



October 5, 2016

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc. for Consent to the Transfer of Control and Assignment of Licenses, MB Docket No. 16-57

Dear Ms. Dortch:

Over 230 days ago, the Commission accepted for filing applications for the transfer of control and assignment of licenses of full-power, low-power, TV translator and Class A broadcast television stations from Media General, Inc. to Nexstar Broadcasting Group, Inc.¹ Last month, the Department of Justice (DOJ) approved the merger. Given DOJ's approval, and the fact that the Commission has well exceeded its 180-day shot clock for reviewing major transactions, the National Association of Broadcasters (NAB) urges the Commission to fulfill its duty to process the transaction immediately.

If, moreover, the Commission approves the proposed transaction,² it should grant the parties' request for a waiver of Sections 1.2204(b) and (d)(3) of the reverse auction application rules, and permit Nexstar and Media General to consummate their merger prior to the conclusion of the broadcast spectrum incentive auction.³ Refusing to permit the consummation of an approved transaction for an additional indefinite period – on top of the nearly eight months their applications have been pending – unfairly penalizes broadcasters who seek to conduct routine business during the course of the extended incentive auction process. It also would further harm the small broadcasters involved in related transactions for divestitures, including transactions that would increase diversity in the broadcast industry by assigning KREG-TV, Glenwood Springs, Colorado to female-controlled Marquee Broadcasting and assigning KADN-TV and KLAF-LD, Lafayette, Louisiana to minority-owned Bayou City Broadcasting. In light of

¹ *Media Bureau Announces Permit-But-Disclose Ex Parte Status for Applications Filed for the Transfer of Control and Assignment of Broadcast Television Licenses from Media General, Inc. to Nexstar Broadcasting Group, Inc.*, Public Notice, 31 FCC Rcd 1345 (2016).

² NAB takes no position on the merits of the proposed merger.

³ See Supplement to Request for Waiver of Nexstar and Media General, MB Docket No. 16-57 (Sep. 21, 2016) (Waiver Supplement).

the length of the incentive auction and ongoing uncertainty as to its closing date, the Commission should ameliorate the adverse impact its auction rules have had in bringing the broadcast television marketplace to a halt and grant the merging parties' requested waiver.

Section 1.2204(b) of the FCC's reverse auction rules requires that the applicant identified on the application to participate in the incentive auction must be the licensee that will relinquish spectrum usage rights if it is a winning bidder. Section 1.2204(d)(3) prohibits major amendments to auction applications after the initial deadline, including changes in the ownership of an applicant that would constitute an assignment or transfer of control. Taken together, Sections 1.2204(b) and (d)(3) preclude transactions from being consummated while the auction remains ongoing. However, none of the policy justifications for the rules are relevant to the Nexstar/Media General transaction.

First, the Commission has explained that its rules prohibiting transactions during the incentive auction help ensure "that all relevant parties are identified to the Commission prior to the auction."⁴ This, in turn, aids the Commission in enforcing its auction rules, including the prohibition on certain communications during the incentive auction.⁵ In this case, there are no questions about the identity of the parties or the FCC's awareness of them. Both Media General and Nexstar are known to the Commission and the specific stations affected, as well as the changes in ownership that will result from the merger, are clearly identified in the applications associated with the transaction. Nexstar and Media General also filed Form 177 applications to participate in the reverse auction, and their merger would bring no new or unknown party into the auction.⁶

Second, the Commission has stated that the negotiations necessary to reach agreement regarding the assignment of licenses or transfers of stations that are the subject of an auction application may risk violating the prohibited communications rule.⁷ That concern does not apply in this case, however, as the parties concluded negotiations on the terms of their transaction prior to the beginning of the quiet period in the incentive auction. Nexstar and Media General publicly announced the completion of negotiations on January 7, 2016, five

⁴ *Guidance Regarding the Prohibition of Certain Communications During the Incentive Auction, Auction 1000*, Public Notice, 30 FCC Rcd 10794, ¶ 24 (2015) (Communications Guidance); accord *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Report and Order, 29 FCC Rcd 6567, ¶ 443 n. 1283 (2014) (Incentive Auction Order).

⁵ *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, Notice of Proposed Rulemaking, 27 FCC Rcd 12357, ¶ 254 (2012); see 47 C.F.R. § 1.2205 (prohibiting certain communications during the "quiet period" of the incentive auction).

⁶ See Waiver Supplement at 13.

⁷ Communications Guidance at ¶ 21.

days before the quiet period began on January 12, 2016.⁸ Thus, the transaction does not implicate the policies underlying the prohibited communications rule.⁹

Under these circumstances, forbidding the consummation of a multi-billion dollar transaction while the incentive auction remains pending is wholly unwarranted. When the FCC adopted its auction rules, it explained that the prohibitions associated with the reverse auction would apply only “during a limited period of time, which we expect will be only a matter of months.”¹⁰ Broadcaster applications to participate in the reverse auction were due by January 12, 2016. Television broadcasters already have been operating under the auction rules’ restrictions on communications and transactions for nearly nine months, and it remains unclear when the auction will end. The Commission was unable to close the auction during its first stage and is currently conducting a second stage that may not conclude for weeks. At this point, there is no way to reliably estimate how many stages may be necessary to successfully close the auction. It is certainly possible that the Commission will have to run additional stages after the current one, potentially delaying the end of the auction for several more months.

As the auction moves forward with no fixed end date, Nexstar and Media General are frozen in place while they wait for the Commission’s determination. The FCC’s delay in acting upon the proposed merger also has created ongoing and unnecessary uncertainty regarding associated transactions for divestitures that, if consummated, will increase female and minority ownership of television stations and result in the sale of other stations to small, independent broadcasters. As these broadcasters have explained in detail, they can ill afford the additional transaction and financial costs caused by yet more delay in concluding the Nexstar/Media General merger and their station divestiture transactions.¹¹ The Commission should not compound these problems by continuing to refrain from acting on the merger and on the parties’ request for waiver to permit consummation of the transaction prior to the conclusion of the incentive auction.

⁸ See Waiver Supplement at 5.

⁹ Moreover, if the parties had been able to file their applications and have them accepted by the FCC in the period between January 7 and January 12, then Nexstar and Media General would not even need their requested waiver to complete the proposed merger during the incentive auction. In its Communications Guidance for the auction, *id.* at ¶ 23, the FCC *sua sponte* waived the bar on the assignment of licenses or transfer of control of an applicant in the reverse auction, provided that the relevant application had been accepted for filing with the FCC as of the deadline for applying to participate in the reverse auction (i.e., January 12). See Waiver Supplement at 10-11.

¹⁰ Incentive Auction Order at ¶ 399.

¹¹ See Comment in Support of Formal Request for Waiver of Marquee Broadcasting Colorado, Inc., MB Docket No. 16-57 (Sep. 27, 2016); Letter from DuJuan McCoy, Bayou City Broadcasting, to Federal Communications Commission, MB Docket No. 16-57 (Sep. 22, 2016); Comments in Support of Formal Request for Waiver of Heartland Media, Inc., MB Docket 16-57 (Sep. 22, 2016); Ex Parte Letter of Nat’l Assoc. of Black Owned Broadcasters, MB Docket No. 16-57 (Sep. 23, 2016); Reply Comments on Closing Date Waiver Request of the Multicultural Media, Telecom and Internet Council at 3-7, MB Docket No. 16-57 (Sep. 27, 2016).

The merits of the proposed transaction have been thoroughly and comprehensively argued before the FCC, and the Department of Justice has blessed the merger. There is no good reason for further delay. If the Commission approves the merger, reflexive application of its reverse auction application rules to prevent the transaction's timely consummation serves no practical purpose and only will exacerbate the harm to broadcasters, both large and small, of the lengthy, continuing freeze placed on the entire broadcast television industry.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Rick Kaplan", with a long horizontal flourish extending to the right.

Rick Kaplan
General Counsel and Executive Vice President,
Legal and Regulatory Affairs
National Association of Broadcasters