Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Applications of	)	MB Docket No. 16-57
	)	
Nexstar Broadcasting Group, Inc.	)	
and	)	
Media General, Inc.	)	
	)	
For Consent To Transfer Control of Licenses	)	

PETITION TO DENY OR IMPOSE CONDITIONS OF DISH NETWORK L.L.C., THE AMERICAN CABLE ASSOCIATION, AND ITTA

Ross J. Lieberman, Senior Vice President of Government Affairs
Mary C. Lovejoy, Vice President of Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

Genevieve Morelli
President
ITTA
1101 Vermont Ave NW Suite 501
Washington, D.C. 20005
(202) 898-1519

Jeffrey H. Blum, Senior Vice President
& Deputy General Counsel
Alison Minea, Director and Senior Counsel, Regulatory Affairs
Hadass Kogan, Corporate Counsel
DISH NETWORK L.L.C.
1110 Vermont Avenue, NW, Suite 750
Washington, D.C. 20005
(202) 293-0981

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PETITION TO DENY OR IMPOSE CONDITIONS OF DISH NETWORK L.L.C., THE AMERICAN CABLE ASSOCIATION, AND ITTA

Pursuant to Section 73.3584(a) of the Commission's rules and Sections 309(d) and 310(d) of the Communications Act of 1934, as amended, DISH Network L.L.C. ("DISH"),[1] ITTA,[2] and the American Cable Association ("ACA")[3] (together, the "Petitioners") urge the

[1] DISH is a multichannel video programming distributor ("MVPD") that, among other things, retransmits local broadcast stations in every designated market area in the United States. DISH today retransmits certain local broadcast stations owned by the Applicants, and expects to negotiate with both Applicants in the future for continued retransmission of their stations. For these and other reasons described herein, DISH is a party in interest under Section 309(d)(l) of the Communications Act. *See* 47 U.S.C. § 309(d)(l).

[2] ITTA represents mid-size companies that provide a broad range of communications services to subscribers in predominantly rural areas across 45 states. In addition to high speed voice and data offerings, all ITTA members provide video services to subscribers utilizing a variety of distribution platforms, including IPTV networks, coaxial cable systems, and fiber infrastructure. ITTA members are new entrant video providers in nearly every market they serve. ITTA members today retransmit certain local broadcast stations owned by the Applicants, and expect to negotiate with both Applicants in the future for continued retransmission of their stations.

[3] ACA represents more than 800 small and medium-sized cable operators, incumbent telephone companies, municipal utilities, and other local providers of multichannel video programming services, as well as voice and broadband Internet access services. ACA member companies negotiate retransmission consent for local broadcast television stations owned by Nexstar and

Commission to deny, or in the alternative, to impose conditions on its approval of, the above-captioned applications ("Applications"),[4] which relate to the proposed acquisition of Media General, Inc. ("MEG") by Nexstar Broadcasting Group, Inc. ("Nexstar") (together, the "Applicants"). If approved, this transaction would create a new broadcast ownership conglomerate of unprecedented size and scope, one which will control the highest number of the Big-4 local broadcast stations in the country and have the power to threaten service blackouts to millions of consumers if any pay-TV distributor tries to hold the line on retransmission consent fees, which have risen more than 22,000 percent since 2005.[5] Moreover, approval of the merger will allow Nexstar to immediately profit from so-called "after-acquired station" clauses, as described below, which will result in dramatically higher fees for MVPDs and their customers without any offsetting benefit.

MEG in numerous designated market areas, and expect to negotiate in the future for continued retransmission of these stations. ACA has standing to prosecute this Petition because its members would face threats of substantial harm if the proposed assignments were approved. *See Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560-61 (1992). To establish standing, a party must show an "actual or imminent" injury that is both "fairly trace[able]" to the proposed agency action and "likely" to be "redressed by a favorable decision." *Louisiana Energy & Power Auth. v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998), *quoting Associated Gas Distribs. v. FERC*, 899 F.2d 1250, 1258 (D.C. Cir. 1990). The D.C. Circuit has made clear that agency action which enables "transactions that have the clear and immediate *potential*" for adverse competitive impact qualifies as injury in fact. Approving a transaction that will trigger after-acquired station clauses with respect to the MEG stations that Nexstar seeks to acquire and that therefore will automatically increase the price of retransmission consent paid by ACA members pursuant to their Nexstar retransmission agreements satisfies this standard. As described throughout this Petition, such injury is traceable to the Commission's action and would be redressed by the requested relief. Accordingly, ACA's standing is satisfied.

[4] *See* Applications of Nexstar Broadcasting Group, Inc. and Media General, Inc. for Consent to Transfer Control of Licenses, FCC Form 315, Comprehensive Exhibit, MB Docket No. 16-57, (filed Feb. 10, 2016) ("*Comprehensive Exhibit*").

[5] *See* Comments of the American Television Alliance, MB Docket No. 15-216, p. ii (Dec. 1, 2015) ("*ATVA Comments*").

I. INTRODUCTION AND SUMMARY

If the Commission allows this transaction to proceed by granting authority for MEG and Nexstar to merge (with Nexstar as the surviving entity), the combined broadcast behemoth will own at least 115 local broadcast stations affiliated with ABC, CBS, FOX, or NBC (the "Big-4" networks) spanning 101 designated market areas ("DMAs") across the nation. The combined entity would eclipse Sinclair Broadcasting Group, Inc. ("Sinclair") as the owner of the most Big-4 affiliated local broadcast stations in the country. Post-merger, Nexstar would enjoy a dramatic increase in negotiating leverage based solely on its aggregation of market power.

This transaction threatens to drive up retransmission consent fees (and, in turn, consumer prices) and to increase the risk and incidence of broadcast programming blackouts in the impacted DMAs. Furthermore, Nexstar's acquisition of MEG will trigger so-called "after-acquired station" clauses that Nexstar has forced many MVPDs to accept in retransmission consent negotiations, and which could now cause those MVPDs and their customers to pay significantly higher retransmission consent fees. Although the Applications neglect to address it, increased retransmission consent fees are a near-certain benefit of the merger, given the merged entity's dramatic increase in negotiating power and the existence of after-acquired station clauses. Moreover, both MEG and Nexstar have a history of using consumers as pawns in retransmission consent negotiations with pay-TV operators, and have repeatedly blacked out their programming during contractual disputes, to the detriment of the consumers they are supposed to serve.

Because the merger will enable two broadcast groups to combine their stations to increase negotiating leverage, threaten massive blackouts to pay-TV subscribers, and raise prices, and because the Applications present no merger-specific benefits, the transaction as presented does not serve the public interest. The Commission cannot approve the Applications as submitted and therefore must designate them for a hearing. If the Commission decides to approve the merger, however, it must impose conditions sufficient to cure the harms posed to the public. In particular, the Commission should, at a minimum, require the post-merger Nexstar to submit to baseball-style arbitration with interim carriage for any pay-TV operator that requests it when negotiating for retransmission consent. The Commission should also require, as a condition of approval, that Nexstar refrain from exercising its right to have retransmission consent rates under existing MEG agreements reset to Nexstar rate levels as a result of its after-acquired station clauses with an MVPD until expiration of those agreements by their terms.

II. STANDARD OF REVIEW

Pursuant to Section 310(d) of the Communications Act ("the Act"), the Commission must determine whether the proposed transfer of broadcast station licenses to Nexstar will serve "the public interest, convenience, and necessity."[6] This requires an evaluation of whether the transaction could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes, as well as an assessment of whether the transaction complies with applicable laws and regulations.[7] The Applicants must prove that

[6] 47 U.S.C. § 310(d); *see also* Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, *Memorandum Opinion and Order*, MB Docket No. 10-56, 26 FCC Rcd. 4238, 4247 ¶ 22 (2011) ("*Comcast-NBCU Order*").

[7] *See* Applications for Consent to the Transfer of Control of Licenses, XM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee, *Memorandum Opinion and Order and Report and Order*, MB Docket No. 07-57, 23 FCC Rcd. 12348, 12363 ¶ 30 (2008) ("*Sirius-XM Order*"); News Corp. and DIRECTV Group, Inc., Transferors, and Liberty Media Corp., Transferee, for Authority to Transfer Control, MB Docket No. 07-18, *Memorandum Opinion and Order*, 23 FCC Rcd. 3265, 3276-77 ¶ 22 (2008) ("*Liberty Media-DIRECTV Order*"); SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control, *Memorandum Opinion and Order*, WC Docket No. 05-65, 20 FCC Rcd. 18290, 18300 ¶ 16 (2005) ("*SBC-AT&T Order*").

the transaction will serve the public interest, convenience, and necessity. It is not enough for the Applicants to prove that the transaction will not be harmful to consumers and competition; rather, they must prove that it would benefit competition.

The Applicants bear the burden of proving, by a preponderance of the evidence, that the proposed transaction serves the public interest[8] by demonstrating that the competitive harms that could result from the proposed transaction are outweighed by the claimed benefits.[9] Further, those benefits must be: 1) transaction specific—likely to occur as a result of the transaction but unlikely to be realized by other practical means having fewer anti-competitive effects;[10] 2) verifiable—both in likelihood and magnitude;[11] and 3) for the benefit of consumers, and not solely for the benefit of the company.[12]

The Commission calculates the magnitude of the claimed benefits and the net cost of achieving them, and then employs a "sliding scale approach," under which the Applicants'

[8] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4247 ¶ 22 (*citing Sirius-XM Order*, 23 FCC Rcd. at 12364, ¶ 30; *Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3277 ¶ 22).

[9] *See* Applications of AT&T Inc. and Deutsche Telekom AG for Consent to Assign or Transfer Control of Licenses and Authorizations, *Order*, WT Docket No. 11-65, 26 FCC Rcd. 16184, 16190 ¶ 5 (2011) ("*AT&T-T-Mobile Order*").

[10] *See AT&T-T-Mobile Order*, 26 FCC Rcd. at 16247-48 ¶¶ 124-28 ("Efficiencies that can be achieved through means less harmful to competition than the proposed merger . . . cannot be considered to be true pro-competitive benefits of the merger.").

[11] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4330-31 ¶ 226 ("The Applicants . . . are required to provide sufficient supporting evidence to permit us to verify the likelihood and magnitude of each claimed benefit. Benefits expected to occur only in the distant future are inherently more speculative than more immediate benefits."); *see also Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3330-31 ¶ 141.

[12] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4331 ¶ 226; *see also* Applications of Western Wireless Corp. and ALLTEL Corp. for Consent to Transfer Control of Licenses and Authorizations, *Memorandum Opinion and Order*, WT Docket No. 05-50, 20 FCC Rcd. 13053, 13100 ¶ 132 (2005).

demonstration of benefits must reveal a higher degree of magnitude and likelihood than the Commission would otherwise demand where, as here, the potential harms are both substantial and likely.[13] If the Commission is unable to find that the alleged benefits do, in fact, outweigh the likely harms, or if there remain substantial and material questions of fact outstanding, the Commission must designate the application for a hearing.[14]

III. CONSUMERS AND COMPETITION ARE HARMED BY DEMANDS FOR INCREASED RETRANSMISSION FEES AND AFTER-ACQUIRED STATION CLAUSES

During the last five years, local broadcast station blackouts have continued to rise and retransmission consent rates have skyrocketed, all to the detriment of consumers. Just five years ago, in 2010, there were eight blackouts across the country.[15] In contrast, in 2015, broadcasters blacked out their programming nearly 200 times.[16] According to the American Television Alliance, blackouts affected more than 13 percent of multichannel video programming distributor ("MVPD") customers in 2015—or one out of every eight subscribers.[17] Against this backdrop, it is not surprising to learn that broadcasters have increased total retransmission consent fees more than 22,000 percent since 2005, at which time retransmission fees totaled $28

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[13] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4331 ¶ 227; *AT&T-T-Mobile Order*, 26 FCC Rcd. at 16248 ¶ 127 and FN 362 (*citing Horizontal Merger Guidelines* § 10) ("[c]ourts generally have found proof of efficiencies to be inadequate to rebut a finding of likely competitive harm."); *see also Liberty Media-DIRECTV Order*, 23 FCC Rcd. at 3331 ¶ 141; *SBC-Ameritech Order*, 14 FCC Rcd. at 14825 ¶ 256.

[14] *See* 47 U.S.C. § 309(e); *see also Citizens for Jazz on WRVR, Inc. v. FCC*, 775 F.2d 392, 394 (D.C. Cir. 1985) ("[W]hether or not an evidentiary hearing is held, the Commission must make the ultimate determination of whether the facts establish that the 'public interest, convenience, and necessity will be served by the granting [of the application].'").

[15] *See* ATVA Comments at ii.

[16] *Id.*

[17] *Id.*

million.[18] And these rates are only projected to increase: SNL Kagan, for example, predicts that retransmission consent fees will total more than $10 billion in 2020.[19]

The rise in retransmission consent fees are due, in part, to the increased leverage broadcasters now enjoy and the uneven playing field that has resulted from the competitive imbalance in the marketplace. When the 1992 Cable Act was passed, Congress noted that "most cable television subscribers have no opportunity to select between competing cable systems" and that "the cable industry has become highly concentrated."[20] Indeed, in 1992 cable operators held 98 percent of the MVPD market share.[21] Today, however, consumers face more competition than ever in the market for MVPD services, with some markets having as many as five MVPDs to choose from.[22] Thus, in today's marketplace, broadcasters now have undue leverage in negotiations against MVPDs because they know that customers can switch providers in the case of a programming blackout.

Increased leverage also has permitted some broadcasters to demand (particularly of smaller MVPDs) the inclusion of "after-acquired station" clauses. In many cases, the broadcaster will not enter into a retransmission consent agreement without these clauses. After-acquired station clauses typically entitle a broadcaster to roll into its existing retransmission consent agreement with an MVPD any other local broadcast stations it subsequently acquires,

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[18] *Id.* at ii, 14.

[19] *Id.* at ii.

[20] Cable Television Consumer Protection and Competition Act of 1992, Section 2 (a), Public Law 102-385 (Oct. 5, 1992).

[21] *See* Comments of the National Cable & Telecommunications Association, MB Docket No. 15-158, p. 3 (Aug. 21, 2015) (*citing* NCTA Analysis of SNL Kagan Data).

[22] *See* Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, Sixteenth Report, MB Docket No. 14-16, ¶ 22 (Apr. 2, 2015).

manages, or on whose behalf it otherwise gets the rights to negotiate retransmission consent. MVPDs forced to agree to include these clauses find that their previous negotiations for acceptable price, terms and conditions with a given local broadcast station can be upended when the station is bought, or when it enters into a management agreement. In that event, the rates that the MVPD pays are reset at the higher level of the acquiring/managing station, without any corresponding change in the value of the programming. It is unfair and destabilizing to operator finances to be faced with such sudden and unpredictable rate increases. When after-acquired station clauses are exercised, MVPDs must either absorb the increases or pass the increased costs through to their subscribers.

The media consolidation threatened by this transaction will only worsen this trend, by providing Nexstar the ability to hold a significant swath of the country's pay-TV customers hostage in retransmission consent negotiations, leading to higher prices and increased blackouts. It could also have the effect of immediately raising retransmission consent fees for a broad array of MVPDs as a result of operation of the after-acquired station clauses imposed on them by Nexstar.

IV. THE MERGER WOULD CREATE A NEW BROADCAST CONGLOMERATE THAT WILL DRIVE UP RETRANSMISSION CONSENT FEES THROUGH THREATS OF MASSIVE BLACKOUTS AND A TRIGGERING OF AFTER-ACQUIRED STATION CLAUSES

A. Description of Transaction

As explained in the Applications, MEG and Nexstar seek Commission approval for a transaction that will combine their respective television broadcast operations, with 27 of the license subsidiaries of MEG being transferred to Nexstar, along with the transfer of an additional assignment of licenses held by MEG subsidiary LIN Television Corporation.[23] In certain markets where MEG and Nexstar today both own stations, Nexstar will divest at least one station in order to comply with the Commission's Local Television Multiple Ownership Rule.[24] If the Commission allows MEG and Nexstar to merge (with Nexstar as the surviving entity), the combined broadcast conglomerate will own at least 115 Big-4 affiliated stations spanning 101 DMAs. The combined entity would eclipse Sinclair as the owner of the most Big-4 affiliated local broadcast stations in the country. Post-merger, Nexstar will enjoy a dramatic increase in negotiating leverage based solely on its aggregation of market power. The transaction threatens to drive up retransmission consent fees (and, in turn, consumer prices) and to increase the risk and incidence of broadcast programming blackouts in the impacted DMAs.

B. The Members and Subscribers of DISH, ACA, and ITTA Are Threatened by the Merger

DISH is the third largest MVPD in the country, and the only one providing local broadcast stations to all 210 DMAs. As a result, any time local broadcast stations merge, DISH will potentially feel the impact in every market where the merged entity operates. As of December 31, 2015, DISH had 13.897 million pay-TV subscribers in the United States. DISH estimates that, if Nexstar and MEG are allowed to merge, approximately ***half*** of DISH's subscriber base could be impacted if the merged entity were to black out all of its local broadcast stations at once. Given the breadth of Nexstar's holdings post-merger, other MVPDs (including the Petitioners) will face a similarly alarming threat of widespread service disruptions if they do not capitulate to Nexstar's rate increase demands. ACA member companies also negotiate retransmission consent for local broadcast television stations owned by Nexstar and MEG in

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[23] *See* Comprehensive Exhibit at 1.

[24] 47 C.F.R. Section 73.3555(b); *see also* Comprehensive Exhibit at 1.

numerous DMAs, retransmit those stations to their subscribers, and expect to negotiate in the future for continued retransmission of these stations. For its part, ITTA members today retransmit certain local broadcast stations owned by the Applicants, and expect to negotiate with both Applicants in the future for continued retransmission of their stations.

In addition to the threat of blackouts, some MVPDs who are forced to agree to after-acquired station clauses in their Nexstar retransmission consent agreements and who also have retransmission consent agreements with Media General stations will feel the impact in all affected markets. Numerous ACA members have reported that, as a result of the merger, the retransmission consent fees they will be paying for former MEG stations will increase anywhere between 11 percent to 125 percent as the rates are reset at Nexstar agreement levels over the remaining life of their agreements.

C. The Applicants Fail to Address How the Merger Would Increase Their Bargaining Leverage for Retransmission Consent and Increase Retransmission Consent Fees as a Result of After-Acquired Station Clauses

The Applicants make vague promises about the supposed benefits of their merger, saying it "will increase the merged company's operational efficiencies and capabilities in serving the public" and "ensure continuance of existing service to the public[.]"[25] What they do not say in the Applications, however, is that Nexstar's dramatically greater size after swallowing up MEG will give it the ability to bully MVPDs into paying outrageous retransmission fee increases. Tellingly, they also fail to mention that the merger will result in sudden and dramatic retransmission consent fee increases for MVPDs and their subscribers that are triggered immediately by operation of the after-acquired station clauses imposed on them by Nexstar

[25] Comprehensive Exhibit at 3.

during retransmission consent negotiations, which they were unable to resist if they want to be able to provide the local broadcast signal for which they are bargaining to their subscribers.

Indeed, Nexstar executives have not been shy about extolling the benefits of the increased retransmission fees the company has been able to extract from MVPDs, and the projected financial benefit Nexstar will enjoy as a result of this rising revenue stream. Nexstar has noted that retransmission consent agreements represent a growing "high margin non-traditional" revenue stream for the company.[26] During Nexstar's 4Q Earnings Call, Nexstar Executive Vice President and Chief Financial Officer Tom Carter explained that retransmission consent income has gone from representing 5 percent of Nexstar's total in 2007, to mid-30 percent today. Carter explained "[t]hat contractual revenue significantly changes the business profile of Nexstar… into the fact that we have a multi-platform revenue platform now whereas in 2007 retrans was a small portion, digital was in the early stages and not a meaningful contributor to revenue. *The stability of that cash flow is paramount for our business model*."[27]

Perry A. Sook, Nexstar Chairman, President & CEO further explained that "total combined fourth quarter retransmission fee and digital media revenue rose 90.1% to $111.0 million, representing nearly 45% of 2015 fourth quarter net revenue."[28] Sook remarked that

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[26] Presentation of Tom Carter, EVP & CFO, Nexstar Broadcasting Group, Inc., JP Morgan Global High Yield & Leveraged Finance Conference, p. 3 (Mar. 1, 2016), *available at* http://cdn.idstatic.com/cms/live/13/JPM-NXST-Short-Deck-3-1-16-FINAL.pdf?1456845024 ("*Nexstar Mar. 1 Presentation*").

[27] Dave Seyler, *Earnings Call: Nexstar Posts Flat 4Q Local Core Revenue*, TVNewsCheck (Feb. 25, 2016), *available at* http://www.tvnewscheck.com/article/92591/nexstar-posts-flat-4q-local-core-revenue (emphasis added).

[28] *Quarterly Report: Nexstar Sets Records with 4Q, Full-Year Rev.*, TVNewsCheck (Feb. 25, 2016), *available at* http://www.tvnewscheck.com/article/92580/nexstar-sets-records-with-4q-fullyear-rev.

Nexstar's 2016 financial growth will, among other things, reflect the company's expanded scale post transaction and "the 2015 renewal of a significant number of retransmission consent agreements."[29] A March 1, 2016 Nexstar presentation to investors highlighted that approximately 40 percent of Nexstar's subscriber base will be up for renewal in 2016. According to the presentation, "[a]cceleration in retransmission revenue post-contract renewal cycle highlights ability [of Nexstar] to negotiate favorable rates which also leads to competitive advantages in deriving value from station acquisitions."[30]

Industry observers have also recognized that Nexstar's underlying motivation for the merger rests in part on being able to extract higher retransmission consent fees. Broadcasting and Cable reported that Nexstar "sees the merger as a way to improve retransmission consent negotiations."[31] Nexstar thus views retransmission consent fees as an important source of revenue that is only expected to increase given its size and scale after acquiring MEG. Such size will give the new company even more leverage than the two companies standing alone have now to demand higher fees, to the detriment of the public interest.

D. The Applicants Have a History of Causing Blackouts as a Negotiating Tactic to Extract Higher Retransmission Fees

Nexstar and MEG individually have a history of blacking out their stations in order to increase their leverage in retransmission consent negotiations, and this behavior is likely to grow post-merger, given the combined company's even greater bargaining leverage. Most recently, on

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[29] *Id.*

[30] *Nexstar Mar. 1 Presentation* at 6.

[31] Jonathan Kuperberg, *Nexstar, Media General Mesh with Complementary Stations, Little Market Overlap*, Broadcasting & Cable (Jan 27, 2016), *available at* http://www.broadcastingcable.com/news/local-tv/nexstar-media-general-mesh-complementary-stations-little-market-overlap/147313.

January 29 of this year, Nexstar blacked out its signal for Cox subscribers in 9 DMAs for 7 days.[32] According to Cox, prior to the takedown, Nexstar was demanding Cox pay *triple* for retransmission consent.[33] Additionally, in 2013, Nexstar pulled its signal for MTC Cable subscribers in Binghamton New York for 17 days. At the time of the dispute, MTC noted that Nexstar sought a *300 percent* increase in monthly programming fees.[34]

MEG also has a history of blacking out its service to MVPD subscribers to increase its leverage in retransmission consent negotiations. Just last year, Mediacom subscribers in 14 markets lost access to MEG content for 15 days[35] after MEG sought "more than double the per subscriber price paid under the prior contract."[36] And, in 2013, MEG blacked out its signal to DISH subscribers in 17 markets for 46 days. This transaction will only embolden MEG and Nexstar to act on their already alarming propensity to use consumers as pawns in retransmission consent negotiations. Nexstar's increased market power will allow it to threaten even more expansive blackouts, or force MVPDs to capitulate to skyrocketing retransmission consent rates. Either option will harm consumers and the public interest.

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[32] *See* Patrick Hipes, *Nexstar and Cox Resolve Dispute with New Deal, End Blackout*, Deadline (Feb 4, 2016), *available at* http://deadline.com/2016/02/nexstar-cox-blackout-ends-new-agreement-1201696722/.

[33] *See* Statement on Nexstar Merger: Customers Forced to Pay More, Cox (Jan 28, 2016), *available at* http://newsroom.cox.com/2016-01-28-Statement-on-Nexstar-Merger-Customers-Forced-to-Pay-More.

[34] *See* Important Notices: Programming Notice, MTC Broadband, *available at* http://www.mtcbroadband.net/news.php?p=notices.

[35] *See* John Eggerton, *Mediacom, Media General Strike Retrans Deal*, Broadcasting and Cable (Jul. 30, 2015), *available at* http://www.broadcastingcable.com/news/washington/mediacom-media-general-strike-retrans-deal/142937.

[36] Daniel Frankel, *Media General Blacks Out Stations on Mediacom in 14 Markets*, FierceCable (Jul. 15, 2015), *available at* http://www.fiercecable.com/story/media-general-blacks-out-stations-mediacom-14-markets/2015-07-15.

V. THE COMMISSION SHOULD DENY THE MERGER OR ALTERNATIVELY IMPOSE CONDITIONS TO HELP PROTECT CONSUMERS

The safest course to protect consumers from increased broadcast station blackouts and the deleterious effects of the after-acquired station clauses in Nexstar retransmission consent agreements would be to designate this merger for a hearing. The Applicants have not demonstrated that the public interest will be affirmatively improved by Nexstar and MEG combining, and the only apparent reason for the merger is to increase their already substantial bargaining leverage for demanding retransmission fee increases and capitalize on existing after-acquired station clauses. If, however, the Commission chooses to allow the merger, it must address the merged entity's increased incentive and ability to hold consumers hostage through blackout threats and to capitalize on after-acquired station clauses.

In particular, consistent with the condition imposed in the Comcast-NBC Universal merger,[37] the Commission should allow any MVPD to pursue baseball-style arbitration in order to arrive at a new contract for retransmission consent for Nexstar's local broadcast stations. During any arbitration, Nexstar would be prevented from blacking out its stations on the MVPD with which it is negotiating, with a true-up reflecting rates decided upon by the arbitrator dating back to the previous contract's expiration date.

In addition, the Commission should require, as a condition of approval, that Nexstar refrain from exercising its right to have retransmission consent rates under existing MEG

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[37] *See Comcast-NBCU Order*, 26 FCC Rcd. at 4259 ("We establish in Appendix A a mechanism whereby an aggrieved MVPD may choose to submit a dispute with Comcast-NBCU over the terms and conditions of carriage of Comcast-NBCU affiliated programming to commercial arbitration. As in prior transactions, the arbitrator is directed to pick between the final contract offers…based on which offer best reflects the fair market value of the programming at issue.").

agreements reset to Nexstar rates by virtue of its after-acquired station clauses with an MVPD until expiration of those agreements by their terms.

VI. CONCLUSION

For the foregoing reasons, the Commission should deny the Applications, or, at least, impose conditions, including the ones described herein, to safeguard the public interest.

Respectfully submitted,

_________/s/_______________
Ross J. Lieberman, Senior Vice President
of Government Affairs
Mary C. Lovejoy, Vice President of
Regulatory Affairs
American Cable Association
2415 39th Place, NW
Washington, DC 20007
(202) 494-5661

_________/s/_______________
Jeffrey H. Blum, Senior Vice President
& Deputy General Counsel
Alison Minea, Director and Senior Counsel,
Regulatory Affairs
Hadass Kogan, Corporate Counsel
DISH NETWORK L.L.C.
1110 Vermont Avenue, NW, Suite 750
Washington, D.C. 20005
(202) 293-0981

_________/s/_______________
Genevieve Morelli
President
ITTA
1101 Vermont Ave NW Suite 501
Washington, D.C. 20005
(202) 898-1519

March 18, 2016

DECLARATION

The foregoing Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA has been prepared using facts of which I have personal knowledge or upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on March 18, 2016

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Jeffrey H. Blum
Senior Vice President & Deputy General Counsel
DISH Network L.L.C.

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Executed on March 18, 2016

Ross Lieberman

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Ross Lieberman
Senior Vice President of Government Affairs
The American Cable Association

DECLARATION

The foregoing Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA has been prepared using facts of which I have personal knowledge or upon information provided to me. I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on March 18, 2016

Genevieve Morelli

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Genevieve Morelli
President
ITTA

CERTIFICATE OF SERVICE

I, Alison Minea, hereby certify that, on this 18th day of March 2016, caused a copy of the foregoing Petition to Deny or Impose Conditions of DISH Network L.L.C., the American Cable Association, and ITTA to be filed electronically with the Commission using the ECFS system and caused a copy of the foregoing to be served upon the following individuals by First Class Mail or electronic mail*:

Scott R. Flick Pillsbury Winthrop Shaw Pittman LLP 1200 17th St NW Washington, DC 20036 Scott.Flick@pillsburylaw.com *Counsel for Media General, Inc.*	Gregory Masters Wiley Rein LLP 1776 K Street, NW Washington, DC 20006 GMasters@wileyrein.com *Counsel for Nexstar Media Group, Inc.*
David Brown* Federal Communications Commission Media Bureau 445 12th Street, SW Washington, DC 20554 David.Brown@fcc.gov	Jeremy Miller* Federal Communications Commission Media Bureau 445 12th Street, SW Washington, DC 20554 Jeremy.Miller@fcc.gov
Alison Nemeth* Federal Communications Commission Media Bureau 445 12th Street, SW Washington, DC 20554 Alison.Nemeth@fcc.gov	

/s/
Alison Minea

* Denotes service by electronic mail.