

**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.<sup>1</sup> 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.

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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.<sup>2</sup> We welcome and largely rely upon the expertise and experience of stakeholders and the public to aid our decision-making.<sup>3</sup> 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 case<sup>4</sup> 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.<sup>5</sup> 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."<sup>6</sup>

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 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

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<sup>1</sup> 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).

<sup>2</sup> 47 U.S.C. § 310(d).

<sup>3</sup> 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>.

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

<sup>5</sup> 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.").

<sup>6</sup> 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).

where a petitioner can produce a viewer affidavit from a member in each relevant market.<sup>7</sup> 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.<sup>8</sup> Indeed, the Commission has previously noted that “individual listeners and viewers as well as groups representing them may qualify as parties in interest”<sup>9</sup> and has often afforded standing to organizations representing viewers based upon relatively straightforward affidavits.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> 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 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,<sup>15</sup> I

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<sup>7</sup> *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*).

<sup>8</sup> *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)).

<sup>9</sup> *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).

<sup>10</sup> *See, e.g., Adelpia 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.

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *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).

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

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

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.<sup>16</sup> 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 case<sup>17</sup> 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.

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

<sup>17</sup> 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).