

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

In the Matter of the Applications of)
)
Tribune Media Company) MB Docket No. 19-30
(Transferor))
)
and)
)
Nexstar Media Group, Inc.) File No. BTCCDT-20190107ADJ, et al.
(Transferee))
)
and)
)
Nexstar Broadcasting, Inc.)
(Assignor))
)
and)
)
Scripps Broadcasting Holdings, LLC) BALCDT-20190403ABL, et al.
(Assignee))
)
and)
)
Nexstar Broadcasting, Inc.)
(Assignor))
)
and)
)
TEGNA Broadcast Holdings, LLC) BALCDT-20190403ABJ, et al.
(Assignee))
)
and)
)
Nexstar Broadcasting, Inc.)
(Assignor))
)
and)
)
CCB License, LLC) BALCDT-20190408AAR, et al.
(Assignee))
)
and)
)
Dreamcatcher Broadcasting, LLC)
(Transferor))
)
and)
)
)

Local TV Finance, LLC)
 (Transferee))
)
 And)
)
 Local TV Virginia License, LLC)
 (Assignor))
)
 and)
)
 Scripps Broadcasting Holdings, LLC)
 (Assignee))
)
 For Transfer of Control of Tribune Media)
 Company to Nexstar Media Group, Inc., and)
 Assignment of Certain Broadcast)
 Licenses and Transfer of Control of Certain Entities)
 Holding Broadcast Licenses)

BTCCDT-20190410AAX, et al.

BALCDT-20190410AAK, et al.

MEMORANDUM OPINION AND ORDER

Adopted: September 13, 2019

Released: September 16, 2019

By the Commission: Commissioner O’Rielly issuing a statement; Commissioners Rosenworcel and Starks dissenting and issuing separate statements.

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I. INTRODUCTION

1. We grant the applications (Applications) seeking consent to the transfer of control of subsidiaries of Tribune Media Company (Tribune) holding the licenses of full-power broadcast television stations (and related broadcast auxiliary facilities), low-power television stations (LPTV), and TV translator stations to Nexstar Media Group, Inc. (Nexstar, jointly Applicants).¹ We further grant the applications (Divestiture Applications) to assign the licenses of certain stations from Nexstar Broadcasting, Inc., a wholly owned subsidiary of Nexstar, and from Tribune, to Scripps Media, Inc., and certain of its subsidiaries (Scripps), to certain subsidiaries of TEGNA, Inc. (TEGNA), and to CCB License, LLC (CCB).² We also grant the applications to transfer control of Local TV Pennsylvania License, LLC, and Local TV Virginia License, LLC, from Dreamcatcher Broadcasting LLC, (Dreamcatcher) to Local TV Finance, LLC (Local TV), and to assign the licenses to Scripps (Dreamcatcher Applications).³

2. In connection with the transaction, in the Indianapolis Nielsen Designated Market Area (DMA),⁴ where Nexstar proposes to obtain a combination of two top-four rated stations from Tribune, and in the Norfolk-Portsmouth-Newport News DMA, where Scripps proposes to obtain a combination of two top-four rated stations from Dreamcatcher, we find that application of the Local Television Ownership Rule's Top-Four Prohibition to these preexisting combinations is not warranted, based on the unique facts and circumstances of the stations and markets at issue.⁵ As a result of the proposed divestitures, and our top-four findings in the Indianapolis and Norfolk-Portsmouth-Newport News DMAs, we find that Nexstar, Scripps, TEGNA, and CCB will be in compliance with both the Local Television Ownership Rule,⁶ and the National Television Ownership Rule,⁷ following consummation of the transaction. Finally, we grant Nexstar continued authority to operate stations in two markets, pursuant to the satellite exception to the Local Television Ownership Rule.⁸

II. BACKGROUND

A. Transaction

3. Tribune is the ultimate parent of the licensees of 41 full-power television stations and one AM radio station.⁹ Pursuant to an Agreement and Plan of Merger¹⁰ dated November 30, 2018, Nexstar

¹ A list of the Applications and associated broadcast stations can be found in Attachment A. Copies of the applications are available in the Commission's Consolidated Database System (CDBS). The Applicants have filed separate applications requesting Commission consent for the transfer of control or assignment of earth station, microwave, and land mobile facilities that are currently held by Tribune subsidiaries.

² A list of the Divestiture Applications can be found in Attachment B. The Divestiture Applications are also available in CDBS.

³ The Dreamcatcher Applications are listed on Attachment B and are available in CDBS.

⁴ A DMA is a geographic unit used by the A.C. Nielsen Company, which provides television survey data to broadcast television stations, multichannel video distributors (MVPDs), cable and satellite television networks, advertisers, and advertising agencies to aid in evaluating audience size and composition.

⁵ 47 CFR 73.3555(b)(2).

⁶ *Id.* § 73.3555(b).

⁷ *Id.* § 73.3555(e).

⁸ *Id.* § 73.3555, Note 5.

⁹ *See, e.g.*, Application for Consent to Transfer Control of WGN Continental Broadcasting, LLC, File No. BTC-20190107ADI, Exh. 15, Amended Comp. Exh. at 1 (April Comp. Exh.). A copy of the April Comp. Exh. is attached to all of the applications to transfer control of Tribune subsidiaries to Nexstar.

¹⁰ *See, e.g.*, Application for Consent to Transfer Control of WGN Continental Broadcasting, LLC, File No. BTC-20190107ADI, Exh. 15 (APM).

seeks to acquire all outstanding Tribune equity interests in a cash merger transaction. Titan Merger Sub, Inc., a wholly-owned subsidiary of Nexstar, will merge with and into Tribune, with Tribune continuing as the surviving entity (the Merger). Upon consummation of the Merger, each share of Tribune common stock issued and outstanding immediately prior to the effective time of the Merger will be converted into the right to receive \$46.50 in cash,¹¹ and Tribune will become a wholly-owned subsidiary of Nexstar. The Applicants amended the Applications on April 22, 2019, to identify three proposed divestiture buyers.¹² They amended the Applications again on June 12, 2019, to specify that, following the merger, Nexstar Broadcasting, Inc. (rather than Nexstar Media Group, Inc., as originally specified in the Applications) will be the direct 100 percent parent company of Tribune.¹³

4. The Commission's Local Television Ownership Rule (Duopoly Rule) allows an entity to own two television stations licensed in the same Nielsen DMA if: (1) the digital noise limited service contours of the stations (as determined by section 73.622(e) of the Commission's rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not rated among the top-four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service (Top-Four Prohibition).¹⁴ If an applicant proposes to own two top-four stations in a DMA, it may request an examination of the facts and circumstances in a market regarding a particular transaction, and based on the showing made by the applicant in a particular case (Top-Four Showing), the Commission or staff on delegated authority may make a finding that permitting an entity to directly or indirectly own, operate, or control two top-four television stations licensed in the same DMA would serve the public interest, convenience, and necessity.¹⁵

5. In 13 DMAs, Nexstar and Tribune both own full-power television stations (Overlap Markets). In the Portland, Oregon,¹⁶ and Washington, DC, markets,¹⁷ the Applicants state that the Merger would create a permissible duopoly of a top-four and non-top-four station. In the other eleven Overlap Markets, prior to divestitures, the Transaction would result in a top-four duopoly (Top-Four Overlap Market). In the following ten Top-Four Overlap Markets, the Applicants are not seeking to own a top-four combination and have filed an application to divest at least one top-four station: Davenport-Rock Island-Moline;¹⁸ Des Moines-Ames;¹⁹ Fort Smith-Fayetteville-Springdale-Rogers;²⁰ Grand Rapids-

¹¹ This amount is subject to certain adjustments based on the closing date and required withholding for taxes. APM at 1-2.

¹² April Comp. Exh. at 26-28.

¹³ See, e.g., Application for Consent to Transfer Control of WGN Continental Broadcasting, LLC, File No. BAL-20190107ADI, Exh. 15, Amended Description of Transaction. A copy of the Amended Description of Transaction is attached to all of the applications to transfer control of Tribune subsidiaries to Nexstar.

¹⁴ 47 CFR § 73.3555(b)(1).

¹⁵ *Id.*

¹⁶ A Tribune subsidiary is the licensee of KRCW-TV, Salem, Oregon. Nexstar is the licensee of station KOIN(DT), Portland, Oregon. April Comp. Exh. at 30.

¹⁷ A Tribune subsidiary is the licensee of WDCW(DT), Washington, DC. Nexstar is the licensee of WDVM(DT), Hagerstown, Maryland. *Id.* at 31.

¹⁸ Nexstar is the licensee of WHBF-TV, Rock Island, Illinois, and KGCW(DT), Burlington, Iowa. A Tribune subsidiary is the licensee of WQAD-TV, Moline, Illinois. WHBF-TV and WSAD-TV are top-four rated stations in the market. An application to divest WQAD-TV to TEGNA is part of this proceeding. *Id.* at 26; see also File No. BALCDT-20190403ABO.

¹⁹ Nexstar is the licensee of WOI-DT and KCWI-TV, Ames, Iowa. A Tribune subsidiary is the licensee of WHO-DT, Des Moines, Iowa. WOI-DT and WHO-DT are currently top-four rated stations in the market. An application to divest stations WOI-DT and KCWI-TV to TEGNA is part of this proceeding. April Comp. Exh. at 26; see also File Nos. BAL/BALCDT-20190403ABV-ABW.

Kalamazoo-Battle Creek;²¹ Harrisburg-Lancaster-Lebanon-York;²² Hartford-New Haven;²³ Huntsville-Decatur (Florence);²⁴ Memphis;²⁵ Richmond-Petersburg;²⁶ and Salt Lake City.²⁷ In the remaining Top-Four Overlap Market (Indianapolis, Indiana), Tribune currently owns two top-four stations, and the Applicants have submitted a Top-Four Showing and seek consent for Nexstar to acquire that existing combination, while divesting Nexstar's remaining stations in the market.²⁸

6. In connection with the Merger, Tribune has exercised its right under an Option Agreement dated December 27, 2013, to acquire control of the licenses of WTKR(DT), Norfolk, Virginia, and WGNT(DT), Portsmouth, Virginia, both in the Norfolk-Portsmouth-Newport News DMA; and

(Continued from previous page)

²⁰ Nexstar is the licensee of KFTA-TV, Fort Smith, Arkansas, and KNWA-TV, Rogers, Arkansas. KNWA-TV operates pursuant to a waiver as a satellite of KFTA-TV. April Comp. Exh. at 29. A Tribune subsidiary is the licensee of KFSM-TV, Fort Smith, Arkansas, and KXNW(DT), Eureka Springs, Arkansas. KFTA-TV/KNWA-TV and KFSM-TV are top-four rated stations in the market. An application to divest station KFSM-TV to Cape Publications, Inc., a subsidiary of TEGNA, is part of this proceeding. *Id.* at 26; *see also* File No. BALCDT-20190403ACH.

²¹ Nexstar is the licensee of WOOD-TV, Grand Rapids, Michigan, and WOTV(DT), Battle Creek, Michigan. A Tribune subsidiary is the licensee of WXMI(DT), Grand Rapids, Michigan. Both WOOD-TV and WXMI(DT) are currently top-four rated stations in the market. An application to divest station WXMI(DT) to Scripps is part of this proceeding. April Comp. Exh. at 26; *see also* File No. BAL-20190403ACH.

²² Nexstar is the licensee of WHTM-TV, Harrisburg, Pennsylvania. A Tribune subsidiary is the licensee of WPMT(DT), York, Pennsylvania. Both stations are currently top-four rated stations in the market. An application to divest WPMT(DT) to TEGNA is part of this proceeding. April Comp. Exh. at 27; *see also* File No. BALCDT-20190403ABN.

²³ Nexstar is the licensee of WTNH(DT) and WCTX(DT), New Haven, Connecticut. A Tribune subsidiary is the licensee of WTIC-TV, Hartford, Connecticut, and WCCT-TV, Waterbury, Connecticut. Both WTNH(DT) and WTIC-TV are currently top-four rated stations in the market. An application to divest WTIC-TV and WCCT-TV to TEGNA is part of this proceeding. April Comp. Exh. at 27; *see also* File Nos. BALCDT-20190403ABJ-ABK.

²⁴ Nexstar is the licensee of WZDX(DT), Huntsville, Alabama, and WHDF(DT), Florence, Alabama. A subsidiary of Tribune is the licensee of WHNT-TV, Huntsville, Alabama. Both WZDX(DT) and WHNT-TV are currently top-four rated stations in the market. An application to divest WZDX(DT) to TEGNA is part of this proceeding. April Comp. Exh. at 27; *see also* File No. BALCDT-20190403ABX.

²⁵ Nexstar is the licensee of WATN-TV and WLMT(DT), Memphis, Tennessee. A Tribune subsidiary is the licensee of WREG-TV, Memphis, Tennessee. Both WLMT(DT) and WREG-TV are currently top-four rated stations in the market. An application to divest stations WATN-TV and WLMT(DT) to TEGNA is part of this proceeding. April Comp. Exh. at 28; *see also* File Nos. BALCDT-20190403ABP-ABQ.

²⁶ Nexstar is the licensee of WRIC-TV, Petersburg, Virginia. A Tribune subsidiary is the licensee of WTVR-TV, Richmond, Virginia. Both stations are currently top-four rated stations in the market. An application to divest station WTVR-TV to Scripps is part of this proceeding. April Comp. Exh. at 28; *see also* File No. BALCDT-20190403ACK.

²⁷ Nexstar is the licensee of KTVX(DT), Salt Lake City, Utah, and KUCW(DT), Ogden, Utah (CW). A Tribune subsidiary is the licensee of station KSTU(DT), Salt Lake City, Utah. Both KTVX(DT) and KSTU(DT) are currently top-four rated stations in the market. An application to divest station KSTU(DT) to Scripps is part of this proceeding. April Comp. Exh. at 27; *see also* File No. BALCDT-20190403ABZ.

²⁸ Application for Consent to Transfer of Control of Tribune Broadcasting Indianapolis, LLC, File No. BTCCDT-20190107ACF, Exh. 20, Top-Four Showing (Indianapolis Top-Four Showing). Nexstar is currently the licensee of WISH-TV, Indianapolis, Indiana, and WNDY(TV), Marion, Indiana. As discussed above, an application has been filed to divest those stations to CCB. April Comp. Exh. at 28; *see also* File No. BALCDT-20190408AAAR-AAS.

WNEP-TV, Scranton, Pennsylvania, in the Wilkes Barre-Scranton-Hazleton DMA, from Dreamcatcher.²⁹ Concurrently, Tribune proposes to assign the licenses of WTKR(DT), WGNT(DT), and WNEP-TV to Scripps.³⁰ The parties explain that, concurrent with consummation of the Merger, Tribune and Dreamcatcher will consummate the transfer of control of the licensees of WTKR(DT), WGNT(DT), and WNEP-TV from Dreamcatcher to Tribune, and the new licensee in turn will consummate the assignment of WTKR(DT) and WGNT(DT) to Scripps and WNEP-TV to TEGNA.³¹ WTKR(DT) and WGNT(DT) are currently top-four stations and Scripps offers a Top-Four Showing seeking consent to acquire that existing combination.³²

7. The Applicants state that Nexstar will also acquire existing, rule-compliant Tribune combinations in the following five additional markets:³³ New Orleans;³⁴ Oklahoma City;³⁵ Seattle-Tacoma; St. Louis;³⁶ and Denver.³⁷ The Applicants represent that, subject to the proposed divestitures to Scripps, TEGNA, and CCB, and Commission approval of the Top-Four Showing in Indianapolis, the proposed merger will comply with the Duopoly Rule.

8. The National Television Ownership Rule prohibits a single entity from owning television stations that, in the aggregate, reach more than 39 percent of the total television households in the United States.³⁸ In determining compliance with the 39 percent national audience reach cap, stations broadcasting in the VHF spectrum are attributed with all television households in their DMAs, while UHF stations are attributed with only 50 percent of the households in their DMAs (the UHF discount).³⁹ The Applicants represent that, following the divestitures, post-Merger Nexstar will comply with the Commission's national ownership limits.⁴⁰ The Applicants state that in order to come into compliance

²⁹ April Comp. Exh. at 2. Tribune currently provides certain services to Dreamcatcher subsidiaries pursuant to contractual arrangements. *Id.*; see also File Nos. BTCCDT-20190410AAW-AAX, BALCDT-20190410AAK-AAL, BTCCDT/BTCDTV/BTCDTT-20190410AAZ-ABG, BALCDT/BALDTV/BALDTT-20190410AAM-AAU.

³⁰ April Comp. Exh. at 2.

³¹ *Id.*; see also Application for Consent to Assignment of Broadcast Station License of WGNT et al., File No. BALCDT-20190410AAK.

³² Application for Consent to Assignment of Broadcast Station License of WGNT et al., File No. BALCDT-20190410AAK, Exh. 18, Top-Four Showing for Continued Common Ownership of Stations WTKR and WGNT at 1 (Norfolk Top-Four Showing).

³³ April Comp. Exh. at 2.

³⁴ A Tribune subsidiary is the licensee of WGNO(DT) and WNOL-TV, New Orleans, Louisiana. *Id.* at 30.

³⁵ A Tribune subsidiary is the licensee of KFOR-TV and KAUT-TV, Oklahoma City, Oklahoma. *Id.*

³⁶ A Tribune subsidiary is the licensee of KZJO(DT), Seattle, Washington, and KCPQ(DT), Tacoma, Washington. *Id.* at 31.

³⁷ A Tribune subsidiary is the licensee of KWGN-TV and KDVR(DT), Denver, Colorado, and KFCT(DT), Fort Collins, Colorado, which operates as a satellite of KDVR pursuant to a satellite exception to the Duopoly Rule. *Id.* at 29; see also 47 CFR § 73.3555, Note 5. The Applicants have requested reauthorization of the satellite exception for KDVR. April Comp. Exh. at 29, 32, Attach. E-1.

³⁸ 47 CFR § 73.3555(e)(1); see also *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213 (2016), *reconsidered in part*, Order on Reconsideration, 32 FCC Rcd 3390 (2017) (*UHF Discount Recon Order*), *pet. for rev. dismissed*, *Free Press et al. v. FCC*, No. 17-1179 (D.C. Cir. July 25, 2018).

³⁹ *UHF Discount Recon Order*, 32 FCC Rcd at 3391.

⁴⁰ April Comp. Exh. at 34.

with the national cap they are divesting to Scripps stations WPIX(DT), New York, New York; WSFL-TV, Miami, Florida; and KASW(DT), Phoenix, Arizona.⁴¹

9. The Applicants contend that grant of the Applications is in the public interest because it will enable “Nexstar to continue to deliver on, and to expand, its own longstanding commitment to provide high-quality local programming and service to its communities, and to carry on Tribune’s legacy of providing such programming and service.”⁴² They argue that operational efficiencies that result from the merger will allow Nexstar to expand local services to the benefit of the public.⁴³ They further maintain that Nexstar’s existing resources, in particular its news bureaus in Washington, DC, and multiple state capitals, will benefit the Tribune stations.⁴⁴ Nexstar’s news bureaus will be a new resource for the Tribune stations, providing access to breaking news, political news and analysis, and in-depth and investigative reporting that they currently do not have.⁴⁵ According to the Applicants, following closing, all of Tribune’s stations will be able to utilize these resources and choose whether and how to utilize content produced by the Washington, DC, and other news bureaus on their stations for the benefit of their local audiences.⁴⁶ The Applicants further represent that, following the transaction, Tribune station KRCW-TV, Portland, Oregon, will cease to be a satellite station of Tribune’s Seattle stations and begin carrying its own local news programming for the Portland market.⁴⁷

10. In addition to arguing that the proposed combination will produce tangible benefits in news programming, the Applicants contend that the transaction will enable Nexstar to invest more heavily in innovative technology and services, including offerings made possible by ATSC 3.0.⁴⁸ Stating that Nexstar has already invested more than \$20 million to make its stations ATSC 3.0 ready, the Applicants declare that they plan to make similar investments in the Tribune stations following the transaction to the extent that they are not already equipped to offer ATSC 3.0 services.⁴⁹

11. The Applicants claim that the increased scale and scope of operations of the combined company will lead to increased efficiency.⁵⁰ They argue that these efficiencies and resultant economies of scale will free up revenue for investment in programming, thereby producing tangible benefits to viewers.⁵¹ The Applicants state that “Nexstar anticipates more than \$160 million in synergies and efficiencies within the first year of closing the Transaction” and that the combined company will reinvest savings in programming, equipment, and employees.⁵²

⁴¹ *Id.*

⁴² *Id.* at 3.

⁴³ *Id.*

⁴⁴ *Id.* at 4-5. The Applicants explain that Nexstar’s Washington, DC, bureau’s primary focus is to facilitate local coverage of issues affecting the markets served by its stations and of the lawmakers who represent those markets in a way that could not be accomplished without a significant presence in the capital.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 9.

⁴⁸ *Id.* at 9-10.

⁴⁹ *Id.* at 10.

⁵⁰ *Id.* at 13.

⁵¹ *Id.*

⁵² *Id.* (citing *Nexstar Media Group Enters into Definitive Agreement to Acquire Tribune Media Company for \$6.4 Billion in Accretive Transaction Creating the Nation’s Largest Local Television Broadcaster and Local Media Company*, Nexstar Media Group, Inc. (Dec. 3, 2018), https://www.nexstar.tv/nexstar_agrees_to_acquire_tribune/).

12. On February 14, 2019, the Media Bureau (Bureau) released a Public Notice announcing the filing of the Applications, establishing a pleading cycle and a permit-but-disclose *ex parte* status for the proceeding.⁵³ Petitions to deny⁵⁴ the transaction were filed by: Frontier Communications Corporation (Frontier);⁵⁵ DISH Network Corporation (DISH); and jointly by Common Cause, Public Knowledge, United Church of Christ, OC Inc., and Sports Fan Coalition (Common Cause). Comments were filed by the American Television Alliance (ATVA) and NCTA—The Internet and Television Association (NCTA).⁵⁶ The Applicants filed a Consolidated Opposition, and DISH filed the only Reply. After the deadline for petitions to deny, an *ex parte* filing was made by ACA-Connects, America’s Communications Association (formerly the American Cable Association) (ACA).⁵⁷ In their Consolidated Opposition, the Applicants responded to the arguments raised in that filing, which we will treat as an informal objection, and ACA filed a letter reply on April 22, 2019.⁵⁸ On April 26, 2019, the Bureau released a second Public Notice announcing the filing of the Divestiture Applications, establishing a pleading cycle, and consolidating the Divestiture Applications with the main proceeding.⁵⁹ New Beginnings Movement (NBM) filed a pleading opposing the Divestiture Application for stations WISH-TV, Indianapolis, Indiana, and WNDY-TV, Marion, Indiana.⁶⁰ Applicants filed an opposition on June 10, 2019 (June Opposition). On May 28, 2019, the Applicants filed a declaration by Jeffrey A. Eisenach,

⁵³ See *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, 34 FCC Rcd 417 (MB 2019) (*February Public Notice*). Concurrently with the release of the *February Public Notice*, the Bureau granted the Applicants’ request for a waiver of the Commission’s inconsistent application rule. *Tribune Media Company and Nexstar Media Group*, MB Docket No. 19-30, Order, 34 FCC Rcd 414 (MB 2019) (*Motion Order*); see also 47 CFR § 73.3518 (“While an application is pending, no subsequent inconsistent or conflicting application may be filed by or on behalf of or for the benefit of the same applicant, successor, or assignee.”). As more fully explained in the *Motion Order*, at the time of the *February Public Notice*, certain transfer of control applications that were part of Tribune’s proposed merger with Sinclair Broadcast Group, Inc., were the subject of a Hearing Designation Order (HDO) that was pending before the Administrative Law Judge. *Motion Order*, 34 FCC Rcd at 415. Because those applications were unresolved and the Bureau was directed to hold the remaining applications in that proceeding in abeyance pending resolution of the HDO, a waiver of section 73.3518 was necessary to proceed with processing the applications before us here. *Id.* Those applications have now been dismissed.

⁵⁴ In addition to the Applicants, only individuals or entities that file petitions to deny and meet the filing requirements become parties to a licensing or transaction proceeding. *Entercom Sacramento Licenses, LLC*, Letter Order, 32 FCC Rcd 6880, 6883 (MB 2017); *Cloud Nine Broadcasting, Inc.*, Letter Order, 10 FCC Rcd 11555, 11556 (MB 1995) (*Cloud Nine*). Informal objectors can only become parties to the proceeding if there is no statutory opportunity to file a petition to deny. *Cloud Nine*, 10 FCC Rcd at 11556.

⁵⁵ Frontier did not submit a supporting declaration of an individual with personal knowledge of the facts alleged as required by the Communications Act of 1934, as amended (the Act). 47 U.S.C. § 309(d)(1). We will treat its pleading as an informal objection under section 73.3587 of the Commission’s rules. 47 CFR § 73.3587.

⁵⁶ We will treat the comments as informal objections under 47 CFR § 73.3587.

⁵⁷ See Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket 19-30 et al. (Mar. 25, 2019) (ACA Ex Parte).

⁵⁸ Letter from Mary C. Lovejoy, Vice President of Regulatory Affairs, ACA, to Marlene H. Dortch, Secretary, FCC, MB Docket 19-30 et al. (Apr. 22, 2019) (ACA Reply).

⁵⁹ *Media Bureau Accepts for Filing Divestiture Applications in Proceeding to Transfer Control of Tribune Media Company to Nexstar Media Group, Inc., and Establishes Consolidated Pleading Cycle*, MB Docket 19-30, Public Notice, 34 FCC Rcd 2516 (MB 2019).

⁶⁰ See Application for Assignment of License of WISH-TV, File No. BALCDT-20190408AAR. As explained below, we find that, although NBM styled its pleading as a petition to deny, it failed to demonstrate that it is a party-in-interest and, therefore, lacks standing to file a petition to deny. We will treat its filing as an informal objection under section 73.3587 of the Commission’s rules (NBM Objection). 47 CFR § 73.3587.

PhD,⁶¹ responding to claims made by DISH in its comments regarding retransmission consent rates. DISH filed a reply on July 15, 2019.⁶² On July 31, 2019, the Department of Justice (DOJ) issued its decision regarding the Merger⁶³ in which it found that given the divestitures, there would be no competitive harms.⁶⁴

B. Pleadings

13. Except for NBM, all of the entities opposing the transaction filed their petitions to deny and comments prior to the filing of the Divestiture Applications. None of the original petitioners and commenters filed against the Divestiture Applications, and NBM challenged only the divestitures of WISH-TV and WNDY-TV. As discussed below, some of the issues raised in the original petitions and comments are now moot because of the filing of the Divestiture Applications.⁶⁵

14. The petitioners and commenters generally assert that the Applicants have failed to meet their burden of proof that the Merger is in the public interest. ATVA and NCTA contend that the Applicants' position that the combined entity will deliver more value to MVPDs through lower transaction costs is not credible because any such efficiency is too small to be of value and is outweighed by the negative effects of the Merger.⁶⁶

15. Common Cause alleges that, in spite of the Applicants' claims that the proposed transaction will benefit local news and programming, it will have a negative impact on localism because Nexstar will employ a regional hub approach to news broadcasting, decreasing the amount of local news and causing multiple stations in the same market to air the same news.⁶⁷ Common Cause further maintains that the proposed merger will harm competition by giving Nexstar increased power to control

⁶¹ Letter from Richard J. Bodorff et al., Counsel to Nexstar Media Group, Inc., to Marlene H. Dortch, Secretary, FCC, Attach., Declaration of Jeffrey A. Eisenach, Ph.D. (May 28, 2019).

⁶² Letter from Pantelis Michalopoulos and Georgios Leris, Counsel for DISH Network Corp., to Marlene H. Dortch, Secretary, FCC, Attach., Reply Declaration of William Zarakas and Dr. Jeremy Verlinda (July 15, 2019).

⁶³ *United States of America et al. v. Nexstar Media Group, Inc., et al.*, Complaint (Nexstar Complaint), Proposed Final Judgment (Nexstar Final Judgment), and Competitive Impact Statement (Nexstar CIS), Case No. 19-cv-02295 (filed Jul. 31, 2019). A complaint details the anticipated harms from the proposed merger, a proposed final judgment sets out DOJ's ultimate determination following its review and includes an explanation of any mitigation of harms to be undertaken by the parties, and a competitive impact statement is the analysis that supports a proposed final judgment.

⁶⁴ Nexstar CIS at 18.

⁶⁵ ATVA and DISH argued that the Applications were not yet ripe for review because the Applicants had not stated which stations they proposed to divest, to whom they proposed to divest, or the terms of the divestitures. ATVA Comments at 2; DISH Petition to Deny at 45 (DISH Petition). NCTA urged us to pause the shot clock until the Applicants identified the stations that they plan to divest and the buyers so that parties had a chance to comment. NCTA Comments at 21. The filing of the Divestiture Applications renders these issues moot. NCTA and DISH proposed as well that the Commission prohibit sharing arrangements between the Applicants and any of the Divestiture Stations in all Overlap Markets. NCTA Comments at 25-26; DISH Petition at 46. The Applicants, however, have represented that "Nexstar will not be providing ongoing services under sharing agreements (JSAs, local marketing agreements ('LMAs') or shared services agreements ('SSAs')) to any of the stations that it is divesting" and "no JSA, LMA or SSA is being assumed by Nexstar in the Transaction," thus rendering this issue moot as well. Consolidated Opposition at 19; *see also id.* at 8, 32.

⁶⁶ ATVA Comments at 5; NCTA Comments at 6-7.

⁶⁷ Common Cause Petition to Deny at 3-8 (Common Cause Petition).

the advertising market⁶⁸ and also objects to the Applicants' reliance on the UHF discount to show compliance with the national ownership limit.⁶⁹

16. Several petitioners and commenters allege that the Merger will harm the public interest because it will cause increases in retransmission consent fees that will negatively impact MVPDs and consumers.⁷⁰ Multiple petitioners and commenters maintain that the Applicants are aggressive negotiators who have been willing to engage in blackouts⁷¹ and that the proposed Merger will give the new entity bargaining leverage.⁷² DISH, which does not allege that the transaction will violate any Commission rule, argues that this leverage will be greater than what the two companies would possess separately because a blackout from each individual entity would likely occur and expire at different times.⁷³ DISH asserts that, by contrast, if a nationwide company faced a simultaneous loss of all Nexstar and Tribune station signals, it would be more likely to capitulate to an unreasonable price increase.⁷⁴ Petitioners and commenters have also expressed concern about the impact of "after-acquired station clauses," which allow a broadcaster to bring newly acquired stations under its existing retransmission consent agreement, substituting the acquiring broadcaster's retransmission consent fee for the rate previously negotiated by the MVPDs for the broadcast stations in question.⁷⁵ ATVA asserts that many of the claimed synergies and efficiencies in the transaction "will come from 'applying Nexstar rates to Tribune subscriber counts.'" ⁷⁶ Citing the Commission's rules,⁷⁷ Frontier concedes that the Commission has limited authority to decide the substantive outcome of retransmission consent negotiations or to determine a retransmission consent fee, yet Frontier asks that we deny a merger that Frontier argues would give a negotiating advantage to a broadcaster.⁷⁸ Frontier also asks that, if the Merger is approved, we adopt protections to prevent post-Merger Nexstar from negotiating what it believes would be anticompetitive rates.⁷⁹ NCTA argues that the Applicants have failed to meet their burden to authorize the continued ownership of Tribune's top-four combination in the Indianapolis market.⁸⁰

⁶⁸ *Id.* at 9.

⁶⁹ *Id.* at 12-14; *see also* DISH Petition at 2; NCTA Comments at 6.

⁷⁰ ATVA Comments at 3.

⁷¹ NCTA Comments at 8; Common Cause Petition at 11; Frontier Petition at 4.

⁷² DISH Petition at 21. *See* ATVA Comments at 3; Common Cause Petition at 9-11.

⁷³ DISH Petition at 42-43.

⁷⁴ *Id.*

⁷⁵ *Id.* at 35. ATVA raised speculative claims about the possible effects of after-acquired station clauses if some stations were divested to Apollo Global Management, which is not a party to this transaction. ATVA Comments at 2-3 n.5. It also raised questions about the possible effects of after-acquired station clauses if the divestitures were handled as pass-through transactions. *Id.* Only the Dreamcatcher Applications involve a pass-through transaction, and no parties commented on those applications.

⁷⁶ ATVA Comments at 3.

⁷⁷ *See* 47 CFR § 76.92 *et seq.*

⁷⁸ Frontier Petition at 3-5

⁷⁹ *Id.* DISH has asked that, if the Merger is approved, we confirm that neither Nexstar nor any of its "sidecar" groups, which it lists as "White Knight, Mission, Marshall, Warwick, and Parker," have violated the joint negotiation ban. DISH Petition at 44. None of those entities other than Nexstar are before us in this transaction. Consolidated Opposition at 8.

⁸⁰ NCTA Comments at 11.

17. As discussed more fully below, in their Consolidated Opposition, the Applicants initially assert that the petitioners and commenters fail to establish standing.⁸¹ They also reiterate the arguments made in their Applications that the Merger will produce substantial public interest benefits, including efficiencies that will enable increased investment in local news and in new technologies and service offerings,⁸² and that significant advantages will accrue to the Tribune stations once they have access to Nexstar's Washington, DC, and state news bureaus.⁸³ In addition, they state that Nexstar intends to examine its post-Merger footprint to determine the viability of establishing news bureaus in additional locations or enhancing existing bureaus.⁸⁴

18. In NBM's informal objection to the WISH-TV and WNDY-TV assignment of license applications, it alleges that it holds an authorization for an FM translator station in the Indianapolis area; it had an arrangement with a third-party to provide NBM space for its translator on a WISH-TV tower owned by Nexstar; the third-party breached that arrangement; and the third-party (and Nexstar) have refused to grant NBM access to the disputed tower site or to provide copies of certain leases, and have not allowed NBM to view the stations' public inspection files.⁸⁵ In its opposition, Nexstar argues that NBM lacks standing because it does not, and cannot, show how its alleged injury would be directly caused by grant of, or prevented by or redressed by denial of, an application for Nexstar's sale of its Indianapolis television stations to a divestiture buyer.⁸⁶ Nexstar also states that NBM's assertions involve a private contractual dispute that does not involve Nexstar.⁸⁷ Moreover, Nexstar points out that the Commission has repeatedly held that it is not the forum for private contractual disputes⁸⁸ and, even if it were, this dispute does not involve Nexstar.

C. Standard of Review

19. Section 310(d) of the Act provides that no station license shall be transferred or assigned unless the Commission, on application, determines that the public interest, convenience, and necessity will be served thereby.⁸⁹ In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.⁹⁰ If the transaction would not violate a statute or rule, the Commission considers

⁸¹ Consolidated Opposition at 2-4.

⁸² *Id.* at 9.

⁸³ *Id.* at 9-10.

⁸⁴ *Id.* DISH, in the only reply to the Consolidated Opposition, argues that it does have standing because it is a customer of the Applicants and its standing has been previously recognized by the Commission. DISH Reply at 3-4. DISH also reiterates its arguments regarding retransmission consent fees and contends that the harms it has alleged are merger specific. *Id.* at 4-11.

⁸⁵ NBM Objection at 1-2.

⁸⁶ June Opposition at 2.

⁸⁷ *Id.* at 2-3. Specifically, Nexstar asserts that although it is the lessor under an October 2015 lease between a predecessor WISH-TV licensee and subsidiary of Radio One, Inc., involving space on a WISH-TV tower, it has no lease or other contractual relationship with NBM. *Id.*

⁸⁸ *Id.* at 3. If NBM had wished to view Nexstar's public files, those files are available online pursuant to the Commission's rules. 47 CFR § 73.3526. Tower lease agreements are not required to be kept in a station's public file. *Id.*

⁸⁹ Section 310(d) of the Act requires that the Commission consider an application as if the proposed assignee/transferee were applying for the license directly. 47 U.S.C. § 310(d); *see also SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005) (*SBC-AT&T Order*).

⁹⁰ *See, e.g., SBC-AT&T Order*, 20 FCC Rcd at 18300, para. 16.

whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.⁹¹ If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.⁹²

20. The Commission applies a two-part test when evaluating a petition to deny under the public interest standard. First, the Commission must determine whether the petition to deny contains specific allegations of fact sufficient to show that granting the application would be *prima facie* inconsistent with the public interest.⁹³ The first step “is much like that performed by a trial judge considering a motion for directed verdict: if all the supporting facts alleged in the [petition] were true, could a reasonable fact finder conclude that the ultimate fact in dispute had been established.”⁹⁴ Second, the Commission must then determine whether, “on the basis of the application, the pleadings filed, or other matters which [the Commission] may officially notice,” a substantial and material question of fact has been raised as to whether grant of the application would serve the public interest.⁹⁵ The DC Circuit has made clear that the two steps of the statutory inquiry “are typically made concurrently.”⁹⁶ That is, the Commission ordinarily does not consider separately whether a petition makes out a *prima facie* case for denial of the application because “a negative resolution of the second question alone [whether the record presents a substantial and material question of fact that warrants further inquiry in a hearing] makes the first question moot.”⁹⁷

III. DISCUSSION

21. We deny the petitions to deny and informal objections and grant the applications listed in Attachments A and B.⁹⁸ As discussed herein, we find that grant of the Applications, the Divestiture Applications, and the Dreamcatcher Applications will pose no competitive harm and would otherwise serve the public interest, convenience, and necessity.⁹⁹ For the reasons described below, we find that the petitioners and commenters have failed to raise a substantial and material question of fact as to whether grant of the Applications would serve the public interest. In addition, the transaction would not violate any Commission rule or provision of the Act or produce any transaction-specific public interest harm.

22. Accordingly, we conclude that the instant transaction serves the public interest, convenience, and necessity and grant the Applications, the Divestiture Applications, and the Dreamcatcher Applications. As discussed below, we reject the concerns raised by commenters and

⁹¹ *Id.*

⁹² 47 U.S.C. § 309(e); see also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, 19 FCC Rcd 473, 483, para. 15 n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, MB Docket No. 01-348, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 211 (2002) (*EchoStar-DIRECTV HDO*).

⁹³ 47 U.S.C. § 309(d)(1); *Astroline Commc’ns Co., Ltd. Partnership v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (*Astroline*).

⁹⁴ *Gencom, Inc. v. FCC*, 832 F.2d 171, 181 (D.C. Cir. 1987).

⁹⁵ *Astroline*, 857 F.2d at 1561; 47 U.S.C. § 309(e).

⁹⁶ *Mobile Commc’ns Corp. of Am. v FCC*, 77 F.3d 1399, 1410 (D.C. Cir. 1996) (quoting *Citizens for Jazz on WRVR v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985) (*Citizens for Jazz*)).

⁹⁷ *Id.* (quoting *Citizens for Jazz*, 775 F.2d at 394).

⁹⁸ The applications for consent for the transfer of control or assignment of earth station, microwave, and land mobile facilities that are currently held by Tribune subsidiaries are granted simultaneously with this Order.

⁹⁹ 47 U.S.C. § 310(d).

permit the continuation of the existing two top-four combinations. We also grant the requested satellite exceptions in Kokomo, Indiana, and Fort Collins, Colorado.

A. Standing

23. Under the Act, only a “party in interest” has standing to file a petition to deny.¹⁰⁰ In addition to containing the necessary factual allegations to support a *prima facie* case that grant of the application would be inconsistent with the public interest, convenience, and necessity, a petition to deny must contain specific allegations of fact demonstrating that the petitioner is a party in interest.¹⁰¹ The allegations of fact, except for those of which official notice may be taken, must be supported by an affidavit or declaration under penalty of perjury of someone with personal knowledge of the facts alleged.¹⁰² In general, a petitioner in a transfer proceeding also must allege and prove that: (1) it has suffered or will suffer an injury in fact; (2) there is a causal link between the proposed assignment and the injury in fact; and (3) that not granting the assignment would remedy or prevent the injury in fact.¹⁰³ In the broadcast regulatory context, standing is generally shown in one of three ways: (1) as a competitor in the market subject to signal interference; (2) as a competitor in the market subject to economic harm; or (3) as a resident of the station's service area or regular listener of the station.¹⁰⁴ In the case of viewer standing, the petitioner must allege that he or she is a resident of the station's service area or a regular viewer of the station.¹⁰⁵ An organization can establish standing on behalf of its members if it provides an affidavit or declaration “of one or more individuals entitled to standing indicating that the group represents local residents and that the petition is filed on their behalf.”¹⁰⁶

24. As an initial matter, we consider Applicants' assertion that all of the Petitioners lack standing because they have failed to establish that they are parties in interest as required by the Act.¹⁰⁷ First, we find that DISH has demonstrated that it meets the requirements for standing. In its petition, DISH claims that it “has retransmission consent agreements with both Applicants” and that grant of the transaction will have specific, negative effects on it, specifically related to retransmission consent fee negotiations, and that those harms can be cured by dismissal or denial of the Applications.¹⁰⁸ Based on these claims and consistent with recent precedent, we find that DISH has met the requirements for standing.¹⁰⁹

¹⁰⁰ *Id.* § 309(d); 47 CFR § 73.3584.

¹⁰¹ 47 U.S.C. § 309(d).

¹⁰² *Id.*

¹⁰³ See, e.g., *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) (*Lujan*); *MCI Communications Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 7790 (1997) (*MCI Order*); *Saga Communications of North Carolina, LLC and Library Productions, a Limited Partnership, re: WOXL-FM*, Letter Order, 20 FCC Rcd 11987 (MB 2005) (*WOXL-FM Letter Order*).

¹⁰⁴ See, e.g., *Entercom License, LLC*, Hearing Designation Order, MB Docket No. 16-357, 31 FCC Rcd 12196, 12205 (2016); *Connoisseur Media Licenses, LLC*, Letter Order, 30 FCC Rcd 6045, 6048, 6049 (MB 2015).

¹⁰⁵ See *Rainbow/PUSH Coalition v. FCC*, 330 F.3d 539, 542-43 (D.C. Cir. 2003).

¹⁰⁶ *Cox Radio, Inc. & Summit Media, LLC*, Letter Order, 28 FCC Rcd 5674, 5676, para. 2 n.12 (MB 2013).

¹⁰⁷ See Consolidated Opposition at 2 (asserting that DISH, Common Cause, and Frontier lack standing).

¹⁰⁸ *Id.* at 15-42; DISH Reply at 4-10. DISH has supported those claims with declarations and expert analysis. DISH Petition at Exhs. A, B; DISH Reply at Exh. A.

¹⁰⁹ *Applications to Transfer Control of License Subsidiaries of Media General, Inc., to Nexstar Broadcasting, Inc.*, MB Docket No. 16-57, Memorandum Opinion and Order, 32 FCC Rcd 183, 189, para. 16 (MB/WTB 2017) (*Nexstar-Media General Order*).

25. Second, we agree with Applicants that the single declaration submitted by Common Cause and its co-petitioners¹¹⁰ only supports standing for Common Cause¹¹¹ and only with regard to WGN-TV, Chicago, Illinois. Common Cause's standing is geographically limited to those markets where it identified viewer membership in its declaration, and Chicago is the only market Common Cause identified.¹¹² In all other markets, we will treat Common Cause as an informal objector. Common Cause's co-petitioners did not submit any declarations from their own members to attempt to establish standing, and we will treat them as informal objectors. We disagree with the Applicants' allegations, however, that Common Cause has failed to state a *prima facie* case. This is because the petitioner has made detailed allegations regarding potential, transaction-specific violations of the Commission's policies regarding localism in the provision of news that it argues can only be cured by dismissal or denial of the Applications.¹¹³ We agree with Nexstar that NBM has failed to establish standing because it has failed to demonstrate that it is a party-in-interest in this proceeding. NBM has not demonstrated that there is a causal link between the proposed transaction and its alleged injury in fact or that not granting the assignment would remedy or prevent the alleged injury in fact.¹¹⁴ Accordingly, we will treat NBM's pleading as an informal objection.

B. Public Interest Benefits

26. Upon review of the record, we find that the proposed Merger will offer public interest benefits to viewers of Nexstar's and Tribune's stations. Specifically, we find that the Tribune stations' new access to reporting from Nexstar's Washington, DC, news bureau and state news bureaus provides transaction-specific, public interest benefits to Nexstar's and Tribune's viewers.¹¹⁵ We have previously found that expanded access to Washington, DC, and state news bureaus that results from a transaction

¹¹⁰ Common Cause did not file a reply.

¹¹¹ *Nexstar-Media General Order*, 32 FCC Rcd at 191, n.57 (holding that an affidavit that supports standing for one organization does not support standing for co-petitioners).

¹¹² While we left the issue unresolved previously, we hold that Section 309(d)(1)'s requirement that a party demonstrate that it is "a party in interest" serves to limit standing to those applications in which the demonstration is made, whether or not the Commission chooses to address other applications in the same proceeding or order. See *Shareholders of Tribune Co.*, 29 FCC Rcd 844, 849, para. 15 & n.40 (2014) ("conflicting Commission precedent" on the issue that was "not necessary" to resolve). But see *Nexstar-Media General Order*, 32 FCC Rcd at 191, n.57 (subsequent Bureau-level decision stating that an affidavit from a member-viewer in each affected market is needed to obtain standing in those markets). For that reason, to the extent our previous decisions conferred organizational standing to file a petition to deny all of the individual station transfers or assignments in a multi-market transaction based on an affidavit of one member of the organization stating that it is a viewer or listener in one of the affected markets, we reject that view. See *NBC/Telemundo*, 17 FCC Rcd 6958, 6965 n.18 (2002); *Hispanic Broadcasting Corp.*, 18 FCC Rcd 18834, 18835 n.4 (2003).

¹¹³ Common Cause Petition at 3-9. We distinguish our decision here from the Commission's decision in *Fox Television Stations*, where the Commission found that petitioners had not established a *prima facie* case in the context of a station's license renewal when they alleged that the licensee had failed to address issues of public importance to the community based on the amount and type of programming it had provided. *Fox Television Stations, Inc.*, MB Docket 18-97, Memorandum Opinion and Order, 33 FCC Rcd 7221, para. 34-37 (2018) (*Fox Television Stations*). The Commission found that, not only had it rejected a quantitative approach to analyzing a licensee's performance in the renewal context, it had repeatedly made clear that it will not second-guess a licensee's editorial judgments about which issues to address and how to address those issues. *Id.* In the case before us, by contrast, the Applicants have argued that providing increased and improved news coverage are among the public interest benefits of their proposed Merger, and Common Cause is challenging those assertions.

¹¹⁴ See, e.g., *Lujan*, 504 U.S. 555; *MCI Order*, 12 FCC Rcd 7790; *WOXL-FM Letter Order*, 20 FCC Rcd 11987.

¹¹⁵ See *Nexstar-Media General Order*, 32 FCC Rcd at 195, para. 29 (finding that "increased access to reporting on federal and state policies and laws would increase the combined company's viewers' awareness of issues that may directly affect them").

“provide[s] transaction-specific, public interest benefits” to viewers¹¹⁶ and that even shared news sources provide public interest benefits when stations did not have prior access to those sources.¹¹⁷ Moreover, the Applicants have demonstrated a commitment to working to provide a selection of locally, regionally, and nationally produced news programming for the use of the post-Merger Nexstar stations in serving their local communities and to make substantial investments in the Tribune stations to enhance such services.¹¹⁸ We further find that Nexstar’s commitment to convert KCSW(TV), Portland, Oregon, from a Seattle satellite station to a full-service station providing local Portland news to Portland viewers, provides a transaction-specific, public interest benefit. In addition, we credit the Applicants’ showing that the transaction will create synergies that will produce substantial savings, enabling them to invest more heavily in employees, programming, and equipment.¹¹⁹ These include investments in ATSC 3.0 that Nexstar has stated that it plans to make in those Tribune stations that are not already equipped to offer such services.¹²⁰ We find that all of these commitments constitute public interest benefits.

C. Retransmission Consent

27. On the other hand, we conclude that the petitioners’ allegations regarding retransmission consent do not raise a substantial and material question of fact as to whether grant of the Applications would serve the public interest. As an initial matter, we conclude that, with our simultaneous approval of the proposed divestitures in this proceeding, described above, the transaction will not meaningfully change the bargaining leverage the Applicants currently possess in local markets.¹²¹ In particular, in those individual DMAs where Nexstar will acquire stations affiliated with one of the “Big Four” broadcast networks (ABC, CBS, NBC, or FOX) from Tribune, Nexstar will simply step into Tribune’s shoes, with no change in local market concentration among Big Four affiliates, and the same will be true for any divestiture entity.

28. With respect to alleged non-local effects, the Commission has not previously identified a national market for the negotiation of retransmission consent.¹²² Similarly, DOJ, while finding that the “licensing of Big 4 television retransmission consent” constitutes a relevant product market, has found only that the relevant geographic market for this product is “the individual DMAs in which such licensing

¹¹⁶ Consolidated Opposition at 11; *see also Transfer of Control of Raycom Media, Inc. to Gray Television, Inc.*, MB Docket 18-230, Memorandum Opinion and Order, 33 FCC Rcd 12349, 12356, 12361-62, paras. 14, 31 (*Gray-Raycom Order*); *Nexstar-Media General Order*, 32 FCC Rcd at 194-196, paras. 26-29, 33.

¹¹⁷ *Gray-Raycom Order*, 33 FCC Rcd at 12361-62, para 31.

¹¹⁸ April Comp. Exh. at 4 (stating that following closing “Tribune’s stations will have access to the resources of the Washington, D.C. news bureau and will be able to choose at the local level whether and how to utilize its availability to deliver content from the nation’s capital to their local audiences.”); *id.* (“Nexstar also has state news bureaus in a number of markets in which Tribune stations operate. These bureaus provide viewers with increased access to state lawmakers and their opinions on critical issues, state agency activities, and state supreme court proceedings, as well as special programming.... Post transaction, Tribune’s stations will gain access to Nexstar’s resources and commitment to cover state government in several state capital cities....”).

¹¹⁹ *Id.* at 13.

¹²⁰ *Id.* at 10.

¹²¹ Based on its review of the Merger, DOJ determined that the licensing of “Big 4” television retransmission consent constitutes a relevant product market for purposes of antitrust analysis and that the relevant geographic market for this product is the DMA. Nexstar CIS at 4-7. DOJ also concluded that there would be 12 “Big 4 Overlap DMAs” where the combination of Nexstar and Tribune’s “Big 4” stations would have resulted in competitive harms with respect to retransmission consent. *Id.* at 7-8. DOJ further found that the likely competitive harms to retransmission consent prices in individual DMAs would be addressed by the divestiture of one of the “Big 4” stations in each of the 12 affected DMAs. *Id.* at 18-23.

¹²² *See Gray-Raycom Order*, 33 FCC Rcd at 12357, para. 16; *Nexstar-Media General Order*, 32 FCC Rcd at 196, para. 35.

occurs.”¹²³ Neither has the Commission found previously that increasing a station’s national reach leads to a public interest harm in retransmission consent negotiations.¹²⁴ We do not believe that a departure from that precedent is warranted in this case. In particular, we are not convinced by DISH’s attempt to find a market parallel in prior non-broadcast transactions. We find that, without more, the analyses from prior transactions that DISH cites—none of which involved consolidation among broadcast television groups or addressed retransmission consent issues—are insufficient to establish by analogy the existence of a national market for retransmission consent. DISH points to prior transactions where it claims the Commission and DOJ have “recognized the threat of national market effects arising from the merger-specific increase in bargaining power that exists above and beyond any adverse effects in local geographic markets.”¹²⁵ Specifically, DISH points to Commission and DOJ analyses in the Charter-Time Warner Cable transaction that examined national effects in the Internet interconnection and video programming markets.¹²⁶ In those instances, however, the Commission and DOJ found that the applicants, as broadband Internet access providers and as MVPDs, functioned as gatekeepers for edge providers and video programmers trying to reach end users, a function that is not obviously analogous to broadcast television stations negotiating for retransmission by MVPDs.¹²⁷

29. Moreover, we do not believe that an increase in retransmission consent rates, by itself, is necessarily a public interest harm. Rather, such harm exists only where an increase is not the product of “competitive marketplace considerations.”¹²⁸ Over the years, the Commission has consistently affirmed Congress’s intent, in creating the retransmission consent regime, to “establish a marketplace for the disposition of the rights to retransmit broadcast signals” but not to “dictate the outcome of the ensuing marketplace negotiations.”¹²⁹ To the extent that rates rise over time pursuant to a functioning retransmission consent marketplace, rather than as a product of market power, it is difficult to see how the public interest is harmed. And here, DISH fails to demonstrate that Nexstar would have market power

¹²³ Nexstar CIS at 6.

¹²⁴ See *Gray-Raycom Order*, 33 FCC Rcd at 12357, para. 16; *Nexstar-Media General Order*, 32 FCC Rcd at 196, para. 35.

¹²⁵ DISH Petition at 10-14.

¹²⁶ See *id.* at 11-12.

¹²⁷ See *Applications of Charter Communications, Inc., Time Warner Cable Inc., and Advance/Newhouse Partnership for Consent to Assign or Transfer Control of Licenses and Authorizations*, MB Docket No. 15-149, Memorandum Opinion and Order, 31 FCC Rcd 6327, 6375, para. 95 (2016) (finding that broadband Internet access providers serve a “gatekeeping role” and those “with larger numbers of subscribers have greater leverage to negotiate preferential terms and prices with edge providers seeking to reach those subscribers”); *United States of America v. Charter Communications, Inc. et al.*, Complaint, Case No. 16-cv-00759 at 7, para. 18 (filed Apr. 25, 2016) (noting that “[v]ideo programmers rely on video programming distributors to reach consumers.”).

¹²⁸ *Implementation of the Satellite Home Viewer Improvement Act of 1999 Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, MB Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445, 5469-70, paras. 56-58 (2000) (*2000 Good Faith Negotiation Order*) (finding that “[c]onsiderations that are designed to frustrate the functioning of a competitive market” and “[c]onduct that is violative of national policies favoring competition” are not “competitive marketplace considerations”).

¹²⁹ See, e.g., *Implementation of Section 103 of the STELA Reauthorization Act of 2014 Totality of the Circumstances Test*, MB Docket No. 15-216, Notice of Proposed Rulemaking, 30 FCC Rcd 10327, 10328, para. 2 (2015) (*Totality of the Circumstances Test NPRM*) (citing S. Rep. No. 92, 102nd Cong., 1st Sess. (1991), *reprinted in* 1992 U.S.C.C.A.N. 1133, 1169). Under this regime, broadcast television stations and MVPDs are required to “negotiate in good faith,” and it is not a violation of the duty to negotiate in good faith where a party enters into agreements “containing different terms and conditions, including price terms” with different entities, provided “such different terms and conditions are based on competitive marketplace considerations.” See 47 U.S.C. § 325(b)(3)(C).

following the transaction, such that it would be able to obtain anything other than competitive rates.¹³⁰ Among other things, DISH fails to demonstrate which negotiating party, if any, would have leverage over the other in a hypothetical national market for retransmission consent negotiations. With respect to this particular transaction, it is worth noting that DISH is a national MVPD. Yet, it is seeking to block Nexstar from expanding its geographic coverage, even though the company would reach far less than the entire nation following the Merger. Perhaps it is in DISH's private interest to have a broader geographic reach than the broadcast companies with which it negotiates retransmission consent agreements. But DISH certainly does not set forth a compelling argument that reducing the current disparity in geographic reach in this instance would result in rates that are anything other than the product of a competitive marketplace and therefore not in the public interest. Moreover, with regard to DISH's allegations of prospective price increases stemming from marketplace negotiations, it does not show whether, on balance, they would reduce consumer welfare or, rather, just shift surplus between DISH and broadcast stations.¹³¹

30. As an independent matter, we also note that DISH's contention that the proper geographic market for consideration of retransmission consent issues is national in scope (i.e., at a level beyond that of a single DMA), together with the harms it alleges would result in that market, would be more appropriately addressed in the context of a rulemaking proceeding.¹³² As noted above, the Commission has never before found that a national market for negotiation of retransmission consent exists. Because of the potentially widespread ramifications of taking this step, as well as the complex nature of these issues, we believe that any consideration of recognizing such a national market should be handled in a rulemaking proceeding.¹³³

31. We also find that DISH's allegations regarding Nexstar's incentive and ability, post transaction, to black out (or threaten to black out) its stations go to the functioning of the retransmission consent marketplace, and the Commission has not previously entertained general concerns about the retransmission consent marketplace in the context of individual transactions.¹³⁴ Instead, the Commission

¹³⁰ DISH and Nexstar have filed opposing expert declarations regarding the effects of the transaction on retransmission consent fees; however, DISH's submissions fail to explain how any change in negotiating leverage post transaction would constitute the acquisition of market power by Nexstar. See DISH Petition at Exh. B, Declaration of William Zarakas and Dr. Eliana Garcés; Letter from Richard J. Bodorff et al., Counsel to Nexstar Media Group, Inc., to Marlene H. Dortch, Secretary, FCC, Attach., Declaration of Jeffrey A. Eisenach, Ph.D. (May 29, 2019); Letter from Pantelis Michalopoulos and Georgios Leris, Counsel for DISH Network Corp., to Marlene H. Dortch, Secretary, FCC, Attach., Reply Declaration of William Zarakas and Dr. Jeremy Verlinda (July 15, 2019).

¹³¹ See, e.g., *EchoStar-DIRECTV HDO*, 17 FCC Rcd at 20637, para. 211 (finding that "any savings in programming costs that result from a change in bargaining power represent a shift in surplus between programming providers and DBS operators, but not necessarily an increase in total surplus").

¹³² See DISH Petition at 6-14. As the Applicants note, parties participating in this transaction proceeding are "free to propose new or modified rules through a proper administrative rulemaking proceeding, and to participate in a variety of rulemaking proceedings that are currently open." Consolidated Opposition at 17.

¹³³ As DISH itself acknowledges, there are undoubtedly a variety of relevant factors, beyond a broadcast group's mere size or coverage, that could go into determining a particular entity's leverage and the retransmission rates it could be expected to command. See DISH Petition at 36-42. And the evidence here, taken as a whole, is plainly insufficient to show that this particular transaction would enable Nexstar to achieve anything other than competitive rates and thus lead to public interest harms or reduce consumer welfare.

¹³⁴ See, e.g., *Gray-Raycom Order*, 33 FCC Rcd at 12356-58, paras. 15-17; *Nexstar-Media General Order*, 32 FCC Rcd at 196-97, paras. 34-36; *Applications for Consent to Transfer Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, MB Docket No. 13-189, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16880, para. 31 (MB 2013); *J. Stewart Bryan III and Media General Holdings, LLC (Transferor), Shareholders of New Young Broadcasting Holding Company, Inc., and Its Subsidiaries (Transferor), and Post-Merger Shareholders of Media General, Inc. (Transferee) for Consent to Transfer Control of Licenses*, MB Docket No. 13-191, Memorandum Opinion and Order, 28 FCC Rcd 15509, 15518, paras. 20-21 (MB 2013); *Applications of Capital Cities/ABC, Inc.*

(continued....)

has, in the past, considered issues related to retransmission consent—including leverage in retransmission consent negotiations—in rulemaking proceedings,¹³⁵ and we believe that it is appropriate to continue that practice here.

D. Localism

32. We find that Common Cause’s contentions regarding the Merger’s impact on localism do not raise a substantial and material question of fact as to whether grant of the Applications would serve the public interest. In particular, we find Common Cause’s objections to Nexstar’s use of “regional hubs” in news production and other functions at stations in the same or nearby markets to be without merit.¹³⁶ Common Cause’s allegations that Nexstar’s use of regional hubs will lead to any loss of local news production are speculative, and the Commission has recognized the benefits to licensees of consolidating administrative functions.¹³⁷ We further reject Common Cause’s contentions that Nexstar’s investments in news and local programming are focused on its Washington, DC, and state news bureaus and will not enhance programming at the local level.¹³⁸ As discussed above, the Commission has previously found that expanded access to Washington, DC, and state news bureaus can produce transaction-specific public interest benefits to viewers¹³⁹ and give stations access to new resources, even when it is a shared resource.¹⁴⁰ Indeed, we find it bizarre to suggest that giving stations greater access to information from our nation’s capital or state capitals is somehow harmful. It is understandable that viewers would be interested in how what is going on at the federal or state level impacts them and their local communities. And the Applicants explain that Nexstar’s Washington, DC, bureau’s primary focus is to facilitate local

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(Transferor) and The Walt Disney Company (Transferee) for Consent to Transfer Control of Licenses of Broadcast Stations, Memorandum Opinion and Order, 11 FCC Rcd 5841, 5859-61, paras. 26-27 (1996).

¹³⁵ See, e.g., *Totality of the Circumstances Test NPRM*, 30 FCC Rcd at 10336-38, para. 13 (seeking comment on certain practices employed by broadcasters to “gain leverage in retransmission consent discussions”); *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 Reciprocal Bargaining Obligation*, MB Docket No. 05-89, Report and Order, 20 FCC Rcd 10339, 10345-46, para. 15 (2005) (concluding that the Commission would “take into account the relative bargaining positions of the parties when examining the totality of the circumstances for a failure to negotiate in good faith”); *2000 Good Faith Negotiation Order*, 15 FCC Rcd at 5469-70, paras. 56-58 (providing examples of retransmission consent negotiation proposals that would be presumptively consistent or inconsistent with “competitive marketplace considerations” under the good faith standard).

¹³⁶ Common Cause Petition at 6.

¹³⁷ See *2002 Biennial Regulatory Review – Review of Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of Telecommunications Act of 1996 et al.*, Notice of Proposed Rulemaking, 17 FCC Rcd 18503, 18528, para. 74 (2002) (“The Commission revised the rule to its current form in 1999, citing as reasons growth in the number and variety of local media outlets and the efficiencies and public service benefits that can be obtained from joint ownership.”).

¹³⁸ Common Cause Petition at 8. Common Cause claims, without supporting precedent, that the amount of local news produced by a station is irrelevant if it is not locally-originated and catered towards that particular community. *Id.* As the Commission has repeatedly made clear, the fundamental public interest obligation of a television broadcaster is to air programming that is responsive to the needs and interests of its community of license, but editorial discretion in the selection of that programming is the core concept underlying the regulation of broadcasting pursuant to the Act. See *Fox Television Stations*, 33 FCC Rcd at 7221, para. 11. Common Cause also argues that Nexstar’s hub broadcasting will potentially eliminate local sports reports and production staff, which Nexstar denies. Common Cause Petition at 8. Consolidated Opposition at 12. Not only is the decision to air local sports within the licensee’s discretion, Common Cause’s allegation is speculative.

¹³⁹ Consolidated Opposition at 11; see also *Gray-Raycom Order*, 33 FCC Rcd at 12356, 12361-62, paras. 14, 31; *Nexstar-Media General Order*, 32 FCC Rcd at 194-196, paras. 26-29, 33.

¹⁴⁰ *Gray-Raycom Order*, 33 FCC Rcd at 12361-62, para 31.

coverage of issues affecting the markets served by its stations and of the lawmakers who represent those markets. We therefore deny Common Cause's petition on this issue.¹⁴¹

E. Top-Four Showings

1. Indianapolis Stations

33. *Background.* Tribune has owned both WXIN and WTTV (Indianapolis Stations) since 2002.¹⁴² In January 2015, station WTTV, which had been the fifth-rated station in the market, changed its network affiliation from CW to CBS, after reaching an affiliation agreement with the CBS network. As a result, WTTV became rated among the top-four stations in the market along with WXIN, which has rated consistently among the top-four stations.¹⁴³ Thus, as of January 2015, both Indianapolis Stations have been rated in the top-four in the Indianapolis DMA.¹⁴⁴

34. As detailed above, as part of this transaction, the Applicants seek Commission consent to own two top-four rated stations in the market, which ordinarily would be prohibited under the Commission's rules.¹⁴⁵ The Applicants state that the top-four combination in Indianapolis has resulted in enhanced competition and programming diversity.¹⁴⁶ They assert that this would remain true if ownership of the Indianapolis Stations transferred to Nexstar.¹⁴⁷ The Applicants note that the transfer of ownership from Tribune to Nexstar would not reduce the number of independent television voices or otherwise reduce competition in the market.¹⁴⁸ The Applicants submit ratings and advertising revenue data in support of their assertion that competition in the Indianapolis DMA did not change drastically as the result of the Indianapolis Stations becoming a top-four combination.¹⁴⁹ Nexstar states that it expects to strengthen the Indianapolis Stations' community service by having the stations participate in Nexstar's company-wide local content initiatives.¹⁵⁰

¹⁴¹ Common Cause has alleged that the Merger will reduce competition, but the Merger will only create three new duopolies, in Salt Lake City, Utah, Washington, DC, and, Portland, Oregon, once KCSW(TV) has converted to a stand-alone station. None of these new combinations will involve two top-four rated stations, and Common Cause has failed to present any arguments related to those markets to establish that the transaction is likely to cause competitive harm.

¹⁴² Indianapolis Top-Four Showing at 1.

¹⁴³ *Id.* at 1, 5-9.

¹⁴⁴ *Id.* at 1.

¹⁴⁵ See 47 CFR § 73.3555(b)(2). The Local Television Ownership Rule generally prohibits top-four combinations in a market, though the Commission will consider, on a case-by-case basis, whether the public interest would be served by permitting a top-four combination based on the specific circumstances in the local market. 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.*, Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9836-39, paras. 78-82 (2017) (adopting case-by-case examination of the Top-Four Prohibition) (2010/2014 *Quadrennial Review Order on Reconsideration*).

¹⁴⁶ Indianapolis Top-Four Showing at 12.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 12-13.

¹⁴⁹ *Id.* at 3-12. The Applicants include ratings data from both 2014 and 2018 to demonstrate that WTHR maintained its top-rated position before and after WTTV's affiliation change in January 2015. *Id.* at 1, 3-9. The Applicants' advertising revenue data similarly indicates that WTHR's market-leading revenue share has remained consistent from 2014 to 2017. *Id.* at 10-12.

¹⁵⁰ *Id.* at 15-16. The Applicants suggest that the Indianapolis Stations will participate in Nexstar's black history, veterans, women's history, and Hispanic heritage programming initiatives. *Id.*

35. The Applicants argue that applying the Top-Four Prohibition in this instance would be inappropriate and diminish the ability of the Indianapolis Stations to continue to provide the same level of service that they have been able to provide during more than sixteen years of common ownership.¹⁵¹ The Applicants assert that requiring divestiture would leave the stations with fewer resources to produce quality news programming and to support their local community, resulting in harm to viewers and station employees.¹⁵² The Applicants state that the Indianapolis Stations have added new employees to their combined news operations staff and increased news production since becoming a top-four combination¹⁵³ and that the improvements made possible by the station combination have resulted in highly-rated and award-winning local programming.¹⁵⁴ The Applicants also note that the Indianapolis Stations air separate newscasts head-to-head in five timeslots during the week and offer distinct brands to viewers.¹⁵⁵

36. NCTA submits comments claiming that the Applicants have not demonstrated that the harms associated with ownership of two top-four stations in Indianapolis are minimal or outweighed by any public interest benefits.¹⁵⁶ NCTA argues that the proposed transaction would put upward pressure on retransmission consent fees due to the negotiating leverage derived from common ownership of two top-four stations in a market.¹⁵⁷ Other commenters state that the transaction would give Nexstar market power in the Indianapolis market, which they maintain is highly concentrated.¹⁵⁸ ACA asserts that TDS, an MVPD serving the Indianapolis DMA, currently pays higher per-subscriber retransmission consent fees for the Indianapolis Stations under Tribune than it pays on average for the other two top-four stations in the market, despite the fact that Tribune overall typically charges lower rates than other broadcasters.¹⁵⁹

37. The Applicants respond that competition-based concerns are irrelevant where a buyer is merely stepping into the shoes of a seller, as Nexstar is doing here.¹⁶⁰ The Applicants also state that the retransmission consent related claims are not specific to the Indianapolis market.¹⁶¹

¹⁵¹ *Id.* at 15.

¹⁵² *Id.*

¹⁵³ *Id.* at 13.

¹⁵⁴ *Id.* at 14.

¹⁵⁵ *Id.* at 13-14.

¹⁵⁶ NCTA Comments at 11-12. NCTA argues that the combined ownership of the Indianapolis Stations yields a Herfindahl-Hirschman Index (HHI) in the market for licensing broadcast programming to MVPDs that exceeds the threshold by which the DOJ Horizontal Merger Guidelines would consider a merger to be “presumptively anti-competitive.” *Id.* at 16; *see also* Common Cause Petition at 9 (noting that the Indianapolis DMA is highly concentrated, with an HHI of 3155); U.S. Department of Justice and the Federal Trade Commission, Horizontal Merger Guidelines at 19 (Aug. 19, 2010) (defining “general standards” for review that consider the change in concentration that would occur as well as the post-transaction HHI for the market), <http://www.justice.gov/atr/public/guidelines/hmg-2010.pdf>.

¹⁵⁷ NCTA Comments at 13-16.

¹⁵⁸ Common Cause Petition at 9.

¹⁵⁹ ACA Ex Parte at 5; *see also* ACA Reply at 3 (indicating that the rates used in the TDS comparison were per-subscriber). In response to the ACA Ex Parte regarding the fees paid by TDS in Indianapolis, the Applicants state that they charge a uniform rate across an MVPD’s footprint and that ACA has not accounted for all of the factors, such as ratings, involved in determining the amount of fees MVPDs pay to broadcasters. Consolidated Opposition at 36 n.140. ACA responds that Tribune does not appear to account for the ratings differences among individual stations in charging a uniform rate across an MVPD’s footprint and that, even accounting for other factors, its point that combined ownership gives station groups more leverage to charge higher prices remains the same. ACA Reply at 3.

¹⁶⁰ Consolidated Opposition at ii, 33-34.

¹⁶¹ *Id.* at 35-36.

38. *Discussion.* Given the pre-existing nature of the Indianapolis combination and the insufficient evidence of harms in the record of this proceeding, we find that application of the Top-Four Prohibition to the Indianapolis Stations would not serve the public interest.¹⁶² The record shows that the Indianapolis Stations have been commonly owned by Tribune for over sixteen years and have existed as a top-four combination for the past four years. In the *2010/2014 Quadrennial Review Order on Reconsideration*, the Commission adopted a case-by-case analysis and stated that it would consider, among other factors, market characteristics and other circumstances impacting the market. As in the *Gray-Raycom Order*, we are presented again with a pre-existing top-four combination, and our application of the case-by-case analysis adopted in the *2010/2014 Quadrennial Review Order on Reconsideration* includes an evaluation of the prior common ownership and its effects.¹⁶³ Consistent with the *Gray-Raycom Order*, we examine here whether the benefits of continuing to allow common ownership outweigh any public interest harms that have resulted or may yet result from the combination. For the reasons described below, we find that they do.¹⁶⁴

39. As noted above, the Applicants in this proceeding assert that common ownership of the Indianapolis Stations has led to benefits in the Indianapolis DMA, including additional hours of news and public affairs programming, production of highly-rated local news programming, and civic engagement with local organizations and causes.¹⁶⁵ Historically, the Commission has been reluctant to require divestiture when doing so would create disruption to the marketplace and hardship for owners that outweigh any benefits of divestiture.¹⁶⁶ Furthermore, the Applicants have asserted existing benefits of the common ownership of these two stations, as well as further benefits that would be gained from transferring the Indianapolis Stations to Nexstar, such as providing the stations with access to Nexstar's Washington, DC, news bureau.¹⁶⁷ Consistent with the *Gray-Raycom Order*, we find that undue disruption would also result from divestiture in this instance, given the existing benefits that are asserted and the fact that common ownership of the combination has been in place for over sixteen years, with the stations operating for the last four years as a top-four combination.¹⁶⁸ No commenter disputed the Applicants' assertions of public interest benefits from common ownership or their assertions of harms from divestiture.

¹⁶² *Gray-Raycom Order*, 33 FCC Rcd at 12360-62, paras. 28-35.

¹⁶³ In the *Gray-Raycom Order*, the stations in Honolulu had been commonly owned by Raycom for 19 years and had existed as a top-four combination for nine years before being acquired by Gray. *Id.* at 12360, para. 25. While common ownership of the Indianapolis Stations and top-four status have not been in place for quite as long as in the *Gray-Raycom Order*, no commenter has raised this fact as grounds for distinguishing the Indianapolis Stations from the stations considered in the *Gray-Raycom Order*.

¹⁶⁴ *Id.* at 12361, para. 29; *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9839, para. 82 (stating that "applicants must demonstrate that the benefits of the proposed transaction would outweigh the harms"); *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.*, Further Notice of Proposed Rulemaking and Report and Order, 29 FCC 4371, 4385, para. 33 (2014) (*2010/2014 Quadrennial Review Order*) (finding that marketplace disruptions and hardships to station owners caused by compulsory divestitures outweighed benefits to the Commission's policy goals).

¹⁶⁵ Indianapolis Top-Four Showing at 13-15.

¹⁶⁶ See, e.g., *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*, Second Report and Order, 50 FCC 2d 1046, 1080, para. 112 (1975) (stating that "divestiture should be limited to use in only the most egregious cases"), *aff'd sub nom. FCC v. National Citizens Comm. for Broad.*, 436 U.S. 775, 803-808 (1978) (upholding Commission's emphasis on the importance of "stability and continuity of meritorious service"); see also *2002 Biennial Review Order*, 18 FCC Rcd at 13808, para. 484.

¹⁶⁷ Indianapolis Top-Four Showing at 13-15; April Comp. Exh. at 4.

¹⁶⁸ See *Gray-Raycom Order*, 33 FCC Rcd at 12361, para. 30; Indianapolis Top-Four Showing at 16.

40. We find that commenters opposing the transfer of the Indianapolis Stations from Tribune to Nexstar have not demonstrated sufficiently that common ownership of the Indianapolis Stations for over sixteen years—including the most recent four years during which the stations were a top-four combination—has caused any public interest harms that would warrant breaking up the existing combination in this instance. Although commenters point to potential harms relating to retransmission consent negotiations, the Indianapolis Stations are commonly owned, and both the Commission’s rules and the governing statute allow joint retransmission consent negotiation by commonly owned stations.¹⁶⁹ Moreover, commenters do not allege any bad faith acts by the Indianapolis Stations during negotiations, and in the absence of any such allegations, we decline to find a harm on the basis of the record here.¹⁷⁰ We also do not find that ACA has explained sufficiently why TDS’s paying a higher rate for retransmission consent fees for the Indianapolis Stations (without quantifying how much higher or providing additional details) than the average of the other top-four stations in the market indicates an obvious harm.¹⁷¹ The Indianapolis Stations are rated second and third in the market, and it does not seem unreasonable or unexpected to find that they would have higher rates than an average of the top-rated and fourth-rated stations in the market.¹⁷² Finally, even with some information about retransmission consent rates provided in the record of this proceeding, ACA does not demonstrate whether, or to what extent, retransmission consent fees increased as a result of the Indianapolis Stations becoming a top-four combination.¹⁷³

41. We further find that the record fails to demonstrate that the Indianapolis Stations’ common ownership, market share, or other factors have had a detrimental effect on competition in the marketplace generally, or on local programming specifically, in the Indianapolis DMA during the time in which the top-four combination has existed. Commenters opposing the transfer of the Indianapolis Stations do not refute the Applicants’ submissions of ratings and advertising revenue data indicating the lack of any significant change in the market during the period from one year before the Indianapolis Stations became a top-four combination to three years after the change.¹⁷⁴

¹⁶⁹ See *Implementation of Sections 101, 103 and 105 of the STELA Reauthorization Act of 2014*, Order, 30 FCC Rcd 2380, 2381, para. 4 (2015) (*Joint Negotiation Order*) (prohibiting joint negotiation for retransmission consent fees by stations in the same local market unless such stations are under common de jure control). NCTA acknowledges that the Indianapolis Stations’ common ownership precedes the transaction but states that the Commission did not have the opportunity to evaluate common ownership of the Indianapolis Stations at the time that the stations became a top-four combination. NCTA Comments at 17. Regardless of how the combination came into existence, and whether the Commission had an opportunity to review it at the time, we are reviewing the combination now.

¹⁷⁰ NCTA argues that the leverage the Indianapolis Stations have in retransmission consent fee negotiations as a top-four combination should be considered a public interest harm. NCTA Comments at 11-14. Similarly, ACA contends that an MVPD’s paying a higher rate for retransmission consent fees for Tribune’s two stations than the average of the two other top-four stations in the market amounts to a public interest harm. ACA Ex Parte at 5. We note that the Commission’s rules require negotiations for retransmission consent fees to be conducted in good faith, and neither NCTA nor ACA has alleged that the Indianapolis Stations violated any such rules. 47 CFR § 76.65(b).

¹⁷¹ See ACA Ex Parte at 5.

¹⁷² Notably, despite ACA’s assertion regarding the leverage it claims Tribune derives from a top-four combination, Tribune’s Indianapolis Stations may not have the highest rates in the market. In comparing the Indianapolis Stations’ rates to the average of the other two stations, ACA leaves open the possibility that one of the stations could have higher per-subscriber rates than the Indianapolis Stations, with the other station’s low rates deflating the average of the two non-Tribune stations, calling into question the relevance of ACA’s point. See *id.*

¹⁷³ See *id.*

¹⁷⁴ See Indianapolis Top-Four Showing at 3-12; Consolidated Opposition at 33-34.

42. Furthermore, no commenter has demonstrated any incremental harm that would result from the transfer of the combination from Tribune to Nexstar—the true matter at issue here.¹⁷⁵ NCTA asserts generally that the transaction would lead to increased market power for the Indianapolis Stations and increased competitive harms, but we find no support for these assertions in the record.¹⁷⁶ The record is devoid of any evidence that the transaction would lead to an increase in market concentration or bargaining power as the two stations combined will have the same market share post-transaction as they did pre-transaction. Similarly, we find no evidence in the record demonstrating that there would be an increased incentive for the Indianapolis Stations to engage in anticompetitive behavior post-transaction.

43. We also do not find that the record demonstrates any incremental harm related to retransmission consent at the regional or national level that would warrant requiring divestiture of one of the Indianapolis Stations. Although NCTA argues that Nexstar's ownership of the Indianapolis Stations will escalate the risk of consumer and competitive harm across the country because these two stations will join the larger Nexstar national footprint and give Nexstar greater leverage in retransmission consent negotiations beyond the Indianapolis market,¹⁷⁷ as stated above, the Commission has not previously determined that a national market for retransmission consent exists and we decline to do so here for the first time on the basis of the record in this proceeding.¹⁷⁸

44. In the past, the Commission has been hesitant to require divestiture when doing so would create hardship for owners and disruption to the marketplace that outweigh any benefits of divestiture.¹⁷⁹ Because we find that the harms attendant to requiring a divestiture of one of these stations would outweigh any potential benefits that might accrue from divestiture, we reject opposing assertions that the Applicants have failed to carry their burden and grant the Applicants' request to retain this top-four combination.¹⁸⁰ In doing so, however, we again emphasize that our decision herein is based on the specific facts presented and the record compiled in this proceeding.

2. Norfolk Stations

45. *Background.* The Applicants request the Commission's consent to the assignment of the licenses of WTKR and WGNT (Norfolk Stations) from Local TV to Scripps.¹⁸¹ The Norfolk Stations have been commonly owned since 2010, and the Commission previously approved the transfer of control of the stations in 2013, which continue to be commonly owned by Local TV.¹⁸² At the time of the current application, the most recent ratings report listed both WTKR and WGNT among the top-four rated stations in the Norfolk-Portsmouth-Newport News DMA (Norfolk DMA).¹⁸³ Specifically, when the application was filed, WTKR, affiliated with CBS, was the top-rated station in the market and WGNT, an

¹⁷⁵ On the other hand, the Applicants have asserted that transferring the existing combination to Nexstar will benefit the former Tribune stations by giving them access to Nexstar's Washington, DC, news bureau and other programming production resources. April Comp. Exh. at 4, 5-6; Indianapolis Top-Four Showing at 13-15.

¹⁷⁶ See NCTA Comments at 12, 19-20.

¹⁷⁷ *Id.* at 19-20.

¹⁷⁸ *Supra* para. 28.

¹⁷⁹ See *supra* note 166.

¹⁸⁰ See NCTA Comments at 11-12.

¹⁸¹ Norfolk Top-Four Showing at 1.

¹⁸² *Id.* at 6. WGNT was rated outside the top-four stations at the time of transfer in 2013. *Id.* at 3.

¹⁸³ *Id.* at 2, Exh. 1.

affiliate of the CW Network, was the fourth highest rated station.¹⁸⁴ As such, Scripps would not be permitted to own both WTKR and WGNT under rigid application of the Top-Four Prohibition.¹⁸⁵

46. The Applicants assert that application of the Top-Four Prohibition is not warranted in this case based on specific conditions in the market, as well as the nature of the transaction.¹⁸⁶ In particular, the Applicants assert that strict application of the prohibition should not apply because WGNT's ranking regularly switches between fourth and fifth in the market.¹⁸⁷ The Applicants also assert that there is no significant ratings "cushion" in the Norfolk DMA between the fourth- and fifth-rated stations, reflecting the competitive nature of the market and the fluidity of the top-four rated stations.¹⁸⁸ Furthermore, the Applicants assert that common ownership of the Norfolk Stations for almost a decade has created benefits to the community and that breaking up the combination would cause harm, both to the parties and the public.¹⁸⁹ In contrast, they argue that assigning the Norfolk Stations together to Scripps would not harm competition, but would create additional benefits to the community.¹⁹⁰ Accordingly, the Applicants seek reconsideration under the case-by-case approach set forth in the *2010/2014 Quadrennial Review Order on Reconsideration* and approval of the assignment of the existing station combination to Scripps.¹⁹¹ The Applicants' request is unopposed.

47. *Discussion.* Similar to Nexstar's acquisition of the Indianapolis stations addressed above, the proposed assignment of the Norfolk Stations to Scripps does not present a situation involving a new combination of two top-four stations but rather the assignment of a pre-existing top-four combination.¹⁹² As stated in previous analyses of such existing top-four combinations, in reviewing such an assignment we must determine whether the benefits of continuing to allow common ownership outweigh any public interest harms that have resulted or may yet result from the combination.¹⁹³ As discussed below, we find that rigid application of the Top-Four Prohibition to the Norfolk Stations would not serve the public interest given the longstanding nature of the ownership combination and the fluid nature of the audience share rankings in the market.

48. As an initial matter, we agree with the Applicants that the Norfolk DMA would appear to be a market in which the Commission's competitive assumptions do not hold fast. The Commission has found previously that in most markets with five or more commercial television stations, there is a "cushion" of audience share percentage points that separates the top-four stations from the remaining stations.¹⁹⁴ In the Norfolk market, however, there does not appear to be as sharp a definition between the

¹⁸⁴ *Id.*

¹⁸⁵ See 47 CFR § 73.3555(b)(2).

¹⁸⁶ Norfolk Top-Four Showing at 1-3.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 3-4.

¹⁸⁹ *Id.* at 4-7.

¹⁹⁰ *Id.* at 7-8.

¹⁹¹ *2010/2014 Quadrennial Review Order on Reconsideration*, 32 FCC Rcd at 9836-39, paras. 78-82.

¹⁹² In that regard, the instant situation is also similar to the Honolulu top-four combination that the Commission examined in the *Gray-Raycom Order*, in which the stations had been commonly owned for a number of years and existed as a top-four combination for nine years before being acquired by Gray. *Gray-Raycom Order*, 33 FCC Rcd at 12360-62, paras. 28-35.

¹⁹³ *Gray-Raycom Order*, 33 FCC Rcd at 12361, para. 29.

¹⁹⁴ See, e.g., *2002 Biennial 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.*, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13695, para. 195 (2003) (*2002 Biennial Review Report and Order*).

top-four rated stations and the remaining stations in the market. Rather, it appears that several stations, including WGNT, move between the fourth-, fifth-, and sixth-rated positions depending on the month and year. This would seem to reflect the competitive nature of the Norfolk DMA and support the conclusion that strict application of the Top-Four Prohibition is not warranted in this circumstance. Indeed, it appears that the audience share rankings for stations in the market change on a regular basis. The ratings data submitted by the Applicants show, and analysis of Nielsen data by Commission staff confirms, that WGNT, WVBT, a Fox affiliate licensed to Nexstar, and, in recent months, WPXV, licensed to ION Media, regularly switch positions in the station rankings.¹⁹⁵ Oftentimes over the previous three years, WVBT has had higher ratings than WGNT for at least four months of each year and is rated among the top-four stations in the market instead of WGNT during these months.

49. The competition between WGNT and at least two other stations for the position of fourth most-watched station in the market also highlights the fact that while WGNT was rated among the top-four rated stations at the time the instant application was filed, its status as the fourth-rated station is fluid. Notably, had the parties filed their application at a different point during the year, based on the relevant ratings at that time, it is possible that the acquisition would have complied with the Local Television Ownership Rule even absent a case-by-case review if WGNT were rated fifth or sixth in the market at that time instead of fourth. The variable nature of WGNT's ranking as the fourth most-watched station in the market further supports departure from a strict application of the Top-Four Prohibition in this case.¹⁹⁶

50. In addition, the Applicants have asserted that common ownership of the Norfolk Stations has led to benefits for the community and that such benefits will continue after assignment of the stations to Scripps.¹⁹⁷ According to the Applicants, common ownership of the Norfolk Stations has enabled WGNT to offer more local news programming than other CW affiliates in comparable markets.¹⁹⁸ Although WGNT generates less revenue than other stations in the Norfolk DMA that have affiliations with the "big-four" networks, the Applicants contend that the shared resources between WGNT and WTKR have allowed WGNT to offer high levels of local news despite the lack of an affiliation with a big-four network.¹⁹⁹ Post-transaction, Scripps expects to expand the news service of both Norfolk Stations by making available programming produced by the national news bureau of Scripps' parent company.²⁰⁰ No commenter disputed these assertions of benefits from common ownership of the Norfolk Stations.

51. Moreover, there is no record evidence that common ownership of the Norfolk Stations since 2010—during which the Norfolk Stations have periodically been a top-four combination—has resulted in any public interest harms or that assignment to Scripps will result in any harms. Nothing in the record shows that the Norfolk Stations' market share or other factors have had a detrimental effect on competition or local programming in the Norfolk DMA during the nine years that the Norfolk Stations have been commonly owned or during the specific periods in which the Norfolk Stations were a top-four combination. Furthermore, there is no indication of any incremental harm that would result from the assignment of the Norfolk Stations from Local TV to Scripps. The two stations combined will have the same market share post-transaction as they did pre-transaction. Similarly, there would be no increased incentive for the Norfolk Stations to engage in anticompetitive behavior post-transaction.

¹⁹⁵ Norfolk Top-Four Showing at Exh. 1. Commission staff examined Nielsen data for the Norfolk DMA for each month between January 2015 and May 2019.

¹⁹⁶ See generally *Gray-Raycom Order*, 33 FCC Rcd at 12359-60, para. 24 (acknowledging and granting transfer of a top-four station combination where one station's top-four rating was temporary).

¹⁹⁷ See Norfolk Top-Four Showing at 4-5, 7-8.

¹⁹⁸ *Id.* at 5.

¹⁹⁹ *Id.* at 4-5.

²⁰⁰ *Id.* at 8.

52. As stated above, the Commission has been hesitant in the past to require divestiture when doing so would create hardship for owners and disruption to the marketplace that outweigh any benefits of divestiture.²⁰¹ We note that in this case the potential for disruption from divestiture is not insignificant, given the costs of separating the stations and the resulting diminishment in service asserted by the Applicants.²⁰² Given the absence of any record evidence of harms resulting from common ownership of the Norfolk Stations, the variable nature of WGNT's position as the fourth-rated station, and the competitive nature of the Norfolk DMA, we find that requiring divestiture would create undue hardship without any offsetting benefit. Therefore, we find that application of the Top-Four Prohibition to the Norfolk Stations would not serve the public interest and we grant the Applicants' request to assign the licenses of the Norfolk Stations from Local TV to Scripps.

F. Request for Continuing Satellite Exceptions

53. We grant the Applicants' unopposed request for reauthorization of existing satellite exceptions to the multiple ownership rules for²⁰³ KFCT(DT), Ft. Collins, Colorado, which operates as a satellite station of KDVR(DT), Denver, Colorado, and WTTK(DT), Kokomo, Indiana,²⁰⁴ which operates as a satellite station of WTTV(DT), Bloomington, Indiana.²⁰⁵ We note that earlier this year, the Commission promulgated streamlined procedures that are now effective for those applicants seeking reauthorization of existing satellites.²⁰⁶ Under the streamlined procedures, an applicant need only provide a copy of the last decision authorizing satellite status and a certification that there has been no material change in the underlying circumstances supporting the applicant's current satellite designation.²⁰⁷ Applicants that are unable to meet one of the conditions of the streamlined procedures may apply for reauthorization with evidentiary showings under our previous *ad hoc* review criteria.²⁰⁸ Because the Applicants failed to provide a copy of the latest authorization of satellite status for either station, we will apply the *ad hoc* standard. As discussed below, we find that both stations meet this standard and grant reauthorization.

54. In *Television Satellite Stations*, the Commission stated that licensees are entitled to a "presumptive" satellite exception to the local television ownership rule if the parent/satellite combination meets three criteria: (1) there is no City Grade overlap between the parent and the satellite; (2) the proposed satellite would provide service to an underserved area; and (3) no alternative operator is ready and able to construct or to purchase and operate the satellite as a full-service station.²⁰⁹ As the *Satellite Streamlining Order* noted, "[t]he transition to digital service in 2009 rendered ineffectual the first prong of the...presumptive standard," and that, subsequently, the Commission would "evaluate all requests for

²⁰¹ See *supra* paras. 39, 44.

²⁰² See Norfolk Top-Four Showing at 6.

²⁰³ See 47 CFR 73.3555, Note 5.

²⁰⁴ Although NCTA states we should ensure that Nexstar is unable to change WTTK(DT)'s satellite status in such a way as to circumvent the ownership rules or the Commission's decisions, it does not oppose grant of the satellite exception. NCTA Comments at 18.

²⁰⁵ April Comp. Exh. at 31-33.

²⁰⁶ *Streamlined Reauthorization Procedures for Assigned or Transferred Television Satellite Stations et al.*, Report and Order, 34 FCC Rcd 1539 (2019) (*Satellite Streamlining Order*).

²⁰⁷ *Id.* at 1542, para. 9.

²⁰⁸ *Id.*

²⁰⁹ *Television Satellite Station Review of Policies and Rules*, Report and Order, 6 FCC Rcd 4212, 4213-4214, para. 12 (1991) (subsequent history omitted) (*Television Satellite Stations*).

new or continued satellite status on an *ad hoc* basis.”²¹⁰ The *Satellite Streamlining Order* further noted that “[a]s a practical matter, the second and third prongs of the Commission’s presumptive standard continued to serve as guidelines under the *ad hoc* review.”²¹¹

55. With regard to the second criterion of the three-prong traditional analysis, a proposed satellite serves an underserved area if either: (a) there are two or fewer full-service television stations licensed to the station’s community of license (the transmission test), or (b) 25 percent or more of the area within the satellite’s Grade B contour, but outside the parent station’s Grade B contour, is served by four or fewer services (the reception test).²¹² As demonstrated by the Applicants, KFCT(DT) and WTTK(DT) qualify under the transmission test, since KFCT(DT) remains the only station licensed to Fort Collins, Colorado, and WTTK(DT) remains the sole full-powered station licensed to Kokomo, Indiana.²¹³

56. To demonstrate compliance with the third prong of the traditional analysis, the Applicants provide a letter from W. Lawrence Patrick, Managing Partner, Patrick Communications, who has been involved in the broadcast industry for over 40 years.²¹⁴ Mr. Patrick states that it is unrealistic to assume that KFCT(DT) would be able to obtain programming, sell enough advertising to be viable, attract employees, or be able to provide all the services to the community expected of a full service, standalone station.²¹⁵ Likewise, Mr. Patrick finds that there are no other viable primary networks and little secondary television programming that would be available to WTTK(DT) as a standalone station.²¹⁶

57. We find that the Applicants have set forth information sufficient to warrant satellite operation of KFCT(DT) and WTTK(DT) under our *ad hoc* analysis. Given that the stations are the only full-power commercial television stations in their communities of license, do not cover the major population centers in the DMA, and would not be economically viable as stand-alone stations, we find it unlikely that alternative operators would be willing and able to purchase or operate the stations as stand-alone facilities. Moreover, KFCT(DT) has operated as a satellite of KDVR(DT) for 24 years, and WTTK(DT) has operated as a satellite of WTTV(DT) for 18 years. In 2013, the Commission found “compelling circumstances justifying a continuing ‘satellite exemption’” for KFCT(DT), and its circumstances have not changed significantly in the past six years.²¹⁷ We see no evidence in the record that continuing the satellite exception will harm competition in their respective markets, or that the factors underlying the most recent grants of satellite status have materially changed.

58. Having reviewed the Applications and other facts before us, we conclude that, not only will granting these requests for satellite exemption reauthorization comply with Commission rules, but it will also serve the public interest, convenience, and necessity.

G. Other Matters

59. We reject the arguments raised regarding after-acquired clauses, which, according to DISH, allow a broadcaster to bring newly acquired stations under its existing retransmission agreement, substituting the bigger broadcaster’s higher rate for the rate actually negotiated by the MVPDs for the

²¹⁰ *Satellite Streamlining Order*, 34 FCC Rcd at 1540, para. 4 (citing 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, 9876 n.72 (2016)).

²¹¹ *Id.*

²¹² *Television Satellite Stations*, 6 FCC Rcd at 4215, para. 19.

²¹³ April Comp. Exh. at 32, 33.

²¹⁴ *Id.* at Attach. E.

²¹⁵ *Id.* at Attach. E-1 at 2.

²¹⁶ *Id.* at Attach. E-2 at 2.

²¹⁷ *Id.* at 32.

acquired stations.²¹⁸ DISH argues that this “rate reset” occurs without any increase in the value of the acquired station to the MVPD or consumer.²¹⁹ Such after-acquired station clauses were negotiated by the parties outside of this transaction, and there is no apparent reason to step in and deny one party the benefit of the negotiated bargain absent evidence of anticompetitive practices or other wrongdoing not apparent here. In addition, the Commission is not the proper forum for resolving an alleged private contractual dispute.²²⁰

60. We also reject DISH’s request that we examine Nexstar’s existing sharing agreements in the context of this transaction. DISH has not provided any evidence that those agreements violate our rules or explained how such a review would be relevant to the transaction before us.²²¹

61. We also reject NCTA’s unfounded and speculative requests regarding the use of LPTV stations and multicast streams by Nexstar. NCTA states that Nexstar multicasts more than one of the four major broadcast networks on certain of its stations, but concedes this does not violate the Commission’s rules and also does not allege, nor does the record reflect, that any more such arrangements would be created post-Merger.²²² We likewise deny NCTA’s request that we take action based on its speculative allegations that Nexstar will attempt to evade the multiple ownership rules by the use of Tribune’s LPTV stations.²²³ No potential rule evasions in any market affected by this transaction were presented by NCTA and, following the divestitures, none appear evident from the record. We note that the Commission has sought comment on related issues in the 2018 *Quadrennial Review NPRM* and NCTA does not raise any transaction-specific harm, so we will not address those issues here.²²⁴

62. With respect to NBM, Nexstar is correct that the Commission is not the proper forum for resolving NBM’s alleged private contractual dispute.²²⁵ Therefore, we deny NBM’s Objection.

63. Finally, we reject the attempts by some petitioners and commenters to challenge Applicants’ reliance on the UHF discount, which are arguments that are more properly raised in the open rulemaking proceeding regarding the National Television Ownership Rule.²²⁶ We are obliged to apply the current National Television Ownership Rule, not the rule that some petitioners and commenters might wish existed. And it is undisputed that Nexstar would be in compliance with the current rule following the Merger.

IV. CONCLUSION

64. After reviewing the record, we conclude that grant of the Applications will comply with section 310(d) of the Act. We conclude that all the applicants listed in the attached appendices are fully qualified and that grant of the applications listed therein will serve the public interest, convenience, and necessity.

²¹⁸ DISH Petition at 35.

²¹⁹ *Id.*

²²⁰ *See, e.g., Listeners’ Guild, Inc. v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987) (*Listeners’ Guild*).

²²¹ DISH Petition at 43-44.

²²² NCTA Comments at 23.

²²³ *Id.* at 3, 5, 23-24.

²²⁴ *See 2018 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*, MB Docket 18-349, Notice of Proposed Rulemaking, 33 FCC Rcd 12111 (2018) (*2018 Quadrennial Review NPRM*).

²²⁵ *See, e.g., Listeners’ Guild*, 813 F.2d at 469.

²²⁶ *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket 17-138, Notice of Proposed Rulemaking, 32 FCC Rcd 10785 (2017).

V. ORDERING CLAUSES

65. Accordingly, **IT IS ORDERED** that the petitions to deny filed by DISH Network Corporation and jointly by Common Cause, Public Knowledge, United Church of Christ, OC Inc. and Sports Fan Coalition **ARE DENIED**.

66. **IT IS FURTHER ORDERED** that the informal objections filed by New Beginnings Movement, Frontier Communications Corporation, American Television Alliance (ATVA), ACA-Connects, America's Communications Association, and NCTA—The Internet and Television Association **ARE DENIED**.

67. **IT IS FURTHER ORDERED** that the requests for continued operation of KFTC(DT), Fort Collins, Colorado, as a satellite station of KDVR(DT), Denver, Colorado, and WTTK(DT)), Kokomo, Indiana, as a satellite station of WTTV(DT), Bloomington, Indiana, pursuant to the "satellite exception" of Note 5 to section 73.3555 of the Commission's rules, 47 CFR § 73.3555, **ARE GRANTED**.

68. **IT IS FURTHER ORDERED** that the request by Nexstar Media Group, Inc. and Tribune Media Company that Nexstar Media Group, Inc. be allowed to acquire control of the commonly owned licensees of WXIN and WTTV, Indianapolis, Indiana pursuant to 47 CFR § 73.3555(b)(2) **IS GRANTED**.

69. **IT IS FURTHER ORDERED** that the request for approval of the assignment to Scripps Broadcasting Holdings, LLC, of the licenses of commonly owned stations WTKR, Norfolk, Virginia, and WGNT, Portsmouth, Virginia, pursuant to 47 CFR § 73.3555(b)(2) **IS GRANTED**.

70. **IT IS FURTHER ORDERED** that the applications in Appendix A seeking consent to transfer control of certain license subsidiaries of Tribune Media Company to Nexstar Media Group, Inc. pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), **ARE GRANTED**, conditioned on the consummation of transactions represented by the applications listed in Appendix B.

71. **IT IS FURTHER ORDERED** that the applications in Appendix B seeking consent to the assignment of certain licenses from: (1) Nexstar Broadcasting, Inc. to Scripps Broadcasting Holdings, LLC; (2) Nexstar Broadcasting, Inc. to TEGNA Broadcast Holdings, LLC; and (3) Nexstar Broadcasting, Inc. to CCB License, LLC; (4) Local TV Virginia License, LLC to Scripps Broadcasting Holdings, LLC; and to transfer control of certain license subsidiaries from Dreamcatcher Broadcasting, LLC to Local TV Finance, LLC; and Local TV Pennsylvania, LLC to TEGNA Broadcast Holdings, LLC, pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), **ARE GRANTED**.

72. These actions are taken pursuant to sections 4(i) and (j), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 154(j), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

ATTACHMENT A

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
KDAF(TV)	Dallas, TX	KDAF, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCCDT-20190107ADH
KIAH(TV)	Houston, TX	KIAH, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCCDT-20190107ADF
KPLR-TV	St. Louis, MO	KPLR, Inc.	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCCDT-20190107ACM
KRCW-TV	Salem, OR	KRCW, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCCDT-20190107ACI
KRCW-LP	Portland, OR	KRCW, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDVL-20190107ACJ
K20ES	Pendleton, Etc., OR	KRCW, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCTTL-20190107ACK
K24DX	Pendleton, Etc., OR	KRCW, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCTTL-20190107ACL
KSTU(TV)	Salt Lake City, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCCDT-20190107AAMI
KKRP-LD	St. George, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAN
K14PA-D	Rural Juab County, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDTT-20190107AAT
K15FQ-D	Milford, Etc. UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDTT-20190107AAS
K17HM-D	Wendover, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAR
K25HF-D	Heber City, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAQ
K35OP-D	Park City, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDTT-20190107AAP
K43CC-D	Santa Clara, UT	KSTU Licensee, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAO
KSWB-TV	San Diego, CA	KSWB, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDTT-20190107AAJ

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
KTLA(TV)	Los Angeles, CA	KTLA, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ADK
KTVI(TV)	St. Louis, MO	KTVI License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACQ
KTXL(TV)	Sacramento, CA	KTXL, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACR
KWGN-TV	Denver, CO	KWGN, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACS
KDVR(TV)	Denver, CO	Tribune Broadcasting of Denver License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACV
KFCT(DT)	Fort Collins, CO	Tribune Broadcasting of Denver License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACU
KFSM-TV	Fort Smith, AR	Tribune Broadcasting of Fort Smith License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACC
KXNW(TV)	Eureka Springs, AR	Tribune Broadcasting of Fort Smith License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACD
WTIC-TV	Hartford, CT	Tribune Broadcasting of Hartford, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAH
WCCT-TV	Waterbury, CT	Tribune Broadcasting of Hartford, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAI
WXIN(TV)	Bloomington, IN	Tribune Broadcasting of Indianapolis, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACF
WTTK(TV)	Kokomo, IN	Tribune Broadcasting of Indianapolis, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACG
WTTV(TV)	Bloomington, IN	Tribune Broadcasting of Indianapolis, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACH
KFOR-TV	Oklahoma City, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAV

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
KAUT-TV	Oklahoma City, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAW
K15HL-D	Cherokee & Alva, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABP
K16DX-D	Gage, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABO
K17ID-D	Cherokee & Alva, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABN
K23NH-D	Seiling, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABM
K20BR-D	Gage, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABL
K20JD-D	Cherokee & Alva, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABK
K22BR-D	May, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABJ
K22ID-D	Alva-Cherokee, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABI
K25JQ-D	May, etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABH
K26IS-D	Woodward, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABG
K28JX-D	Alva -Cherokee, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABF

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
K29HZ-D	Woodward, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABE
K31JQ-D	Woodward, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABD
K33JM-D	Mooreland, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABC
K14QP-D	Woodward, Etc., OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABB
K21MT-D	Seiling, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABA
K16LQ-D	Seiling, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAZ
K18LY-D	Seiling, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAY
K36NR-D	Seiling, OK	Tribune Broadcasting of Oklahoma City License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107AAX
KCPQ(TV)	Tacoma, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACX
KZJO	Seattle, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACY
K07ZC-D	Ellensburg/Kittitas, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDL-20190107ACZ
K25CG-D	Aberdeen, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDL-20190107ADA
K25CH-D	North Bend, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ADB

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
K28KJ-D	Chelan, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDL-20190107ADC
K29ED-D	Everett, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDL-20190107ADD
K42CM-D	Centralia/Chehalis, WA	Tribune Broadcasting Seattle, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ADE
WNOL-TV	New Orleans, LA	Tribune Television New Orleans, Inc.	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABV
WGNO(TV)	New Orleans, LA	Tribune Television New Orleans, Inc.	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABW
WDAF-TV	Kansas City, MO	WDAF License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAK
WDCW(TV)	Washington, DC	WDCW, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ADG
WGHP(TV)	High Point, NC	WGHP License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABU
WGN(AM)	Chicago, IL	WGN Continental Broadcasting Company, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ADI
WGN-TV	Chicago, IL	WGN Continental Broadcasting Company, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ADJ
WHNT-TV	Huntsville, AL	WHNT License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACB
WHO-DT	Des Moines, IA	WHO License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACA
WITI(TV)	Milwaukee, WI	WITI License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107AAU
WJW(TV)	Cleveland, OH	WJW License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACT
WPHL(TV)	Philadelphia, PA	WPHL, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ADM

Call Sign	Community of License	Licensee	Transferor	Transferee	Application File No.
WPIX(TV)	New York, NY	WPIX, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ADL
WPMT(TV)	York, PA	WPMT, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABQ
WQAD-TV	Moline, IL	WQAD License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACE
WREG-TV	Memphis, TN	WREG License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABY
WSFL-TV	Miami, FL	WSFL, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ACW
WTVR-TV	Richmond, VA	WTVR License, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTCDDT-20190107ABZ
WXMI(TV)	Grand Rapids, MI	WXMI, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABR
W17DF-D	Muskegon, MI	WXMI, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABT
W42CB-D	Hesperia, MI	WXMI, LLC	Shareholders of Tribune Media Company	Nexstar Media Group, Inc.	BTC-20190107ABS

ATTACHMENT B

Call Sign	Community of License	Assignor or Transferor	Assignee or Transferee	Application File No(s).
WTIC(TV)	Hartford, CT	Tribune Broadcasting Hartford, LLC	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABJ
WCCT-TV	Waterbury, CT	Tribune Broadcasting Hartford, LLC	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABK
KASW(TV)	Phoenix, AZ	Nexstar Broadcasting, Inc.	Scripps Broadcasting Holdings, LLC	BALCDT-20190403ABL
K34EE-D	Prescott-Cottonwood, AZ	Nexstar Broadcasting, Inc.	Scripps Broadcasting Holdings, LLC	BAL-20190403ABM
WPMT(TV)	York, PA	WPMT, LLC	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABN
WQAD-TV	Moline, IL	WQAD License, LLC	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABO
WATN-TV	Memphis, TN	Nexstar Broadcasting, Inc.	TEGNA Memphis Broadcasting, Inc.	BALCDT-20190403ABP
WLMT(TV)	Memphis, TN	Nexstar Broadcasting, Inc.	TEGNA Memphis Broadcasting, Inc.	BALCDT-20190403ABQ
KFSM-TV	Fort Smith, AR	Tribune Broadcasting Fort Smith License, LLC	Cape Publications, Inc.	BALCDT-20190403ABS
WPIX(TV)	New York, NY	WPIX, LLC	Scripps Media, Inc.	BALCDT-20190403ABU
WOI-DT	Ames, IA	Nexstar Broadcasting, Inc.	TEGNA Broadcast Holdings, LLC	BAL-20190403ABV
KCWI-TV	Ames, IA	Nexstar Broadcasting, Inc.	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABW

Call Sign	Community of License	Assignor or Transferor	Assignee or Transferee	Application File No(s).
WZDX(TV)	Huntsville, AL	Nexstar Broadcasting, Inc.	TEGNA Broadcast Holdings, LLC	BALCDT-20190403ABX
WSFL-TV	Miami, FL	WSFL, LLC	Scripps Broadcasting Holdings, LLC	BALCDT-20190403ABY
KSTU(TV)	Salt Lake City, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BALCDT-20190403ABZ
KKRP-LD	St. George, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACA
K43CC-D	Santa Clara, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACB
K35OP-D	Park City, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BALDTT-20190403ACC
K25HF-D	Heber City, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACD
K17HM-D	Wendover, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACE
K15FQ-D	Milford, etc., UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BALDTT-20190403ACF
K14PA-D	Rural Juab County, UT	KSTU License, LLC	Scripps Broadcasting Holdings, LLC	BALDTT-20190403ACG
WXMI(TV)	Grand Rapids, MI	WXMI, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACH
W42CB-D	Hesperia, MI	WXMI, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACI

Call Sign	Community of License	Assignor or Transferor	Assignee or Transferee	Application File No(s).
W17DF-D	Muskegon, MI	WXMI, LLC	Scripps Broadcasting Holdings, LLC	BAL-20190403ACJ
WTVR-TV	Richmond, VA	WTVR License, LLC	Scripps Broadcasting Holdings, LLC	BALCDT-20190403ACK
WISH-TV	Indianapolis, IN	Nexstar Broadcasting, Inc.	CCB License, LLC	BALCDT-20190408AAR
WNDY-TV	Marion, IN	Nexstar Broadcasting, Inc.	CCB License, LLC	BALCDT-20190408AAS
WTKR(TV)	Norfolk, VA	Local TV Virginia License, LLC Dreamcatcher Broadcasting, LLC	Scripps Broadcasting Holdings, LLC Local TV Finance, LLC	BALCDT-20190410AAK BTCCDT-20190410AAX ¹
WGNT(TV)	Portsmouth, VA	Local TV Virginia License, LLC Dreamcatcher Broadcasting, LLC	Scripps Broadcasting Holdings, LLC Local TV Finance, LLC	BALCDT-20190410AAL BTCCDT-20190410AAW ²

¹ In connection with the proposed Transaction, Tribune has exercised its right under an Option Agreement dated December 27, 2013, to acquire control of Local TV Virginia License, LLC (WTKR-WGNT License), the licensee of WTKR, Norfolk, Virginia, and WGNT, Portsmouth, Virginia, from Dreamcatcher. Tribune currently provides certain services to WTKR-WGNT License pursuant to contractual arrangements. Concurrently, Tribune proposes to assign the licenses of WTKR and WGNT to Scripps Broadcasting Holdings, LLC (SBH). The parties explain that, concurrently with consummation of the Transaction, Tribune and Dreamcatcher will consummate the transfer of control of WTKR-WGNT License from Dreamcatcher to Tribune, and WTKR-WGNT License and SBH in turn will consummate the assignment of WTKR and WGNT from WTKR-WGNT License to SBH.

² See *supra* note 1.

Call Sign	Community of License	Assignor or Transferor	Assignee or Transferee	Application File No(s).
WNEP-TV	Scranton, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALCDT-20190410AAM BTCCDT-20190410AAZ ³
W10CP-D	Towanda, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTV-20190410AAN BTCDTV-20190410ABA
W20AD-D	Williamsport, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTT-20190410AAO BTCDDT-20190410ABB
W15CO-D	Towanda, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTT-20190410AAQ BTCDDT-20190410ABC
W07DC-D	Allentown/Bethlehem, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTV-20190410AAR BTCDTV-20190410ABD

³ In connection with the proposed Transaction, Tribune has exercised its right under an Option Agreement dated December 27, 2013, to acquire control of Local TV Pennsylvania License, LLC (WNEP License), the licensee of WNEP-TV, Scranton, Pennsylvania, from Dreamcatcher. Tribune currently provides certain services to WNEP License pursuant to contractual arrangements. Concurrently, Tribune proposes to assign the license of WNEP-TV to TEGNA. The parties explain that, concurrently with consummation of the Transaction, Tribune and Dreamcatcher will consummate the transfer of control of WNEP License from Dreamcatcher to Tribune, and WNEP License and TEGNA in turn will consummate the assignment of WNEP-TV from WNEP License to TEGNA.

Call Sign	Community of License	Assignor or Transferor	Assignee or Transferee	Application File No(s).
W14CO-D	Clarks Summit, etc., PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTT-20190410AAS BTCDDT-20190410ABE
W28DP-D	Pottsville, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTT-20190410AAT BTCDDT-20190410ABF
W26CV-D	Mansfield, PA	Local TV Pennsylvania License, LLC Dreamcatcher Broadcasting, LLC	TEGNA Broadcast Holdings, LLC Local TV Finance, LLC	BALDTT-20190410AAU BTCDDT-20190410ABG
W11H-CD	Indianapolis, IN	Nexstar Broadcasting, Inc.	CCB License, LLC	BAL-20190416AAO

**STATEMENT OF
COMMISSIONER MICHAEL O'RIELLY**

Re: *In the Matter of the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, MB Docket No. 19-30.

This Order allows Nexstar to acquire many of Tribune's assets, while others will be transferred to third parties. While I would have supported releasing the Order at the Bureau level, I am nonetheless pleased that we are considering this item upon the request of Commissioners who wished to weigh in on it. As a matter of my process reform efforts, I have long argued that Commissioners ought to have the right to call up any item that has been produced and will be released on delegated authority. In this case, the Chairman agreed to bring the matter before the full Commission, but, for the long-term health of the institution, this practice warrants greater permanence and should be formally adopted and codified. However, the Chairman's allowance of full Commission consideration should not be taken by others as an opportunity to delay expeditious action—and that is particularly important here. Each additional day of delayed consideration has resulted in the diversion of substantial funds to the company's bankers, which would have been better spent on programming, personnel, technology or any other productive use.

On the merits of the item, it is clear that this transaction can be expected to be a win for viewers due to certain efficiencies and consumer opportunities to be gained. Nexstar has a history of increasing news content on the stations it acquires, especially by providing stations access to its state and local public affairs resources. I expect it will do the same here, consistent with commitments made in the transfer applications. Further, Nexstar has been a lead proponent of ATSC 3.0 and plans to increase investment to upgrade the purchased properties to ATSC 3.0 capabilities. This should not be overlooked, given the potential consumer benefits.

On a more fundamental note, today's media landscape has created significant challenges for broadcasters, who are forced to compete against Silicon Valley behemoths for advertising dollars. Any opportunities to enable broadcasters to compete more effectively should therefore be encouraged and embraced. While the Order makes a strong case for allowing this transaction to move forward, it is ironic that we nonetheless spend so much effort scrutinizing whether or not a station is a four or five (or six) in its market, and whether that should even be a factor. Frankly, does this even make a difference when the high-tech giants are competing with the highly-regulated broadcasters for advertising dollars in nearly every local market across the country and with dramatically different economies of scale?

Yet, here we are, forced to split atoms to defend the merits of allowing a top-ranked station owner to purchase a top-four, or -four/-five/-six in this case, station. The inflection point for digital advertising to overtake all other traditional ad platforms is literally happening before our eyes,¹ with television ads having already been surpassed two years ago.² Seismic shifts confronting the television industry threaten to send some entities the way of the newspaper if we do not respect marketplace realities and reorient our transaction regulations and processes, in general, to the way consumers, advertisers, and the market view broadcast television. The tsunami is already sweeping ashore and we're still debating how many umbrellas the beachgoers are allowed to own.

¹ Press Release, US Digital Ad Spending Will Surpass Traditional in 2019 (Feb. 20, 2019), <https://www.emarketer.com/newsroom/index.php/us-digital-ad-spending-will-surpass-traditional-in-2019/>.

² Interview with Brett Gordon, Associate Professor of Marketing, Kellogg School of Management, (Sept. 5, 2019), <https://insight.kellogg.northwestern.edu/article/companies-digital-advertising-spending>.

Accordingly, I take significant issue with many of the station spin-offs required of Nexstar by the U.S. Department of Justice in its review. To maintain an effective blanket prohibition on top-four combinations, especially one based on specious claims, is to ignore the case-by-case circumstances and market-specific analysis that are supposedly central to that agency's merger review process. Many of these stations, if not all, should have been allowed to transfer to Nexstar. Forcing so many to be spun off is more consistent with the bygone era of black and white television and a dilapidated, out-of-touch philosophy than the modern high-tech world in which we live.

For a multitude of reasons, I approve the transaction.

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL,
DISSENTING**

Re: *In the Matter of the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, MB Docket No. 19-30.

We live in a world of infinite content. But there is still something special about local broadcasting. There is something unique about a signal in the air with the responsibility to serve community at its core. It's one of the reasons why broadcasting remains a dominant force in local news. It's also why broadcasting has special status under the law—and at the FCC we have long-standing duties to ensure that the use of our airwaves is consistent with the values of localism, competition, and diversity.

For decades, the FCC has used these values as guideposts in its decisions involving broadcast media. They have their origin in the Communications Act. While they may not be especially trendy, these principles have stood the test of time. They support journalism and jobs. They make it possible for communities across the country to have local news and content, rather than just national news and programming developed on the coasts. Because we fall short of honoring these essential values in this decision, I dissent.

In the transaction before us, Nexstar Broadcasting acquires Tribune Media Company and its 41 full-power television stations. Following a handful of divestitures, the newly combined licensee will hold 144 full-power station licenses in 115 markets nationwide. As a result, this new broadcast company—the largest in our nation's history—will be able to broadcast to more than three in five of our nation's television households.

This is extraordinary reach. As a result, the FCC should make an effort to understand the consequences for localism, competition, and diversity. But we fail to do so here in two critical respects.

First, in this decision we rely on a totally-outdated broadcasting standard. To understand why this matters, roll back to 1985. On television we watched Dallas, Dynasty, and Miami Vice. It was a long time ago. But it was back in 1985 when the FCC put its Ultra-High Frequency (UHF) discount for television in place. At the time, it compensated for the technical shortcomings of UHF signals used by television stations allocated to channels above 13. In the analog era, UHF stations had weaker propagation, limiting audience size. Their signals simply did not travel as far as Very-High Frequency (VHF) band signals allocated to channels 13 and below. As a result, it was the low VHF stations that were most desirable—because their signals reached the most viewers. To reflect the more limited scope of UHF signals and their less desirable status in the marketplace, they counted only half as much as VHF signals for the purposes of our television broadcast ownership rules. By all accounts, this was a fair approach to analog technology.

However, it was *more than a decade ago* that all our full-power television stations converted to digital technology. The analog era is over. This is the digital age. With respect to UHF and VHF signals, this means the world has been reversed. The very UHF signals that had the least reach in analog broadcasting now have the furthest reach in digital broadcasting. Conversely, the once-desirable VHF signals now have the weakest reach in digital broadcasting.

We should be updating our policies to reflect current technologies. There is not a broadcast engineer in the country who could say with a straight face that continuing to honor the UHF discount makes any technical sense. Yet our decision today depends entirely on counting stations as if it does. It

relies on the fiction of the UHF discount still being technically viable in order to ensure that the new broadcasting company that results from this transaction clears important ownership limits in the law.

This is unfortunate. Our failure to revisit this basic standard prevents us from having an honest dialogue about localism, competition, and diversity. It means discussions about media ownership are all built on an anachronistic assumption about audience reach. This is embarrassing. The FCC is the nation's expert on broadcasting and our technical policies are simply obsolete. It's also regrettable because the economic models that have sustained traditional newsgathering and content have changed with digitization. At the same time, as newspapers fold, broadcasting remains an essential source for the local news we need to make decisions about our lives, our communities, and our country. In many ways, it has never been more important—and our treatment here should reflect that by assessing how this increase in concentration impacts localism, competition, and diversity.

Second, this decision takes a brutal approach toward standing. Under the Communications Act, a “party in interest” has the right to file a petition to deny any application before the FCC involving licensed services. With broadcasting transactions, the FCC has generally allowed for standing in three ways: competitors in the market with signals subject to interference, competitors in the market subject to economic harm, and residents of the station's service area or regular listeners. An organization can establish standing by showing that at least one of its members meets this test.

This is a good policy. It has served the FCC well for decades. But in this decision, we burn it down. In a footnote, the agency overturns its past decisions making it possible for organizations to challenge media mergers in which multiple markets are at issue. Instead of honoring long-standing commission-level precedent in media mergers that conferred organizational standing based on the affidavit of one member, going forward organizations will be required to file an affidavit from a member in each and every affected market across the country. In the instant decision, that means we treat Common Cause's concerns as informal objections in every market but one.

This is bureaucratic and cruel. It perversely means that the public will have fewer opportunities to comment on the use of the public airwaves. It turns this agency's priorities upside down by creating a new and unnecessary roadblock for the public to participate in our proceedings. As a result, it reduces the role the public can play assisting this agency in assessing localism, competition, and diversity. This is shameful and wrong.

We should be encouraging the public and individual citizens to take an active interest in the scope and quality of broadcasting in their communities. It plays a special role in providing local news and information—and our process should honor this essential truth rather than diminish it.

For these reasons, I dissent.

**STATEMENT OF
COMMISSIONER GEOFFREY STARKS,
DISSENTING**

Re: *In the Matter of the Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, MB Docket No. 19-30.

Today's merger will create one of the largest broadcasters in history, reaching more than 60 percent of United States households. In my mind, permitting that large a single broadcaster runs counter to our fundamental tenets of promoting competition, localism, and diversity.¹ Furthermore, the only way to achieve such a broadcast behemoth is through the application of the UHF discount – a loophole that, unfortunately, this administration revived permitting consolidation that I believe is against our statutory authority. For those and the reasons discussed below, I dissent.

The touchstones of FCC law and practice are longstanding and timeless. We grant licenses, transfers, and assignments in service of the public interest, convenience, and necessity.² We welcome and largely rely upon the expertise and experience of stakeholders and the public to aid our decision-making.³ It is rare to find an organization with this kind of immutable DNA. That is why one of the most concerning aspects of today's decision is the damage it may do to the ability of the public to engage with the Commission on a merger like this one.

Since 1966, when the seminal case⁴ on standing was decided, the Commission has relied upon members of the public to present evidence of whether the licenses we grant or transactions we approve square with our public interest standard and better serve local communities. Indeed, even during the broadcast deregulatory era of the 1980s, the Commission noted that input from the public would be crucial to allowing the agency to exercise its core licensing functions.⁵ As we said in another matter, the Commission "relies on members of the public to act as private attorneys general to assist in overseeing the conduct of applicants and licensees and in fulfilling our statutory functions."⁶

Given the importance of public input to this agency, we should make it easier for parties to participate, rather than more confusing. I am concerned that today's action could discourage future participation in Commission proceedings by suggesting that petitioners must meet an unreasonably high

¹ See generally *2018 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*, Notice of Proposed Rulemaking, 33 FCC Rcd 12111 (2018).

² 47 U.S.C. § 310(d).

³ See Media Bureau, FCC, *The Public And Broadcasting: How to Get the Most Service from your Local Station* (Aug. 2019), <https://www.fcc.gov/sites/default/files/public-and-broadcasting.pdf>.

⁴ *Office of Commc'ns of United Church of Christ v. FCC*, 359 F.2d 994 (D.C. Cir. 1966).

⁵ See, e.g., *Revision of Programming and Commercialization Policies, Ascertainment Requirements, and Program Log Requirements for Commercial Television Stations*, Report and Order, 98 FCC 2d 1075, 1091 (1984) ("As we have stated in numerous proceedings, citizen complaints and formal petitions to deny provide an important monitoring function in our regulatory endeavors. We believe these procedures will continue to provide us with important information relative to an individual licensee's compliance.").

⁶ See, e.g., *1998 Biennial Regulatory Review -- Streamlining of Mass Media Applications, Rules, And Processes*, Report and Order, 13 FCC Rcd 23056, 23064-65, para. 18 (1998).

standard to demonstrate that they are entitled to full participation as a party in interest. For instance, it is unclear whether this item affirms a previous Bureau-level decision to afford organizational standing only where a petitioner can produce a viewer affidavit from a member in each relevant market.⁷ If so, that onerous and unprecedented standard would require more than 30 affidavits for this transaction. Even very recently, the Commission conferred party in interest status more inclusively in our license transfer process.⁸ Indeed, the Commission has previously noted that “individual listeners and viewers as well as groups representing them may qualify as parties in interest”⁹ and has often afforded standing to organizations representing viewers based upon relatively straightforward affidavits.¹⁰ I think that is the correct approach. However, despite a strong interest in making it easier for expert parties representing viewers to participate in our proceedings, this item at best muddles our approach to standing in a way that does little to encourage interested parties, and at worst does significant harm.

Additionally, three points of this order are particularly unpersuasive. First, the item consistently cites increased station access to a Washington, DC news bureau as a significant public interest benefit, without fully explaining how such access promotes the Commission’s goals, including localism.¹¹ Without more analysis, it is not altogether clear to me why this is considered a “benefit” at all, and the great weight placed upon it seems arbitrary and capricious particularly in light of the well-pled arguments in the record that this transaction could lead to newsroom layoffs and higher prices for consumers.¹²

Second, our statutory merger review of the transfer of a license places the burden on applicants to affirmatively prove that the benefits of the transaction outweigh any harms.¹³ Here, the majority flips the burden of proof, specifically in granting the two “Top-Four” station combinations in Indianapolis and Norfolk. The Commission justifies these station combinations by placing significant weight on a desire to avoid “hardship to owners” and “undue disruption” rather than requiring the combinations to produce clear and significant public interest benefits.¹⁴ This is unprecedented and improper to me.

Third, as mentioned above, I am compelled to dissent from this item because I fundamentally disagree with the rules relied upon to grant it. I share concerns that excessive consolidation of our

⁷ *Applications for Consent to Transfer Control of License Subsidiaries of Media General, Inc., from Shareholders of Media General, Inc. to Nexstar Media Group, Inc.*, Memorandum Opinion and Order, 32 FCC Rcd 183 at 191, n.57 (2017) (*Nexstar-Media General Order*).

⁸ *See, e.g., Applications of Tribune Media Company, (Transferor) and Sinclair Broadcast Group, Inc., (Transferee)*, Hearing Designation Order, 33 FCC Rcd 6830, 6841, para. 32 (2018) (ordering a range of petitioners be made parties to a proceeding pursuant to 47 CFR § 1.221(d)).

⁹ *Petition for Rulemaking to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application*, 82 FCC 2d 89, 93 (1980).

¹⁰ *See, e.g., Adelphia Commc’n Corp.*, 21 FCC Rcd 8203, 8216, para. 20 (2006); *AM/FM, Inc.*, 15 FCC Rcd 16062, 16077 (2000); *Hispanic Broad. Corp.*, 18 FCC Rcd 18834, 18835 (2003); *Telemundo Commc’n Grp.*, 17 FCC Rcd 6958, 6965 (2002); *Shareholders of Tribune Co.*, 29 FCC Rcd 844, 849, para. 15 & n.40 (2014). *But see Nexstar-Media General Order*, 32 FCC Rcd at 191, n.57.

¹¹ *See, e.g., Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, FCC 19-89, paras. 26, 32, 39, 50 (adopted Sept. 13, 2019).

¹² *Petition to Deny of Common Cause, Public Knowledge, United Church of Christ, OC Inc., and Sports Fans Coalition*, MB Docket No. 19-30, at 6-7, 11 (filed Mar. 18, 2019).

¹³ *See, e.g., Applications of AT&T Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9139, para. 18 (2015).

¹⁴ *See, e.g., Tribune and Nexstar Order*, FCC 19-89, paras. 39, 44, 52 (adopted Sept. 13, 2019).

broadcast licenses is counter to our statutory goals and harmful to our democracy. Although I was not a member of the Commission when this administration reinstated the obsolete UHF discount loophole,¹⁵ I would not have supported that action then, and do not support it as a sound basis now. In fact, I believe that it defies our statute and the will of Congress. Based on the Congressionally imposed 39 percent national ownership cap alone, I believe that this transaction, as structured, is against the law. Congress clearly directed the Commission to set the national ownership cap at 39 percent with the goal of preventing further media consolidation while remaining silent on the application of the UHF discount.¹⁶ At the time Congress set this limit, it mattered whether a station was VHF or UHF and that categorization had an actual impact on audience reach due to the technical characteristics of the broadcast signal. This is no longer the case¹⁷ and, due to the revived application of the UHF discount, this Commission permits station groups to effectively reach up to 78 percent of the population. This doesn't add up. We are beholden to Congress, and I cannot support an action that I believe runs counter to our authority.

While I am ultimately unable to support today's action, I appreciate the Chairman's willingness to solicit a Commission vote on this item, rather than release it on delegated authority, and his staff's engagement with my office while it has been on circulation.

¹⁵ *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Order on Reconsideration*, 32 FCC Rcd 3390 (2017).

¹⁶ Consolidated Appropriations Act of 2004, Pub. L. No. 108-199 § 629, 118 Stat. 3 (2004).

¹⁷ *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule, Report and Order*, 31 FCC Rcd 10213 (2016).