁸ See *Donor Lookup: Byron Allen*, Open Secrets (accessed Mar. 27, 2023), <https://www.opensecrets.org/donor-lookup/results?name=Byron+Allen&order=desc&sort=D>.

⁹ *A Big Donor, Nancy Pelosi and the FCC*, *supra* note 6.

¹⁰ Edney, *supra* note 6.

¹¹ See 47 U.S.C. 310(d) ("[I]n acting thereon the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.").

¹² It further raises questions as to the Commission's fidelity to the statutory prohibition on consideration of alternative buyers.

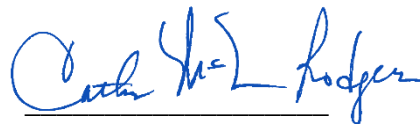
1. Please explain why the HDO was issued by the Media Bureau under delegated authority rather than through a full Commission vote.
2. Please list all HDOs the Commission has issued in the last three decades regarding transactions exceeding \$1 billion. For each such order, please indicate whether it was issued by a full Commission vote or under delegated authority.
3. The HDO claims there are substantial and material questions of fact regarding whether the transaction will lead to rate increases “as a result of contractual clauses that take immediate effect after the consummation” of the transaction and whether the transaction will “result in labor reductions at local stations.” Please list all orders in which the Commission previously analyzed and addressed:
 - a. Retransmission rate increases that were “a result of contractual clauses that take immediate effect after the consummation” of a transaction.
 - b. “Labor reductions at local stations” as a result of a transaction.
4. Please explain the following theories advanced by the Media Bureau:
 - a. How retransmission consent rates are a part of reviewing whether a license transfer is in the public interest.
 - b. How labor relations are a part of reviewing whether a license transfer is in the public interest.
5. Please state whether the Commission has ever found the following:
 - a. An increase in retransmission consent fees resulting from a broadcast television transaction to constitute a stand-alone public interest harm. If so, please list each order in which the Commission has done so.
 - b. A change in labor relations to constitute a stand-alone public interest harm in a broadcast television transaction. If so, please list each order in which the Commission has done so.
6. Is there any principle limiting when Media Bureau staff can designate a license transfer for a hearing without any input from the full Commission? If so, please describe this principle in full.
7. When did the Media Bureau begin drafting the February 24, 2023 HDO?
8. When did the Media Bureau provide a draft(s) of the February 24, 2023 HDO to each Commissioner? Please provide documentary support for each such notification.
9. Why did the Media Bureau not give Commissioners 48 hours’ notice of the February 24, 2023 HDO as is customary with significant bureau-level items?

10. Please provide all documents concerning communications between Standard General or TEGNA and anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023. If any oral communications or meetings took place between the applicants and anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023, please identify the dates on which those meetings or oral communications took place and the subject of those communications.
11. Please provide all documents concerning communications between (A) NewsGuild-CWA, David Goodfriend, or Andrew Schwartzman and (B) anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023. If so, please identify the dates on which those meetings or oral communications took place and the subject of those communications.
12. Has anyone in the Office of the Chairwoman or any Commission staff had any communications with Byron Allen or any board member, employee, or contractor of Allen Media Group or Entertainment Studios regarding the Standard General-TEGNA transaction? If so, please provide all documents concerning those communications and identify the dates on which any meetings or oral communications took place and the subject of those communications.
13. For the period when the Commission's review of the Standard General-TEGNA transaction was pending, did anyone in the Office of the Chairwoman or any Commission staff have any communications mentioning any person or company that sought unsuccessfully to purchase TEGNA? If so, please provide all documents and communications (including summaries and dates of any oral communications) regarding Byron Allen, Allen Media Group, or any other person or company (other than Standard General) that sought to purchase TEGNA.
14. The Commission strives to decide all transactions within 180 days and maintains a shot clock for transactions. Please list all transactions in which the Commission took 375 days or more to make a decision, including a citation for the transaction. Please also identify whether it was decided by the full Commission or under delegated authority, as well as the number of days the decision took according to the Commission's own shot clock.

Sincerely,



Ted Cruz
Ranking Member
Committee on Commerce
Science, and Transportation



Cathy McMorris Rogers
Chair
Committee on Energy and Commerce