Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
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Applications to Transfer Control of Tegna Inc. to Nexstar Media Inc.	)	MB Docket No. 25-331
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EMERGENCY APPLICATION FOR REVIEW OF BROADBAND COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA; BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON; INDIANA CABLE AND BROADBAND ASSOCIATION; MISSISSIPPI INTERNET AND TELEVISION; TENNESSEE CABLE & BROADBAND ASSOCIATION; VCTA – BROADBAND ASSOCIATION OF VIRGINIA; DIRECTV, LLC; NEWSMAX MEDIA, INC; PUBLIC KNOWLEDGE; COMMUNICATIONS WORKERS OF AMERICA; UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY, INC.; AND FREE PRESS

Todd Eachus
President
BROADBAND COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA
127 State St.
Harrisburg, PA 17101

David Ducharme
Executive Director
BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON
4217 Williams Ave. N.
Renton, WA 98056

Joseph Dant
Executive Director
INDIANA CABLE AND BROADBAND ASSOCIATION
150 W. Market St., Ste. 412
Indianapolis, IN 46204

Lindsey Simmons
Interim Executive Director
MISSISSIPPI INTERNET AND TELEVISION
PO Box 55867
Jackson, MS 39296

Ann Marie Walp
President
TENNESSEE CABLE & BROADBAND ASSOCIATION
414 Union St., Ste. 1900
Nashville, Tennessee 37219

Ray LaMura
President
VCTA – BROADBAND ASSOCIATION OF VIRGINIA
1111 East Main St., Ste. 802
Richmond, VA 23219

Michael Nilsson
William M. Wilshire III
Timothy J. Simeone
HWG LLP
1919 M Street, N.W.
The Eighth Floor
Washington, D.C. 20036
(202) 730 1300

Counsel to DIRECTV

John Bergmayer
PUBLIC KNOWLEDGE
1818 N Street, NW
Suite 410
Washington, DC 20036

Nell Geiser
Ceilidh Gao
COMMUNICATIONS WORKERS OF AMERICA
501 Third Street, NW
Washington, DC 20001

Michael Hartman
General Counsel
Chief External Affairs Officer and Secretary
Stacy Fuller
Senior Vice President, External Affairs
DIRECTV, LLC
2260 E. Imperial Highway
El Segundo, CA 90245

Christopher Ruddy
Chief Executive Officer
Michael Martin
Director of Government Affairs
NEWSMAX MEDIA, INC.
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487

Cheryl Leanza
UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY, INC.
100 Maryland Avenue, NE
Suite 330
Washington, DC 20002

Matthew F. Wood
Vice President of Policy &
General Counsel
FREE PRESS
1025 Connecticut Avenue NW, Suite 1110
Washington, DC 20036

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EMERGENCY APPLICATION FOR REVIEW

Pursuant to § 1.115 of the Federal Communications Commission's ("Commission") rules,[1] the Broadband Communications Association of Pennsylvania ("BCAP"); Broadband Communications Association of Washington ("BCAW"); Indiana Cable and Broadband Association ("ICBA"); Mississippi Internet and Television ("MIT") (formerly known as the Mississippi Cable Telecommunications Association); Tennessee Cable & Broadband Association ("TCBA"); VCTA – Broadband Association of Virginia ("VCTA"); DIRECTV, LLC ("DIRECTV"); Newsmax Media, Inc. ("Newsmax"); Public Knowledge; the Communications Workers of America ("CWA"); United Church of Christ Media Justice Ministry, Inc. ("UCC"); and Free Press (collectively, "Petitioners") hereby file this application for review and respectfully request that the Commission reverse the March 19, 2026 decision ("Order") of the Media Bureau ("Bureau") approving the transfer of control of the broadcast licenses of TEGNA Inc. ("TEGNA") to Nexstar Media Group, Inc. ("Nexstar") (collectively, the "Applicants") in the above-captioned proceeding ("Transaction").

[1] 47 C.F.R. § 1.115.

SUMMARY

The Transaction approved by the Media Bureau ushers in an unprecedented concentration of broadcast television market power. It would consolidate control of 265 full-power TV stations under one company (259 with illusory "divestitures" two years hence that may never materialize), reaching an astounding 80 percent of U.S. television households, and including three or more full-power stations in more than 20 markets. As a result, Nexstar would have vast power to raise carriage costs for pay TV distributors and their customers and threaten blackouts, across the country, of must-see programming like the NFL, college sports, and local news if their pricing demands are not met. The Applicants knew that the Transaction would violate both the National Television Ownership Rule's national audience reach limitation ("National Cap" or "Cap") and the Local Television Ownership Rule (or "Duopoly Rule"). Despite pending rulemakings considering whether the Commission may amend those rules on an industry-wide basis, the Applicants asked the Bureau to waive both rules for them. The Transaction would also result in a raft of other public interest harms, facilitating job cuts and increasing Nexstar's power in labor markets to the detriment of broadcast workers; reducing competition and raising prices in local television advertising; and cutting newsroom staff and original local reporting.

In response, Petitioners, along with numerous other stakeholders from across the political and ideological spectrum, opposed the Transaction.[2] The record made clear that the Transaction would violate the Communications Act and the Commission's rules, and cause immediate,

[2] *See, e.g.*, Petition to Deny of the Broadband Communications Association of Pennsylvania, Broadband Communications Association of Washington, Indiana Cable and Broadband Association, Mississippi Cable Telecommunications Association, Tennessee Cable & Broadband Association, and VCTA – Broadband Association of Virginia, MB Docket No. 25-331 (filed Dec. 31, 2025) ("Petition to Deny of State Cable Petitioners"); Petition to Deny of DIRECTV (filed Dec. 31, 2025); Petition to Deny of EchoStar, (filed Dec. 31, 2025); Petition to Deny of CCB License, LLC, (filed Dec. 31, 2025); Petition to Deny of Public Interest Petitioners, filed Dec. 31, 2025); Petition to Deny of Newsmax, (filed Dec. 31, 2025). Unless otherwise noted, all cited petitions to deny, comments, replies, reply comments, and *ex parte* letters are those filed in MB Docket No. 25-331.

irreparable, and sustained public interest harms. Among other things, the Transaction would result in higher retransmission consent fees for multichannel video programming distributors ("MVPDs") and higher consumer prices, both immediately and in the longer term. Contrary to this overwhelming record evidence and precedent, the Bureau adopted the Order, approving the Transaction and the Applicants' associated waiver requests. As explained herein, the Commission should reverse the Bureau's Order because:

(1) the waiver of the National Cap violates Section 629 of the 2004 Consolidated Appropriations Act ("CAA") (47 C.F.R. §§ 1.115(b)(2)(i), (iii));

(2) the Bureau's waivers of the National Cap and the Duopoly Rule violate Commission rules prohibiting the Bureau from addressing "novel" questions of law, fact, and policy and matters that are not "minor," "routine" or "settled" under delegated authority (47 C.F.R. §§ 1.115(b)(2)(i), (ii));

(3) the Bureau's dismissal of retransmission consent-related harms contradicts Bureau and Commission precedent (47 C.F.R. § 1.115(b)(2)(i)); and

(4) the Bureau erred in approving the Transaction despite the concrete, Transaction-specific record evidence of harm warranting denial or designation for hearing consistent with past precedent (47 C.F.R. § 1.115(b)(2)(iv)).

The handful of station "divestitures" and other "affordability" commitments made by the Applicants are illusory and fail to remediate these legal errors and harms.

Petitioners respectfully request that the Commission reverse the Order and deny the Transaction, or, at minimum, designate the Transaction for an evidentiary hearing given the substantial questions of material fact in the record on consumer pricing impacts and other demonstrated harms, and insufficient evidence of asserted benefits. Petitioners have simultaneously filed an emergency petition for stay of the Order pending a decision on this application for review, so as to preserve their right to effective review of this FCC action.[3]

[3] The Commission has granted stays in similar situations and should do so here. *See*, *e.g.*, *Bloomberg L.P., Complainant v. Comcast Cable Communications, LLC, Defendant*, Memorandum Opinion and Order, 27 FCC Rcd. 9488 ¶ 11 (2012) (finding "that the novelty and importance of the issues presented warrant an administrative stay of certain aspects of the [order] to provide the Commission an opportunity to resolve the issues on review").

I. THE BUREAU'S WAIVER OF THE NATIONAL CAP VIOLATES THE COMMUNICATIONS ACT, AS AMENDED BY THE 2004 CAA

As explained by State Cable Petitioners, the Commission may not waive any rule "mandated by statute" unless the statute itself authorizes an exception, waiver, or similar relief.[4] The Bureau's Order fails to clear this threshold hurdle. The Telecommunications Act of 1996 ("1996 Act"), as amended by the 2004 CAA, enshrined a "39 percent national audience reach limitation" into law in five different places:

- It directs the Commission to increase the national audience reach limitation for television stations to 39 percent;[5]
- It prescribes that "[a] person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B) through grant, transfer, or assignment of an additional license for a commercial television broadcast station shall have not more than 2 years after exceeding such limitation to come into compliance with such limitation";[6]
- It further prescribes that the divesture requirement above "shall not apply to persons or entities that exceed the 39 percent national audience reach limitation through population growth";[7]
- It makes clear that the Commission's forbearance authority in 47 U.S.C. § 160 "shall not apply to any person or entity that exceeds the 39 percent national audience reach limitation for television stations in paragraph (1)(B)";[8] and
- It excludes the "39 percent national audience reach limitation" from the quadrennial review of broadcast ownership rules.[9]

The Order concludes that the congressional mandate for the Commission to increase the Cap to 39 percent did not foreclose the possibility that the Commission could later amend or

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[4] *See* Petition to Deny of State Cable Petitioners at 21 (citing *Nat'l Ass'n of Broads. v. FCC*, 569 F.3d 416, 426 (D.C. Cir. 2009)).

[5] Consolidated Appropriations Act of 2004, Pub. L. No. 108-199, § 629(1), 118 Stat. 3, 99-100 ("2004 CAA"); Telecommunications Act of 1996, Pub. L. No. 104-104, § 202(c)(1)(B), 110 Stat. 56, 111 ("1996 Act").

[6] 2004 CAA § 629(2); 1996 Act § 202(c)(3).

[7] 2004 CAA § 629(2); 1996 Act § 202(c)(3).

[8] 2004 CAA § 629(2); 1996 Act § 202(c)(4).

[9] 2004 CAA § 629(3); 1996 Act § 202(h).

waive the Cap.[10] As explained by State Cable Petitioners, this reading is in conflict with the text of the Act: "The *only* reason for Congress to say '39 percent,' *and to do so repeatedly*, was to 'enshrine' that limit into the statute."[11] Moreover, the Applicants conceded that when Congress enshrines numerical limits in the Communications Act, it generally knows how to carve out exceptions.[12] The lack of any such exception in connection with the National Cap weighs against the Order's conclusion.[13] The Order's interpretation is also inconsistent with the structure of the 2004 CAA which, in addition to setting the Cap at 39 percent, removed the Cap from the Commission's quadrennial process.[14] A reading of the CAA that allows the Commission to change the Cap outside of its periodic review of ownership rules "would render these congressional actions, which work together to bar changes to the cap, meaningless."[15]

Additionally, in interpreting the 2004 CAA, the Bureau ignored the significance of the divestiture provision in § 629(c)(3), accepting the Applicants' argument that "nothing in the divestiture provision" expressly "purports to revoke or limit the Commission's waiver authority."[16] First, *Loper Bright* forecloses agency claims of agency authority based on congressional silence rather than express delegations of authority.[17] Second, the best and only

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[10] *Applications for Consent to the Transfer of Control of TEGNA Inc. to Nexstar Media Inc.*, Memorandum Opinion and Order, MB Docket No. 25-331, DA 26-267 ¶ 34 (MB Mar. 19, 2026) ("Order").

[11] *See* Reply of State Cable Petitioners at 10 (emphasis added).

[12] *See id.* at 10-11 (citing Consolidated Opposition to Petitions to Deny and Comments of TEGNA Inc. and Nexstar Media Inc., MB Docket 25-331, at 58-59 (filed Jan. 15, 2026) ("Opposition")).

[13] *See* Reply of State Cable Petitioners at 10-11 (citing *Collins v. Yellen*, 594 U.S. 220, 248 (2021)).

[14] *See* Reply of DIRECTV at 37.

[15] *Id.*; *see also* Reply Comments of NTCA – The Rural Broadband Association at 4-5 ("[T]he record here confirms that the statutory framework governing the national television ownership cap precludes such a waiver.").

[16] Opposition at 63; Order ¶ 36.

[17] *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 404 (2024). This was the approach taken in the 2016 *UHF Discount Elimination Order*. There, the Commission essentially argued that, while the 2004 CAA directed the Commission to adopt a 39 percent Cap, it did not otherwise bar the Commission from exercising its general rulemaking authority to adjust the Cap further. *See generally Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Report and Order, 31 FCC Rcd. 10213 (2016) ("*UHF Discount*

reasonable interpretation of the two-year divestiture provision is that it is yet another signal of Congress's intent to remove the Cap from Commission discretion. Under the Bureau's interpretation, the day after enactment of the statute setting the Cap at 39 percent, the Commission could have immediately waived the Cap or initiated a rulemaking proceeding to raise the Cap to 100 percent, which would have been an absurd result and clearly contrary to the 2004 CAA.[18] There would be no need to prescribe a divestiture period at all—let alone one of such specific duration—if Congress intended the Commission to further adjust the National Cap up or down.[19] In fact, Congress established divestiture as the *exclusive* remedy for violations of the Cap occurring "through grant, transfer, or assignment of an additional license for a commercial broadcast station."[20] And in every case where a proposed license transfer would result in a violation of the Cap, the FCC has conditioned approval on mandatory divestitures to bring the new entity under the Cap, consistent with the requirements of the 2004 CAA.[21] The Order's unacknowledged change in position from prior orders is another reason for reversal.[22]

Nor is it possible to square the Order's interpretation with the fact that Congress made clear that divestiture would *not* be required if an entity exceeds the "39 percent" Cap "through

Elimination Order"). *Loper Bright* requires the Commission to defer to Congress, not the other way around. The Commission's attempt to sidestep those directives in the 2016 order cannot be relied upon by the Bureau.

[18] *See* Reply of State Cable Petitioners at 11; *see also* Comments of Free Press, *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318, at 18-19 (filed Aug. 4, 2025).

[19] Reply of State Cable Petitioners at 11.

[20] 2004 CAA § 629(2).

[21] *See, e.g.*, *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 ¶ 1 (MB 2017) ("*Nexstar/Media General Order*"); *Tribune Media Company and Nexstar Media Group, Inc., et al.*, Memorandum Opinion and Order, 34 FCC Rcd. 8436 ¶ 8 (2019) ("*Nexstar/Tribune Order*").

[22] *See Encino Motorcars v. Navarro*, 579 U.S. 211, 221-22 (2016) (finding that an unexplained inconsistency in agency policy is grounds to find agency action arbitrary and capricious). The "divestiture" commitments made by Applicants have no effect on their combined national reach, in violation of the Cap.

population growth"—and instead applied the Cap only to those entities that exceed it through acquisition.[23] As State Cable Petitioners explained, "population growth" can only happen in the future, reinforcing the mandate that the "39 percent" Cap remain static.[24]

The Order also accepts the Applicants' argument that the 2004 CAA's exclusion of the Cap from the Commission's § 160 forbearance authority is insignificant based on § 160's applicability to telecommunications services and the difference between forbearance and waiver.[25] This misreads Congressional intent: Congress understood the Commission's forbearance authority to be the only mechanism built into the Communications Act by which the Commission could effectively waive application of a *statutory* requirement, and Congress made sure to expressly block that source of authority with respect to the Cap.[26]

The Order also fails to recognize the impact that insulating the National Cap from the Commission's Section 202(h) review process had on the Commission's authority over the Cap. Congress's decision to remove the periodic review process elevated the National Cap into a statutory rule.[27] The Third Circuit confirmed this, finding that Congress had issued a "statutory

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[23] 2004 CAA § 629(2); 1996 Act § 202(c)(3).

[24] *See* Petition to Deny of State Cable Petitioners at 15 (citing Letter from Brian Fitzpatrick, Vanderbilt Law School, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 17-318, at 2-3 (filed Nov. 3, 2025) ("[I]t is hard to see how the Commission could raise Congress's 39% cap without running afoul of Congress's 2004 provision requiring any entity to divest when they exceed 39%: this provision clearly applies to *future growth*, not just to those entities that were too big on the date the 2004 amendments came into law.") (emphasis added)).

[25] Order ¶ 37.

[26] Reply of State Cable Petitioners at 13.

[27] *See* Reply of State Cable Petitioners at 13; Reply of EchoStar at 9-11; *see also* Kannon Shanmugam & William Marks, *The FCC Lacks Statutory Authority to Revise the Telecommunications Act's 39% National Ownership Cap for Television* 14-15 (2025), available at https://americantelevisionalliance.org/wp-content/uploads/2025/12/NationalOwnershipCapWhitePaper_12-15-25.pdf ("The 2004 amendments followed closely on the heels of the D.C. Circuit's decision in *Fox Television*. Although the 2004 amendments retained the periodic-review provision for 'all of [the FCC's] ownership rules,' Congress expressly excluded the 39% cap from that requirement, thereby removing the FCC's authority to reevaluate the cap as it was required to do under the 1996 Act. . . . [A] reviewing court would likely hold that Congress sought to exempt the revised 39% cap from agency alteration, both as a response to the D.C. Circuit's decision and to spare both the FCC and the market from the destabilizing force of continual litigation over the cap.").

directive" for the Commission to adopt "a precise 39% cap," without any express suggestion of discretion to change it.[28] Given Congress's action to change the status quo following the *Fox Television* decisions, the Order's conclusion that the National Cap remains subject to the Commission's general rulemaking authority fails.[29] Whatever authority Congress might have preserved for the Commission to revise the Cap in 1996, Congress plainly removed it in 2004.

Beyond the Order's inconsistency with the 1996 Act and 2004 CAA, the record makes clear that the Bureau's waiver of the Cap also runs contrary to the Major Questions Doctrine.[30] When an agency asserts a wide "breadth of . . . authority" with "economic and political significance," courts must "hesitate before concluding that Congress meant to confer such authority."[31] To overcome this presumption, a court must identify "clear congressional authorization" for the power the agency seeks to exercise, not a "merely plausible textual basis" for it.[32] Waiving the National Cap is an issue of economic and political significance, fundamentally altering the nationwide market for retransmission consent and the broadcast industry as a whole.[33] Furthermore, the Major Questions Doctrine prohibits the Commission from adopting "basic and fundamental changes in [a] scheme" designed by Congress.[34] That is precisely what the Order does.[35] For this reason, too, the Order must be reversed.[36]

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[28] Reply of EchoStar at 10 (quoting *Prometheus Radio Project v. FCC*, 373 F.3d 372, 396 (3d Cir. 2004)).

[29] *See* Reply of State Cable Petitioners at 14.

[30] *See* Reply of EchoStar at 11; Reply Comments of NTCA – The Rural Broadband Association at 6-7.

[31] *West Virginia v. EPA*, 597 U.S. 697, 721 (2022) (internal quotations omitted).

[32] *Id.* at 723 (internal quotations omitted).

[33] *See, e.g.*, Reply of EchoStar at 11; Reply Comments of NTCA – The Rural Broadband Association at 6-7.

[34] Petition to Deny of Newsmax at 6 (quoting *Biden v. Nebraska*, 600 U.S. 477, 494 (2023)).

[35] *See id.* ("There could be no greater 'basic and fundamental change' in a limit established by Congress than permitting a company to exceed it.").

[36] 47 C.F.R. § 1.115(b)(2)(i).

II. THE BUREAU EXCEEDED ITS DELEGATED AUTHORITY BY ADDRESSING NOVEL QUESTIONS OF LAW, POLICY, AND FACT

Section 0.283 of the Commission's rules prohibits the Bureau from acting on matters "that present novel questions of law, fact or policy that cannot be resolved under existing precedents and guidelines."[37] The Commission will find that there is a novel question when "[t]he legal and factual questions to be resolved . . . are [not] well-established"[38] and are not "routine [or] well-adjudicated,"[39] or where there is an "issue[ ] of first impression."[40] Similarly, Section 0.5(c) of the Commission's rules limits the scope of delegated authority under the Communications Act to "matters which are *minor* or *routine* or *settled in nature.*"[41] Whether the Commission, let alone the Bureau, may waive the 39 percent National Cap, or whether waiver would be in the public interest, are novel questions that cannot be resolved in the first instance by

[37] 47 C.F.R. § 0.283(c); *see also* 47 C.F.R. § 1.115(b)(2)(ii) (noting Bureau action warrants full Commission consideration where "[t]he action involves a question of law or policy which has not previously been resolved by the Commission"); *Delete, Delete, Delete*, Direct Final Rule, GN Docket No. 25-133, FCC 25-40, ¶ 10 & n.22 (2025) (noting "longstanding Commission rules" that "the Bureaus and Offices [do] not have delegated authority to act on any 'new or novel' issues").

[38] *Cf. Graphnet, Inc. Application for Supplemental Auth. to Provide Certain Digital Commc'ns Servs.*, Memorandum Opinion & Order, 84 F.C.C.2d 240 ¶ 5 (1981) (finding that "the certification of a new carrier or the expansion of authority for an existing carrier, as is the case here, normally does not involve novel questions of law and fact" because "[t]he legal and factual questions to be resolved in determining whether the public convenience and necessity require the additional service being offered by the carrier are well-established" and thus "[i]t cannot be said these considerations are novel in character").

[39] *Fones4all Corp. Petition for Expedited Forbearance*, Memorandum Opinion & Order, 21 FCC Rcd. 11125 ¶ 6 n.17 (2006) ("Extensions of time do not raise 'novel questions of fact, law or policy' as Fones4All asserts. Rather, the extension of time involves a routine and well-adjudicated procedural question[.]") (internal citations omitted).

[40] *Blanca Tel. Co. Seeking Relief from Demand for Repayment of a Universal Serv. Fund Debt*, Memorandum Opinion and Order and Order on Reconsideration, 32 FCC Rcd. 10594 ¶ 42 n.120 (2017); *see also Petition for Determination of Effective Competition in 32 Massachusetts Communities & Kauai, HI*, Memorandum Opinion & Order, 34 FCC Rcd. 10229 ¶ 4 (2019) (finding "novel" questions and addressing at the Commission level the question of whether the AT&T TV NOW streaming service met the effective competition test for cable rate regulation purposes).

[41] 47 C.F.R. § 0.5(c) (emphases added).

the Bureau.[42] Likewise, it is not "minor," "routine," or "settled" for the Bureau to grant waivers of the Duopoly Rule on the scale contemplated in the Order.[43] This constitutes clear legal error.

A. The Order Unlawfully Concludes That the Commission Has the Authority to Waive the National Cap

The Bureau has virtually nothing to say on these threshold delegation issues. Rather than explain why the waiver is "minor" or "routine" under its delegated authority, it cites, without elaboration, a third-party *ex parte* stating that "the Commission has taken the position in the past that it does have that authority"[44] and points elsewhere to the Commission's general rulemaking authority.[45] According to the Bureau, such broad authority to change the Cap necessarily encompasses the authority to waive the Cap.[46] This conclusion is erroneous for several reasons.

As a threshold matter, the relevant legal question in the 2016 order was whether the Commission had the authority to eliminate the UHF Discount under its general rulemaking authority, *not the Cap itself*.[47] Thus, the cursory discussion relating to the Cap in that order is dicta.[48] And there the Commission was focused exclusively on its authority to *tighten* the Cap,

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[42] *See generally* Letter from Todd Eachus et al., President, Broadband Communications Association of Pennsylvania, to Marlene Dortch, Secretary, FCC (filed Feb. 10, 2026).

[43] *See* Petition to Deny of State Cable Petitioners at 24 ("[T]he Commission has never expressly held that the Cap may be waived, nor has it issued any guidance for the Bureau to follow in adjudicating waiver requests."); Reply of State Cable Petitioners at 15 ("[T]he question of whether the Commission, after Congress's legislative enactments in the CAA, still has authority to modify the National Cap is a novel legal question that the Commission has not addressed in the over two decades since the CAA was enacted."); Petition to Deny of DIRECTV at 61 ("[T]he question whether the Commission, after Congress's complex legislative enactments in the CAA, still has authority to modify the national cap is, to say the least, a novel legal question.").

[44] Order ¶ 43 & n.135.

[45] Order ¶ 32.

[46] Order ¶ 34.

[47] *See UHF Discount Elimination Order* ¶¶ 17-24 (framing the analysis under the heading "Authority to Modify the UHF Discount").

[48] For example, other than to quote the text of the statute itself in a footnote, nowhere does the *UHF Discount Elimination Order* mention, let alone analyze the 2004 CAA's "Divestiture" provision which twice expressly discusses the "39 percent national audience reach limitation." *See generally UHF Discount Elimination Order*.

not to waive or otherwise relax the Cap. The Commission's decision to eliminate the UHF Discount had the effect of making the Cap *more restrictive*, and the Commission underscored that this action was fully consistent with what Congress enacted in the 2004 CAA. For example, as the Commission explained:

> [The forbearance provision in the 2004 CAA] is most reasonably interpreted as a congressional directive that the Commission *not decline to enforce against any person or entity the stricter national cap that Congress required the Commission to adopt*. After all, the statute was a response to the Commission's relaxation of the cap, and Congress directed the Commission to instead adopt a more stringent cap. *There is nothing in the CAA that suggests Congress intended to prevent the Commission from tightening the cap, repealing the UHF discount*, or otherwise changing its rules at a later date.[49]

In contrast, there is no basis under the *UHF Discount Elimination Order* to grant a wholesale waiver of the Cap as in the Order. To the extent the Commission (incorrectly) believed it had the authority to grant waivers of the Cap, the *UHF Discount Elimination Order* specified that such waivers would be limited to a small number of grandfathered stations that would otherwise fall out of compliance with the Cap, and made clear that any future transactions would be required to comply with it.[50] The Commission never granted any waivers pursuant to the order or designated the Bureau to adjudicate any such waiver requests. "An agency is bound by its own regulations," and because the Bureau lacked any precedent to guide its waiver grants in the Order, doing so was arbitrary and capricious.[51]

In any event, the Commission *reversed* the *UHF Discount Elimination Order* in a 2017 reconsideration order. There, the Commission not only vacated the *UHF Discount Elimination Order*, but also made clear its intention to open a future proceeding to consider Cap-related

[49] *Id.* ¶ 21 n.77 (emphases added).

[50] *See id.* ¶ 47 (requiring any grandfathered ownership combination subsequently assigned or transferred to comply with the Cap in effect at the time of the assignment or transfer).

[51] *Nat'l Environ. Dev. Ass'n v. EPA*, 752 F.3d 999, 1009 (D.C. Cir. 2014).

issues more holistically, which it promptly did later that same year.[52] Importantly, the *2017 National Cap NPRM* sought comment *on the very legal questions that the Bureau purports to resolve in the Order challenged here*. The NPRM acknowledged the "continued questions regarding the Commission's authority in this area" and sought comment on how to construe the Commission's authority in light of the changes made to the Cap in the 2004 CAA.[53] If the Commission's authority to adjust the Cap were a "settled" question, there would have been no need to raise these issues in the NPRM, which remains pending to this day.[54]

In short, since the full Commission has not voted to increase or eliminate the National Cap pursuant to this pending NPRM, the Bureau is expressly precluded from addressing this novel legal issue under 47 C.F.R. § 0.283(c). For this reason, the Order must be reversed.[55]

B. The Order Unlawfully Concludes That Waiver of the Cap, and Wholesale Waivers of the Duopoly Rule, Would Be in the Public Interest

Even assuming *arguendo* that the Commission had previously and conclusively determined that it has the authority to adjust the Cap (which, as explained above, it has not), it has never decided whether actually doing so would be in the public interest.[56] As noted, the

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[52] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390 ¶ 17 (2017); *Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Notice of Proposed Rulemaking, 32 FCC Rcd. 10785 (2017) ("*2017 National Cap NPRM*").

[53] *Id.* ¶¶ 7, 9. For example, as explained at length in the record and in Section I, *supra*, Congress's removal of the Cap from the Commission's quadrennial review process was designed to withhold the Commission's authority to change the Cap as set by Congress. *See, e.g.*, Petition to Deny of State Cable Petitioners at 12-14; Reply of State Cable Petitioners at 13-15; Petition to Deny of DIRECTV at 59; Reply of DIRECTV at 38-39; Reply of EchoStar at 9-11.

[54] *See Media Bureau Seeks to Refresh the Record in the National Television Multiple Ownership Rule Proceeding*, Public Notice, 40 FCC Rcd. 4159 (2025) ("*2025 National Cap Refresh Public Notice*").

[55] 47 C.F.R. § 1.115(b)(2)(i), (ii). Additionally, the Order must be reversed based on its reliance on the *UHF Discount Elimination Order*, which was overturned. *Id.* § 1.115(b)(2)(iii).

[56] *See* Petition to Deny of DIRECTV at 60-61 ("[A] transaction envisioning a merged entity that would 'serve 54.5% of the national audience' has never before been presented to the Commission. . . . [T]here is [also] a difficult and novel policy question whether the kind of broadcasting giant that the proposed transaction would create should ever be allowed."); *see also* Petition to Deny of State Cable Petitioners at 24; Reply of State Cable Petitioners at 15. In a recent interview, Chairman Carr said that while he believed the Commission has the authority to modify the Cap, he

Commission made clear its intention in the *UHF Discount Elimination Order* to launch an NPRM "to consider whether it is in the public interest to modify the national audience reach rule[.]"[57] The subsequent NPRM teed up that very question.[58] Rather than await the Commission's resolution of the issue, the Bureau purports to answer the question on its own. In doing so, the Bureau considered the same public interest issues raised in the pending NPRM, such as whether increased consolidation causes public interest harms and whether those harms are outweighed by potential benefits to marketplace competition, and then finds in favor of the Applicants on all grounds.[59] As explained in the record, such a usurpation of the Commission's role is plainly beyond the Bureau's delegated authority.[60]

The Bureau fails to grapple with the practical consequences of its decision in light of the scale of the instant Transaction. Because the Cap applies on a nationwide basis, grant of the Applicants' request means that the Cap has been *eliminated* for a company that combines the first and fourth largest broadcast station owners in the country (first and third, if measured by national audience reach).[61] Given the maximal scale of this Transaction, the waiver, if allowed

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also believed that "there's a lot of interesting policy debates" around actually doing so. *See* Christopher Cole, *12 Questions for FCC Chair Brendan Carr*, Law360 (Feb. 12, 2026).

[57] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, Order on Reconsideration, 32 FCC Rcd. 3390 ¶ 17 (2017).

[58] *See 2017 National Cap NPRM* ¶¶ 10-11.

[59] *See* Order ¶¶ 40-45, 51-54; *see also* Reply of State Cable Petitioners at 16, 18-19; *compare* 47 U.S.C. § 309(a) (requiring the Commission to consider "whether the public interest, convenience, and necessity will be served" by granting a broadcast license assignment application) *with 2017 National Cap NPRM* ¶¶ 13, 15-17 (seeking comment on whether the National Cap serves the public interest goals of localism, competition, and viewpoint diversity); *see also 2025 National Cap Refresh Public Notice* at 2 (seeking comment on how new analysis, evidence, or proposals about the National Cap "relate to the Commission's promotion of the public interest").

[60] *See* Petition to Deny of DIRECTV at 60-61; Petition to Deny of State Cable Petitioners at 24; Reply of State Cable Petitioners at 15; 47 C.F.R. § 0.5(c) (explaining that delegated authority is reserved for "matters which are *minor* or *routine* or *settled in nature.*") (emphases added).

[61] *See* Harry A. Jessell, *Nexstar Again Tops Station Groups as Consolidation Prospects Grow*, TVNewsCheck (Aug. 5, 2025), https://tvnewscheck.com/business/article/nexstar-again-tops-station-groups-as-consolidation-prospects-grow/.

to stand, would make the Bureau hard-pressed to deny similar relief to other station owners, effectively creating a new rule without Commission sanction. This approach conflicts with well-settled precedent that seeking a rule change is "inappropriate in the form of a waiver request."[62] The Bureau purports to moot the Commission-level *WPIX NAL*, which found that expansion of Nexstar's reach beyond the Cap was contrary to the public interest, but that is not something the Bureau is empowered to do, nor was the issue even addressed by the Applicants.[63]

The Bureau has similarly exceeded its authority in granting wholesale waivers of the Duopoly Rule to the Applicants. Unlike the statutory Cap, the Duopoly Rule may be waived under the Commission's general Section 1.3 waiver authority; however, the Commission and the Bureau have historically granted such waivers in discrete markets based on special circumstances.[64] The Order, in contrast, grants waivers in an unprecedented 21 markets covering tens of millions of U.S. viewers. It bears emphasis that the Applicants' "divestiture" commitments are illusory.[65] First, nothing prevents the combined company from exploiting the

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[62] *Hull Broadcasting, Inc*., Order, 19 FCC Rcd. 16710 ¶ 3 & n.7 (EB 2004) ("*Hull Broadcasting Order*") (citing *Applications of Empire State Broadcasting Corporation (WWKB) Buffalo, New York For Renewal of License Bursam Communications Corporation (WTHE) For Construction Permit*, Summary Decision of Administrative Law Judge Joseph Chachkin, 4 FCC Rcd. 7008 ¶ 63 (1989)) ("[R]esolution of this broad policy dispute properly belongs in a rule making proceeding, not a waiver request."); *see also Trib. Co. v. FCC*, 133 F.3d 61, 68 (D.C. Cir. 1998) ("[I]t is hornbook administrative law that an agency need not—indeed should not—entertain a challenge to a regulation, adopted pursuant to notice and comment, in an adjudication or licensing proceeding."); *cf.* Letter from David J. Brown, Chief, Video Division, Media Bureau, FCC to Sinclair, Inc., Cunningham Broadcasting Corporation and KMTR Television, LLC, and DIRECTV, LLC, LMS File Nos. 0000276551 & 0000276767 et al., at 9 & n.61 (Feb. 3, 2026) ("*2026 Sinclair Approval Order*") (citing *Community Television of S. Cal. v. Gottfried*, 459 U.S. 499, 511 (1983) ("[A] rulemaking is generally a better, fairer, and more effective method of implementing a new industry-wide policy than is the uneven application of conditions in isolated [adjudicatory] proceedings.").

[63] *See generally Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY*, Notice of Apparent Liability for Forfeiture, 39 FCC Rcd. 3676 (2024) ("*WPIX NAL*") (proposing "two divestiture options under which . . . Nexstar can remedy its noncompliance with the National Ownership Cap").

[64] *See, e.g.*, *Consent to Assign Certain Licenses from Imagicomm Eureka, LLC to Marquee Broadcasting West, Inc.*, Memorandum Opinion and Order, 40 FCC Rcd. 2491 ¶ 12 (MB 2025) (granting a waiver of the Local Television Ownership Rule based on the "unique characteristics of the Eureka DMA and the Stations at issue").

[65] *See* Order ¶ 55 ("Nexstar commits to divesting these stations 'no later than two years following the TEGNA Closing Date, provided that a waiver of the Local TVO Rule remains necessary under the Commission's rules at such time.'"). The Order's statement that "competition will not be *unduly* harmed during the period of common ownership" is cold comfort while consumers incur the costs of rising fees, increased blackouts, and job cuts. *Id.*

benefits of consolidation for the better part of the next two years and then divesting the stations to its sidecars in a non-arms-length transaction. Moreover, the Applicants only commit to divesting these six stations if the Local Television Ownership Rule (now subject to a Commission rulemaking) still requires the Applicants to obtain such a waiver at the end of two years. The Bureau's waiver grant under these circumstances merely sets the stage for granting similar massive waivers in future transactions, and prejudges how the Commission will handle the issue in the pending Quadrennial Review, well outside the Bureau's delegated authority.

Finally, the Bureau fails to demonstrate how waivers of this scale and scope are in any way justified by "special circumstances," as required under the Commission's general waiver standard.[66] Rather, the Bureau merely echoes the Applicants' rote claims that waiver is necessary to enable them to compete with Big Tech in the video marketplace and the wholly implausible claims that the merger is necessary for the Applicants to "sustain operations."[67] However the Applicants and other broadcasters have made exactly the same claims in support of eliminating the Cap and the Duopoly Rule in the pending rulemakings.[68] There is nothing

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(emphasis added). Moreover, unlike comparable transactions, the Order contains no clauses actually ordering these divestitures. *Cf. Nexstar/Tribune Order* ¶ 71 & Appx. B; *Nexstar/Media General Order* ¶¶ 76-83.

[66] *NetworkIP, LLC v. FCC*, 548 F.3d 116, 127 (D.C. Cir. 2008); *see also Trib. Co.*, 133 F.3d at 69 (affirming denial of waiver of newspaper cross-ownership rule where "the evidence [the applicant] presents is not particular to the South Florida market" and "most, if not all, of the country's media markets have experienced similar growth"); *Hull Broadcasting Order* ¶ 3 (denying waiver of EAS rules where the requesting station made efficiency arguments that could be "invoked by many other stations that are co-located but not co-owned").

[67] Order ¶¶ 43, 44, 49. These claims are directly contradicted, for example, by Nexstar CEO Perry Sook's statements to Wall Street *earlier this month* lauding TEGNA as a peer "best of breed" broadcast competitor with "the best balance sheet." *See* Transcript of Nexstar CEO Perry Sook, Deutsche Bank 34th Annual Media, Internet & Telecom Conference (Mar. 9, 2026), https://seekingalpha.com/article/4880153-nexstar-media-group-inc-nxst-presents-at-deutsche-bank-34th-annual-media-internet-and-telecom; Letter from Brenda Victoria Castillo, President & CEO, National Hispanic Media Coalition, to Marlene H. Dortch, Secretary, FCC (filed Mar. 16, 2026); *see also* Petition to Deny of Public Interest Petitioners at 45 ("Nexstar and TEGNA separately are financially thriving and investing in their local news operations.") (emphasis in original).

[68] *See* Petition to Deny of EchoStar at 2; Reply of State Cable Petitioners at 18-19; Reply Comments of Altafiber at 3 ("[T]he issues [Nexstar] claims support Commission action outside of these rulemakings are not of the nature for which immediate action is necessary. Nexstar's speculation of doom and gloom, assuming it would come to fruition, would be of equal concern to all broadcasters (and presumably would have a far greater negative impact on

"special" about these justifications; rather, they apply equally to the rest of the broadcast industry. The Order must be reversed for this additional reason.[69]

III. THE BUREAU'S DISMISSAL OF RETRANSMISSION CONSENT-RELATED HARMS IS ARBITRARY AND CAPRICIOUS AND INCONSISTENT WITH ESTABLISHED PRECEDENT

The Order makes much of the *Nexstar/Tribune Order*'s finding that "an increase in retransmission consent rates, by itself, is [not] necessarily a public interest harm" to justify its dismissal of the Transaction-specific retransmission consent-related harms identified in the record.[70] This mischaracterizes the *Nexstar/Tribune Order* and contradicts Commission and Bureau precedent. The Bureau's deviation from this precedent requires reversal.[71]

Generally, the Commission's transaction review often "closely examines the effect of a proposed transaction on consumer prices."[72] "[A]n overwhelming amount of evidence" has been submitted to the Commission over the years demonstrating that Big Four affiliate station duopolies, such as those proposed in the Transaction, drive up consumer prices as a result of increased retransmission consent fees and warrant consideration.[73]

While the *Nexstar/Tribune Order* found that increased fees, alone, do not constitute a transaction-specific public interest harm, the Commission found in the same order that public interest harms exist where an increase in retransmission consent rates is "not the product of

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smaller broadcasters)."); *id.* at 2 ("In light of the pending rulemaking and given the magnitude of the transaction and scope of waivers required for the Commission to approve it, shouldn't Nexstar be obligated to go beyond simply making assertions that its ownership of the TEGNA stations would serve the public interest?").

[69] 47 C.F.R. § 1.115(b)(2)(i).

[70] *See Order* ¶ 78 (citing, e.g., *Nexstar/Tribune Order* ¶ 28).

[71] 47 CFR 1.115(b)(2)(i).

[72] Comments of American Television Alliance and National Content & Technology Cooperative ("ATVA & NCTC") at 3.

[73] *See, e.g.*, Petition to Deny of State Cable Petitioners at 45 (citing Petition to Deny of DIRECTV, Pleading No. 0000280877, LMS File No. 0000276662, at 13 (filed Nov. 18, 2025)).

'competitive marketplace conditions.'"[74] It goes without saying that a merger of this scale that would immediately increase prices above those already negotiated with TEGNA is anything *but* an example of competitive marketplace conditions. Moreover, as highlighted in the record, the Bureau itself has confirmed in the *Standard General/TEGNA Hearing Designation Order* that increases in retransmission consent rates can be public interest harms:

> The caselaw makes clear that increases in retransmission consent rates can constitute a public interest harm if such increases are not simply the product of a properly functioning competitive marketplace. In particular, evidence that anticompetitive practices or other wrongdoing could distinguish what would perhaps constitute a market-driven rate increase from one that is anti-competitive, unwarranted, and harmful to consumers and the public interest.[75]

The record makes clear that the local consolidation produced by the Transaction is anticompetitive, increasing the market power of the Applicants to extract supra-competitive rates using a familiar playbook.[76] The "massive" increases in retransmission consent fees are the exact use of market power that the *Nexstar/Tribune Order* contemplated as a public interest harm.[77] Moreover, the Bureau designated the Standard General/TEGNA transaction for formal hearing after finding substantial and material questions of fact exist as to whether transaction-

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[74] *See Nexstar/Tribune Order* ¶ 29; *see also* Opposition at 40.

[75] *Applications of SGCI Holdings III LLC; TEGNA, Inc.; and CMG Media Corporation*, Hearing Designation Order, 38 FCC Rcd. 1282 ¶ 24 (MB 2023) ("*Standard General/TEGNA HDO*"). However, as DIRECTV explained, nothing in Section 325 limits the FCC's merger review and, in fact, Section 325 specifically directs the Commission to consider the impact of retransmission-consent issues on MVPD pricing. *See* Reply of DIRECTV at 30.

[76] *See* Reply of State Cable Petitioners at 6, n.11; Petition to Deny of State Cable Petitioners at 45-46 (noting that the retransmission consent rates that would result from Nexstar's accumulation of multiple top-four stations would not be the product of a properly functioning or competitive marketplace); Petition to Deny of EchoStar at 21-23 ("By consolidating these duopolies, Nexstar would gain the power to threaten must-have programming on multiple fronts within the same community, forcing DISH to agree to supra-competitive rates."); Petition to Deny of Public Interest Petitioners at 42 ("More consolidation would also enhance Nexstar's market power they've already abused to extract excessive retransmission consent payments from pay-TV distributors and their weary customers."); Comments of ATVA & NCTC at 4 ("The Big Four duopolies and triopolies created and perpetuated by the proposed transaction would have anticompetitive effects.").

[77] *See* Reply of EchoStar at 6 ("[T]he massive fees broadcasters charge for retransmission are derived solely from their market power. It is clear, then, that the further increase in retransmission fees that will result if this transaction is approved would harm the public interest.").

specific retransmission consent fee increases are not the product of a properly functioning competitive marketplace.[78] The Bureau's dismissal of retransmission consent-related harms, and failure to investigate whether such harms are market-driven in this instance, is thus contrary to established precedent and arbitrary and capricious, and must be reversed.[79]

IV. THE BUREAU ERRED IN FINDING THE PUBLIC INTEREST HARMS PRESENTED IN THE RECORD ARE NOT ESTABLISHED

More than 45 individual organizations and companies came together in this proceeding to submit concrete harms that would directly flow from the Transaction, in the form of higher prices for consumers, MVPDs, and small businesses, as well as reductions in competition for labor, advertising, and newsgathering, localism, and diversity. These claims were based specifically on the Applicants' past practices, Commission and Department of Justice ("DOJ") analyses and findings in past analogous transactions, and the Applicants' own statements to Wall Street regarding the Transaction. As explained below, Applicants' commitments to reduce these

[78] *See Standard General/TEGNA HDO* ¶¶ 21-24.

[79] 47 CFR 1.115(b)(2)(i). Relatedly, the Bureau erred in ignoring that Public Interest Petitioners have organizational standing. The Supreme Court has recognized that organizations have standing themselves when harm "perceptibly impairs" core activities. *See* Petition to Deny of Public Interest Petitioners at 10 (quoting *Food & Drug Admin. v. All. For Hippocratic Med.*, 602 U.S. 367, 395 (2024)). Public Interest Petitioners demonstrated that they have such standing because the Transaction would harm unions' ability to represent, bargain, and organize its membership; make it "significantly more difficult and more costly for Free Press to raise awareness about issues and move people to take action"; and frustrate UCC's ability to further its denomination's goals. *See id.* at 16-18 (internal quotations omitted). Furthermore, Public Interest Petitioners demonstrated representational standing on behalf of their members through the harms the Transaction would cause its members, including economic injury and harms to First Amendment rights, and, further, through the harms to viewers in individual local markets. *See id.* at 19-25. Thus, the Bureau's conclusion with respect to Public Interest Petitioners must also be reversed, and is equally erroneous in restricting State Cable Petitioners' standing just to certain association members in certain markets; rather, standing should apply to all state association members for the foregoing reasons.

harms are illusory. And, in any event, the Bureau's dismissal of these harms cannot be squared with the evidence available in the record, so it must be reversed.[80]

A. The Record Leaves No Doubt That the Transaction Would Result in Supra-Competitive Retransmission Consent Fees and Higher Consumer Prices

As noted above, the Bureau has recognized that retransmission rate increases that are "anti-competitive, unwarranted, and harmful to consumers" are public interest harms and has designated transactions for hearing on the basis of such harms presented in the record.[81] Similarly, as explained in the record, broadcast consolidation, including accumulation of multiple top-four stations in a single market, has been proven to lead directly to disproportionately higher retransmission consent costs as a result of increased negotiation leverage and threats of program blackouts.[82] In these situations, the DOJ and Commission have relied on divestitures to ensure the public interest is served by broadcast transactions.[83]

Here, the Transaction results in Nexstar reaching 80 percent of U.S. Television households and owning Big Four station affiliate duopolies in 30 overlap markets (and a *triopoly* in one), giving them an increased ability to black out local stations across the country. Three of the six required divestures are for MyNetworkTV affiliates; and all divested markets still have

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[80] *See* 47 C.F.R. § 1.115(b)(2)(iv) (noting that Commission review is warranted where there was "an erroneous finding as to an important or material question of fact"). The assessment of public interest harms is all the more important where the Transaction violates both the National Cap and the Duopoly Rule. *See 2026 Sinclair Approval Order* at 8-9 (Feb. 3, 2026) (noting that a discussion of public interest harms is required when an applicant is seeking a waiver or if a petitioner raises cognizable potential public interest harms).

[81] *See Standard General/TEGNA HDO* ¶ 24.

[82] *See* Petition to Deny of State Cable Petitioners at 38-41 (describing how DOJ and economic analysis have found that larger national scale leads to a heightened ability to threaten program blackouts and an ability to impose disproportionately higher costs on MVPDs, as demonstrated by the more than 1,000 percent increase in retransmission consent fees per subscriber from 2013-2023); Petition to Deny of DIRECTV at 22-25 (noting that the DOJ has recognized that Big Four duopolies increase retransmission fees in the context of the Nexstar-Media General, Gray-Raycom, Nexstar-Tribune, and Gray-Quincy mergers and required divestitures to reduce harms); Petition to Deny of EchoStar at 2-3 (noting a 7,230 percent rise in retransmission prices over the last 15 years and highlighting evidence that broadcast mergers lead to price increases).

[83] *See, e.g.*, Petition to Deny of DIRECTV at 22-25; Petition to Deny of State Cable Petitioners at 46-47.

Big Four duopolies. Indeed, an economic analysis by Dr. Allan Shampine that DIRECTV submitted in the record "present[s] a case study of what happened to retransmission rates paid by DIRECTV after the Nexstar-Tribune merger," showing "a sharp increase in rates relative to trend and relative to other benchmarks for both the Tribune and Nexstar stations in the first post-merger negotiation (i.e., separate from the increase in Tribune rates immediately after the merger due to contractual adjustments)."[84] Dr. Shampine's analysis provides concrete evidence that the retransmission consent-related harms have materialized in the past and will do so again here.

Furthermore, the risks of program blackouts are not theoretical: the Applicants have had a long history of using blackouts as part of their playbook to extract higher retransmission consent fees.[85] DIRECTV noted that 75 percent of Nexstar's contentious retransmission negotiations have resulted in program outages. The Bureau dismisses these blackout concerns, claiming, among other things, that consumers' ability to access broadcast signals over-the-air will discipline the combined company from pursuing such tactics.[86] This is absurd. Does the Bureau really expect millions of consumers to figure out how to set up "rabbit ears"(assuming they even own them) to get those signals when Nexstar blacks out NFL games? Furthermore, there is no evidence that consumer use of rabbit ears has ever disciplined Nexstar given its long track record of using blackouts as leverage in retransmission consent negotiations, and the fact its rates have risen by 2000% in the last 15 years.

The record leaves no doubt that the instant Transaction would introduce anticompetitive marketplace conditions that would result in steep hikes to retransmission consent fees and

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[84] Reply of DIRECTV, Appendix C (Shampine Reply Decl.) ¶ 5.

[85] *See* Petition to Deny of State Cable Petitioners at 47-48 (outlining how Nexstar has blacked out local stations in over 290 cumulative markets in the last five years, more than any other broadcaster); Reply of EchoStar at 12 (noting that TEGNA has forced five major blackouts in recent years, one lasting four months).

[86] Order ¶ 72.

consumer prices. For example, DIRECTV, ATVA, and the Public Interest Petitioners outlined detailed Herfindahl-Hirschman Index ("HHI") data showing that, in each of the affected DMAs, the market for retransmission consent for Big Four stations is highly concentrated and would become even more so if the Transaction is approved.[87] As DIRECTV explained, claims of harm based on HHI data cannot be considered "speculative" when (1) HHI data "is the best tool to measure concentration and likely anticompetitive effects without access to Applicants' proprietary information,"[88] and (2) the Commission has routinely used HHI as "the most widely-accepted measure of concentration in competition analysis."[89] The record also contains several declarations attesting that increased local and national scale of the Transaction leads directly to increased retransmission consent fees paid by MVPDs and prices paid by consumers.[90]

Moreover, the Bureau's conclusion that Petitioners have failed to make a "cognizable claim" of harms flatly ignores the fact that *Nexstar is touting the very same price hikes as a benefit of the Transaction*. For example, Nexstar CFO Lee Ann Gliha told Wall Street that the Transaction will produce "about $300 million of synergies. It breaks out very similarly to how

[87] *See* Petition to Deny of DIRECTV at 12-16; Comments of ATVA & NCTC at 7-8; Petition to Deny of Public Interest Petitioners at 39.

[88] Reply of DIRECTV at 14 (citing Elizabeth Xiao-Ru Wang, *Economic Tools for Evaluating Competitive Harm in Horizontal Mergers* (2013), https://media.crai.com/sites/default/files/publications/Economic-Tools for-Evaluating-Competitive-Harm-in-Horizontal-Mergers.pdf (describing Gross Upward Pricing Pressure Index)).

[89] *Id.* at 13 (quoting *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 Ann. Rep. and Analysis of Competitive Mkt. Conditions with Respect to Mobile Wireless, Including Commercial Mobile Servs.*, Sixteenth Report, 28 FCC Rcd. 3700 ¶ 54 (2013)); *see also 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*, Report and Order, 38 FCC Rcd. 12782 ¶ 84 (2023); *Applications of T-Mobile US, Inc., and Sprint Corp. for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, Declaratory Ruling, and Order of Proposed Modification, 34 FCC Rcd. 10578, 10616 ¶ 92 (2019).

[90] *See* Petition to Deny of State Cable Petitioners, Declaration of Joe Lorah, Declaration of Paul Beaudry, and Declaration of Jack Capparell; Petition to Deny of DIRECTV, App. D, Declaration of Rob Thun; Comments of American Television Alliance and National Content & Technology Cooperative, Declaration of Judith Meyka; Petition to Deny of Public Interest Petitioners at 23 (citing declarations of individual consumers).

the synergies broke out on the Tribune deal, which was about 45% from *net retrans*[.]"[91] Indeed, unlike applicants in past transactions, here, the Applicants offer no expert testimony and no evidence that the Transaction will not reduce competition and raise prices.[92] Instead, Nexstar openly admits that "retrans synergies" are "number one" in its "playbook" and, in reference to the instant Transaction, that "the synergy playbook here is very similar to the playbook that you've seen us execute in the past."[93] It is unsurprising, then, that the Applicants' commitment relating to retransmission consent rates is illusory. The commitment only applies to MVPDs whose contracts come up for renewal before November 30, 2026; would apparently not prevent Nexstar from immediately raising rates for TEGNA stations to Nexstar's "existing" rates; and says nothing about Nexstar's ability to recoup any "lost" revenues by imposing massive rate hikes in advance of November 30 in the middle of the NFL season.

Nexstar has also made clear that the waivers granted by the Order pave the way for further "retrans synergies," with Gliha stating:

> [I]f [broadcast ownership rules] went away, I do think there's going to be significant opportunity for additional consolidation. . . . [I]n the past, we've been able to accomplish a lot of value . . . through application of our retransmission agreements[ ] onto the new assets.[94]

Sure enough, rather than referencing increases in programming value or any other market-driven factor that would justify increasing rates, Gliha touted to investors Nexstar's "ability to step up any targets[']retrans if it is lower to our level. And that's a very nice synergy

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[91] Nexstar Media Group, Inc., Q3 2025 Earnings Call Transcript (Nov. 6, 2025) (emphasis added); *see also* Petition to Deny of State Cable Petitioners at 42 n. 153.

[92] *See* Reply of DIRECTV at 4-5.

[93] *See* Nexstar June 2025 Investor Presentation at 22 ("The Nexstar Consolidation Playbook: 1. Retransmission Revenue Synergies: Acquired stations move to Nexstar's retransmission consent agreements."); Transcript of Nexstar Media Group, Inc. M&A Call (Aug. 19, 2025).

[94] Transcript of Nexstar Media Group, Inc. Presentation at UBS Global Media & Communications Conference (Dec. 9, 2024); *see* Reply of State Cable Petitioners at 27-28.

to have. It's easy to achieve."[95] These statements flatly contradict the Bureau's conclusions, and thus this error must be reversed.[96]

B. The Bureau Also Errs in Failing to Acknowledge Nexstar's Track Record of Consolidating Newsrooms and Cutting Jobs Following Consolidation

Evidence submitted in the record outlines Nexstar's pattern of cutting jobs, consolidating newsroom operations, and running centralized content following consolidation.[97] The Bureau's conclusion that labor related harms are more than offset by benefits to localism cannot possibly be correct when these harms are all too real for Nexstar and TEGNA workers, who actively fear more layoffs and fewer job opportunities, and who report part-time employees already being laid off in anticipation of the Transaction.[98] Analysis submitted in the record confirms that such layoffs are a direct result of consolidation that enables content to be produced in a cheaper and more centralized fashion.[99]

This record evidence has direct bearing on Nexstar's ability to adhere to the Commission's public interest goals of promoting localism and viewpoint diversity. What the

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[95] Transcript of Nexstar Media Group, Inc. Presentation at 53rd Annual JPMorgan Global Technology, Media and Communications Conference (May 14, 2025); *see* Reply of State Cable Petitioners at 27.

[96] *See* 47 C.F.R. § 1.115(b)(2)(iv). The Bureau bizarrely argues that these higher costs will not ultimately be borne by MVPD consumers. Order ¶ 74. The Commission has long recognized in its Cable Price Surveys and other reports and past regulations that retransmission consent costs are an "input" into MVPD pricing. This is no different than how any video distributor helps defray programming-related costs.

[97] *See* Petition to Deny of State Cable Petitioners at 49-54; Petition to Deny of Public Interest Petitioners at 51-66 (outlining how Nexstar has significant power over its employees and how the proposed Nexstar/TEGNA Transaction will enable the combined company to cut jobs by eliminating an existing employer and consolidating news production functions and follow Nexstar's pattern of laying off workers following consolidation).

[98] *See* Petition to Deny of Public Interest Petitioners at 57-59.

[99] *See* Reply of State Cable Petitioners at 29 (citing Kressin Powers*, From Local Stations to Nationwide Conglomerates: The High Cost of TV Mega-Mergers*, at i, 26-38 (Dec. 4, 2025), https://www.kressinpowers.com/post/why-consolidation-in-local-tv-is-bad-for-consumers-and-local-news-and-about-to-get-much-worse ("Beyond cost increases, increased consolidation is fueling a reduction in the quality and diversity of local television. Recent decades have seen a series of local newsroom shutdowns, 'news duplication' across supposedly competing local stations, 'must run stories' mandated by corporate headquarters, a lack of diversity of viewpoints across the political spectrum, and a raft of local station layoffs.")).

Bureau wrongly credits as benefits of the merger are far more likely to result in tangible harms—evidence which the Order ignores.[100] DIRECTV submitted detailed analysis showing that "in *every* market in which Applicants hold a duopoly today, they have consolidated news operations."[101] This includes consolidation of news websites, news content, news leadership, and talent.[102] Further, the Applicants emphasized the acquired stations' new access to Nexstar's D.C. Capital News Bureau, State Capital News Bureaus, and other remotely produced content.[103] Yet, as explained by Petitioners, these centralized reporting bureaus will *reduce* local news and replace it with national coverage reflective of the combined company's outsized national footprint and Nexstar's history as the country's leading "duplicator" of news content.[104] Nexstar's localism commitments promise only modest and time-limited increases in the "amount" and "availability" of "local" programming but notably omit any commitment not to duplicate such programming across stations.[105]

Contrary to the Bureau's conclusions, such harms cannot possibly be benefits to the public interest when the Transaction is designed "to reduce headcount and eliminate duplicated functions."[106] Nexstar has openly admitted this to investors, stating:

> [T]here are many areas where we do things a little bit differently that generates synergy. . . . [T]here is obviously the . . . 35 of 51 markets that are the overlap

[100] Order ¶ 82.

[101] Reply of DIRECTV at 21-24, Apps. D-E; *see generally* Letter from Michael Nilsson, Counsel to DIRECTV, to Marlene H. Dortch, Secretary, FCC (Feb. 20, 2026) ("DIRECTV Letter") (compiling evidence that, in markets where broadcasters hold a duopoly, triopoly, or quadropoly today, they have consolidated news operations and offered the same local news on multiple stations).

[102] *See* Reply of DIRECTV at 21-24, Apps. D-E; *see also* DIRECTV Letter.

[103] *See* Petition to Deny of State Cable Petitioners at 52 (citing Applications of Nexstar Media Inc. and TEGNA Inc., FCC File Nos. 0000280646, et seq., Comprehensive Exhibit (filed Nov. 18, 2025) at 11-15).

[104] *See* Petition to Deny of State Cable Petitioners at 52-53 (citing Danilo Yanich & Benjamin E. Bagorri, *Reusing The News: Duplicating Local TV Content* (Aug. 2025), https://www.reusingthenews.org/ (finding that Nexstar controlled more station pairings nationwide that regularly duplicate content than any other group)).

[105] Order ¶ 82.

[106] Reply of Public Interest Petitioners at 16-17.

> markets that we can really operate two stations off of one infrastructure. . . . [T]hat is an area where there's a significant portion of those synergies coming out of that. . . . We did a very deep analysis in terms of looking at line by line, person by person, what these costs could be.[107]

Accordingly, industry analysts and journalists across the country understand what the Bureau papers over: that Nexstar's "path to 'synergies' runs through pink slips."[108]

In the *Standard General/TEGNA Hearing Designation Order*, the Bureau determined that substantial and material questions of fact existed about whether the "apparent intent to provide local news services remotely will promote or harm localism" and "[took] seriously concerns that a diminution in the employment of local journalists and other local staff poses a threat to localism."[109] Nor did the Bureau address sufficiently the public interest harms to local advertising or news production.[110] Nexstar will have power to increase prices in local broadcast TV spot advertising markets to the detriment of local businesses,[111] and also face reduced competition in news production to the detriment of local journalism.[112] As State Cable Petitioners pointed out, "[t]his Transaction raises the same questions even more pointedly."[113] The Bureau's failure to recognize these harms provides a further basis for reversing the Order.[114]

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[107] Nexstar Media Group, Inc., Q3 2025 Earnings Call Transcript (Nov. 6, 2025); *see* Petition to Deny of State Cable Petitioners at 50-51.

[108] *See* Petition to Deny of State Cable Petitioners at 51 (collecting and citing numerous press reports).

[109] *Standard General/TEGNA HDO* ¶¶ 49, 36.

[110] Petition to Deny of Public Interest Petitioners at 7 (noting that, post-merger, Nexstar will "control half or more of the commercial stations airing English-language news").

[111] Petition to Deny of Public Interest Petitioners at 33-40 (noting that local businesses will face higher prices as the number of competitive spot-ad alternatives shrinks post-merger), 68-71.

[112] Petition to Deny of Public Interest Petitioners at 31-35, 43 (explaining that Nexstar will be able to increase the advertising time dedicated to commercials during news programming and reduce resources dedicated to journalism).

[113] Petition to Deny of State Cable Petitioners at 54.

[114] 47 C.F.R. § 1.115(b)(2)(iv). The Bureau also ignored record evidence that the loss of TEGNA as a competitor in the spot advertising market will increase advertising prices. *See, e.g.*, Petition to Deny of State Cable Petitioners at 55.

V. THE COMMISSION MUST, AT MINIMUM, DESIGNATE THIS TRANSACTION FOR HEARING

Congress requires the Commission to hold a hearing "[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent" with the public interest.[115] In prior broadcast transactions, both the Commission and the Bureau have followed this Congressional mandate by designating applications for hearings where "'the totality of the evidence arouses a sufficient doubt' as to whether grant of the application would serve the public interest."[116]

Such doubts are present here. As noted above, the Transaction raises, for the first time, a substantial and material question as to whether waiver of the Commission's broadcast ownership rules on the scale requested would serve the public interest.[117] The record also presents the exact same questions of fact regarding retransmission consent rates and localism that the Bureau in the *Standard General/TEGNA Hearing Designation Order* found to justify a formal evidentiary hearing.[118] Beyond these questions, the record presents several additional "substantial and material facts" providing sufficient doubt that the Transaction serves the public interest and warranting the Commission's careful consideration and analysis.[119]

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[115] 47 U.S.C. § 309(d)(2); *see also Astroline Comm'cns Co. v. FCC*, 857 F.2d 1556, 1561 (D.C. Cir. 1988) (noting that "in evaluating a request for an evidentiary hearing . . . the Commission must . . . assum[e] that" facts set forth in a petition to deny are true).

[116] *Standard General/TEGNA HDO* ¶¶ 15-16 (quoting *Serafyn v. FCC*. 149 F.3d 1213, 1216 (D.C. Cir. 1998)) (designating transaction for hearing where substantial questions of fact existed related to potential retransmission consent fee increases as a result of market power and the effects of the transaction on localism); *see also Applications of Tribune Media Company and Sinclair Broadcast Group*, Hearing Designation Order, 33 FCC Rcd. 6830 ¶ 17 (2018) ("*Sinclair/Tribune HDO*") (designating transaction for formal hearing where substantial and material questions of fact exist whether the applicant engaged in misrepresentation and/or lack of candor in its application, including with respect to its compliance with the broadcast ownership rules).

[117] *See* Section II.B., *supra*.

[118] *See* Sections III, IV, *supra*.

[119] *See, e.g.*, Petition to Deny of State Cable Petitioners at 5 ("Allowing any one entity to control dissemination of high-value news, sports, and emergency programming with this level of concentration at both the national and local levels would be . . . devastating for competition, localism, and viewpoint diversity."); *id.* at 32-33 (describing how Nexstar is seeking to require 11 TEGNA stations that the DOJ required Nexstar to divest, and prohibited from

Despite the submission of these substantial and material facts into the record, and the extensive evidence showing why this merger cannot reasonably be found to be in the public interest, the Bureau never even issued a request for additional information from the Applicants,[120] including for highly relevant economic studies they submitted to DOJ.[121] Nor did it order a hearing as required by § 309(d)(2). Notably, despite extensive record evidence—and the Applicants' own public statements to Wall Street Investors—on how the merger will increase consumers' monthly video bills, at a time when every policymaker's central concern is affordable pricing, the Bureau refused to follow the statute and order a hearing to probe further into that important issue. Instead, it approved the merger after receiving its orders from the President.[122] If the Commission does not deny the Transaction outright, it must designate the Transaction for hearing to resolve the substantial and material questions of fact presented. Failure to do so for a Transaction of this size and scope is unprecedented and must be reversed.

VI. CONCLUSION

There are multiple grounds on which the Commission must reverse the Order. The record in this proceeding makes clear that the Commission does not have the authority to modify or waive the National Cap and by doing so for the first time in this Transaction, the Bureau

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reacquiring, in 2019); *id.* at 10, 33-34 (highlighting the Commission 2024 *WPIX NAL* where it found Nexstar in "willful" violation of the National Cap and noting that the Applicants failure to disclose the decision warrants a formal hearing consistent with the *Sinclair/Tribune HDO*) (citing *Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY*, Notice of Apparent Liability for Forfeiture, 39 FCC Rcd. 3676 ¶¶ 54, 85, 87 (2024); *Sinclair/Tribune HDO* ¶ 17).

[120] *See, e.g.*, *Sinclair/Tribune HDO* ¶ 6 ("On September 13, 2017, the Media Bureau issued a Request for Information (Information Request) to the Applicants. Sinclair responded to the Information Request on October 5, 2017. Thereafter, the Bureau announced an additional opportunity for comment on October 18, 2017.").

[121] *See* Letter from Michael Nilsson and William M. Wiltshire, Counsel to DIRECTV, to Marlene H. Dortch, Secretary, FCC (Mar. 6, 2026) (noting that Nexstar has not submitted studies to the FCC purporting to explain the "rationale that the definitions of markets and the definition of video certainly needs to evolve with the times").

[122] *See* Donald J. Trump (@realDonaldTrump), Truth Social (Feb. 7, 2026, 10:25 AM), https://tinyurl.com/3cp7ufhj (urging the Commission, with reference to the Transaction to "GET THAT DEAL DONE!"); *see also* Brendan Carr (@BrendanCarrFCC), X (Feb. 7, 2026, 2:20 PM), https://tinyurl.com/yu4da25r (agreeing with President Trump and expressing his intent to "get it done.").

exceeded its delegated authority, contravened established Commission and Bureau precedent, and paved the way for irreparable public interest harms to MVPDs, businesses, workers, and consumers. Likewise, by granting total waivers of the Duopoly Rule in 21 markets—effectively eliminating that rule's application to Nexstar, the largest broadcast station group owner in the country—the Bureau acted beyond its authority and committed legal error. The Bureau also made erroneous findings of fact and ignored precedent when it credited the Applicants' asserted benefits while discounting the numerous, non-speculative harms identified in the record. At a bare minimum, the Bureau should have recognized that there are numerous substantial and material issues of fact warranting further examination. For all of these reasons, Petitioners respectfully request that the Commission reverse the Order and deny the Transaction or, in the alternative, designate the Transaction for a formal evidentiary hearing.

Respectfully submitted,

/s/_____

Todd Eachus
President
BROADBAND COMMUNICATIONS ASSOCIATION OF PENNSYLVANIA
127 State St.
Harrisburg, PA 17101

David Ducharme
Executive Director
BROADBAND COMMUNICATIONS ASSOCIATION OF WASHINGTON
4217 Williams Ave. N.
Renton, WA 98056

Joseph Dant
Executive Director
INDIANA CABLE AND BROADBAND ASSOCIATION
150 W. Market St., Ste. 412
Indianapolis, IN 46204

Lindsey Simmons
Interim Executive Director
MISSISSIPPI INTERNET AND TELEVISION
PO Box 55867
Jackson, MS 39296

Ann Marie Walp
President
TENNESSEE CABLE & BROADBAND ASSOCIATION

Ray LaMura
President
VCTA – BROADBAND ASSOCIATION OF VIRGINIA

414 Union St., Ste. 1900
Nashville, Tennessee 37219

Michael Nilsson
William M. Wilshire III
Timothy J. Simeone
HWG LLP
1919 M Street, N.W.
The Eighth Floor
Washington, D.C. 20036
(202) 730 1300

Counsel to DIRECTV

John Bergmayer
PUBLIC KNOWLEDGE
1818 N Street, NW
Suite 410
Washington, DC 20036

Nell Geiser
Ceilidh Gao
COMMUNICATIONS WORKERS OF AMERICA
501 Third Street, NW
Washington, DC 20001

1111 East Main St., Ste. 802
Richmond, VA 23219

Michael Hartman
General Counsel
Chief External Affairs Officer and Secretary
Stacy Fuller
Senior Vice President, External Affairs
DIRECTV, LLC
2260 E. Imperial Highway
El Segundo, CA 90245

Christopher Ruddy
Chief Executive Officer
Michael Martin
Director of Government Affairs
NEWSMAX MEDIA, INC.
750 Park of Commerce Drive, Suite 100
Boca Raton, FL 33487

Cheryl Leanza
UNITED CHURCH OF CHRIST MEDIA JUSTICE MINISTRY, INC.
100 Maryland Avenue, NE
Suite 330
Washington, DC 20002

Matthew F. Wood
Vice President of Policy &
General Counsel
FREE PRESS
1025 Connecticut Avenue NW, Suite 1110
Washington, DC 20036

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CERTIFICATE OF SERVICE

I, Todd Eachus, certify that on this 20th day of March, I caused true and correct copies of the foregoing Reply to be served by electronic mail on the following:

Jennifer A. Johnson
COVINGTON & BURLING LLP
850 Tenth Street NW
Washington, DC 20001-4956
(202) 662-5552
jjohnson@cov.com

Counsel to TEGNA, Inc.

Kathleen Kirby
WILEY REIN LLP
2050 M Street NW
Washington, DC 20036
(202) 719-3360
kkirby@wiley.law

Counsel to Nexstar Media Inc.

David Brown
Chief, Video Division
Media Bureau
Federal Communications Commission
45 L Street, NE
Washington, DC 20554
David.Brown@fcc.gov

Chris Robbins
Deputy Chief, Video Division
Media Bureau
Federal Communications Commission
45 L Street, NE
Washington, DC 20554
Chris.Robbins@fcc.gov

Emily Harrison
Video Division
Media Bureau
Federal Communications Commission
45 L Street, NE
Washington, DC 20554
Emily.Harrison@fcc.gov

Jim Bird
Transaction Team
Office of General Counsel
Federal Communications Commission
45 L Street, NE
Washington, DC 20554
Jim.Bird@fcc.gov

/s/ *Todd Eachus*
Todd Eachus

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