



Mary C. Lovejoy
Vice President of Regulatory Affairs
ACA Connects– America’s Communications Association
2415 39th Place, NW
Washington, DC 20007

mlovejoy@acaconnects.org
(202) 603-1735

April 22, 2019

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Communication in: MB Docket No. 19-30 (Nexstar-Tribune)

Dear Ms. Dortch:

I write on behalf of ACA – America’s Communications Association (“ACA Connects”) in response to claims made by Nexstar Media Group, Inc. (“Nexstar”) and Tribune Media Company (“Tribune”) (together, “the Applicants”) in their merger proceeding. On March 25, ACA Connects filed an *ex parte* letter discussing, among other things, Nexstar’s reputation and prior conduct in the retransmission consent marketplace.¹ In reply comments in the above-captioned proceeding, Nexstar and Tribune disputed these claims.² Below please find ACA Connects’ responses.

1. Acentek in Grand Rapids.

In the *ex parte*, we noted that “Nexstar negotiated an exceptionally high rate for its ABC station without informing Acentek that the station was not the ‘primary’ ABC affiliate in the market.”³ In response, the Applicants mischaracterize Acentek as complaining “that Nexstar failed to advise Acentek that there are multiple ABC affiliates in the [local] market.”⁴ They then

¹ Letter from Mary Lovejoy to Marlene Dortch, MB Docket No. 19-30 *et al.* (filed Mar. 25, 2019) (“*ex parte*”).

² Consolidated Opposition to Petitions to Deny and Comments, MB Docket No. 19-30 (Apr. 2, 2019).

³ *Ex parte* at 10.

⁴ Opp. at 31 n.118.

argue that Acentek's complaint "rings hollow" because Acentek had listed both affiliates in its channel guide for several years.⁵

Neither ACA Connects nor Acentek ever disputed that two affiliates *existed* in the local market. Acentek, as Nexstar notes, has carried both for years. We stated something else entirely—that Nexstar failed to disclose during negotiations that it was the "secondary" ABC affiliate in the market and therefore Acentek could be subject to network nonduplication blackout from the primary affiliate. That is, Nexstar led Acentek to believe that it would be able to carry Nexstar's ABC programming, as it had for years, for the term of the contract. Only after the negotiation concluded did Acentek receive a network nonduplication notice from the primary ABC affiliate, informing them that they would be required to black out all ABC programming on Nexstar's station. Acentek believes that Nexstar knew that this other affiliate held network nonduplication rights, and that there was a strong chance that Acentek would be forced to blackout Nexstar's affiliated programming. Nonetheless, Nexstar sought to charge "Big Four" rates for that station.

2. Shentel in Virginia.

In the *ex parte*, we noted the view of Chris Kyle, a Shentel executive who described Nexstar as "the most difficult party with whom he negotiates."⁶ The Applicants describe this as "fallacious" because Nexstar negotiated with a consultant engaged by Shentel and not Mr. Kyle, and that the consultant refused to permit Nexstar to speak with Shentel directly.⁷

Mr. Kyle's opinion is, of course, his own and he stands by it. He bases his opinion on multiple experiences negotiating with Nexstar, both directly and through a consultant, during which Nexstar exercised its significant market power to extract several important contract terms. The Applicants' other claims, moreover, are misleading. While Mr. Kyle did not negotiate directly with Nexstar in Shentel's last negotiation, he did maintain daily contact with his consultant, Lew Scharfberg. According to Mr. Scharfberg, no one from Nexstar ever objected to negotiating with him or asked to speak with a Shentel employee directly, and had they done so, he would have obliged, although he would have asked that, for the sake of continuity, he be present for any such conversations. Mr. Kyle further notes not only that he has dealt directly with Nexstar in previous negotiations, but that he also has a prior business relationship with Keith Hopkins,⁸ Nexstar's primary negotiator for this agreement, and that Mr. Hopkins would therefore know how to get in touch with him directly, if he so desired.

⁵ *Id.* (noting that "Acentek's own channel guide identified both "WOTV-ABC (Battle Cr.)" and "WZZM-ABC (Gr. Rap.)" at least as early as June 30, 2015.")

⁶ *Ex parte* at 10.

⁷ *Opp.* at 31 n.119; Ryder Decl. ¶ 7.

⁸ Although Applicants rely on the declaration of Ms. Elizabeth Ryder, rather than Mr. Hopkins, to support its assertions about its negotiations with Shentel, ACA Connects would never suggest that

3. TDS In Indiana and New Mexico.

In our *ex parte*, we described TDS as paying “more for Tribune’s duopoly stations than it pays for the average of the other two top-four stations in the market, despite the fact that Tribune typically charges lower retransmission consent rates than other broadcasters.”⁹ Applicants claim that ACA Connects’ reliance on the average of the other two top-four stations is “misleading,” as it ignores the difference in ratings among the stations.¹⁰ Yet in the very same paragraph, Applicants state that Tribune “negotiates for a uniform ‘big four’ rate across the entire footprint of a given MVPD.”¹¹ *Tribune*, in other words, appears to ignore the ratings differences among individual stations. This is consistent with TDS’s experience in negotiating with Tribune for stations in multiple markets across its footprint.

Applicants then accuse TDS of ignoring other factors that might explain the price difference, such as when each agreement was negotiated, whether the fees paid to the other stations reflect specific prices for those stations or prices negotiated for a multiple station group, and whether any non-monetary consideration was factored into the per subscriber rate for those other stations.¹² To the extent that these factors are relevant to the issue at hand, we now clarify that the agreements for all four Indianapolis stations were negotiated during the same cycle; that the agreement for one of the two non-Tribune stations in question also encompasses two other big-four stations operating in other markets owned by the same station group;¹³ and that no non-monetary consideration was factored into the per subscriber rate for either of those stations.

Our basic point remains the same: duopolies give station groups more leverage to charge higher prices. This is so even if, as appears to be the case with Tribune, such prices are “spread out” through a station group’s entire footprint. Moreover, TDS (and likely other ACA Connects members) would be happy to waive confidentiality provisions in all of their retransmission consent contracts to enable the Commission to determine the accuracy of their representations.

We also described Nexstar as “syndicating out-of-market newscasts from stations owned by smaller groups instead of producing their own” in parts of the Albuquerque market served by

Ms. Ryder’s lack of first-hand knowledge about Mr. Scharfberg’s conversations with Mr. Hopkins would disqualify her completely from commenting on those negotiations.

⁹ *Ex parte* at 5. To clarify, the rate that TDS pays for each Tribune station is, in fact, higher than the rates paid for either of the other two big-four stations in the market.

¹⁰ Opp. at 36 n.140.

¹¹ *Id.*

¹² *Id.*

¹³ TDS, through its subsidiary TDS Broadband, also has a separate retransmission consent agreement for “big-four” stations owned by the same station group in two additional markets. The two agreements were negotiated simultaneously, and the rates and terms for all five stations are substantially similar.

TDS.¹⁴ Here, however, ACA Connects misunderstood the facts as they had been conveyed by TDS. We misspoke. Nexstar's stations located in the Albuquerque DMA generally do not cover the news at the edge of the local market, where several of TDS's systems are located. TDS thus has to import nearby stations from the neighboring Denver, Odessa-Midland, and El Paso markets in order to provide viewers with local newscasts that are more immediately relevant to the interests of TDS's customers. In other words, TDS itself (and not Nexstar) imports out-of-market newscasts in order to remedy Nexstar's lack of local coverage.

* * *

I have filed this letter electronically pursuant to section 1.1206 of the Commission's rules.

Sincerely,



Mary C. Lovejoy

cc: Holly Saurer
Nancy Murphy
Varsha Mangal
Steven Broeckaert
Brendan Murray
Maria Mullarkey
Jonathan Mark
Olivia Avery
Matthew Berry
Alexander Sanjenis
Joel Miller
Kate Black
Evan Swartztrauber
Michael Scurato
David Brown
Chris Robbins
Darren Fernandez
Jim Bird
Mace Rosenstein, Counsel to Tribune Media Company
Gregory Masters, Counsel to Nexstar Media Group, Inc.

¹⁴ *Ex parte* at 8.