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**A Close Read of the Media Bureau's Nexstar/TEGNA Order
Exposes the Fallacy of the Retransmission Consent Regime**

by

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I. Introduction and Summary

On April 9, U.S. District Court for the Eastern District of California Chief Judge Troy L. Nunley [extended by a week](#) the [temporary restraining order](#) (TRO) he'd granted on March 27 blocking – or at least pausing so that it might later be unwound – the \$6.2 billion merger between Nexstar Media Group, Inc. (Nexstar) and TEGNA, Inc. (TEGNA). A merger that was [summarily approved by the FCC's Media Bureau](#) on March 19. DIRECTV, LLC (DIRECTV) sought that TRO given Nexstar's well-documented intention to leverage its unprecedented, ownership-cap-exceeding size to increase retransmission consent revenues to the detriment of the customers of traditional, facilities-based multichannel video programming distributors (MVPDs).

As the order granting the TRO notes, DIRECTV in its motion "asserts that Nexstar's purpose in acquiring TEGNA is to drive up the [retransmission consent fees] it can extract from [DIRECTV] and other distributors, which will force them to raise prices on their subscribers." Chief Judge Nunley found merit in this argument. As do I. The *Further Readings* section below includes links to numerous pieces I have written on the inevitably negative impact of efforts to

bolster broadcasters' ability to compete with Big Tech platforms through deregulation on the already lopsided – because of regulatory asymmetries – relationships between broadcasters and MVPDs.

By contrast, the Media Bureau – in just six paragraphs – dismissed concerns regarding the combined entity's ability to demand above-market retransmission-consent fees, concluding that "[w]hen placed in its proper market context, the harms and arguments pressed by this Transaction's opponents *melt away*..." (emphasis added). To justify that position, the Media Bureau makes a number of interesting factual assertions – assertions that undermine the basis for Commission regulation of relationships between local broadcast television stations and regulated MVPDs.

II. The Logic Behind the Media Bureau's Dismissal of Harms Relating to MVPD Carriage Inescapably Undermine the Retransmission Consent Regime Itself

The discussion in the Media Bureau's order of the merger's impact on retransmission consent, found in paragraphs 71 through 76, at times seems to both overstate and overlook marketplace realities. More importantly, and taken as a whole, the discussion undercuts any policy justifications for regulatory intervention in the financial relationships between broadcasters and traditional MVPDs.

To start, the order treats over-the-air reception using an antenna as "a readily available and free substitute" for MVPD carriage – one that "disciplines both Nexstar and MVPDs" and that "ameliorates any concerns raised in our record." This unequivocal characterization of over-the-air reception as a perfect substitute for MVPD carriage represents a stark departure from previous policy positions – and, in a larger sense, calls into question the need for any carriage mandates whatsoever.

I am (barely) old enough to remember the Supreme Court's discussion of A/B switches in the two legal challenges to statutory carriage obligations, *Turner I* in 1994 and *Turner II* in 1997. In particular, (1) the recognition in the former that "Congress found [that] '[m]ost subscribers to cable do not or cannot maintain antennas to receive broadcast television services, do not have input selector switches to convert from a cable to antenna reception system, or cannot otherwise receive broadcast television services,'" and (2) the Court's conclusion in the latter that it "cannot conclude that" an A/B switch – what today we would call the "input selector" function of a digital television – "is an adequate alternative to must-carry for promoting the Government's legitimate interests."

Until the Media Bureau's Nexstar/TEGNA order, the FCC for the most part agreed. Citing *Turner II*, the Commission in a [2005 order regarding digital must carry](#) wrote that:

To the extent that some consumers can and would take advantage of the advances in antennas and A/B switches, the availability of such technology would also weigh against the imposition of a dual carriage requirement. Consistent with past Congressional findings and *Turner*, however, antennas and A/B switches alone

cannot satisfy the governmental interests at stake or replace the need for mandatory carriage.

To be fair, I am somewhat skeptical of the Media Bureau's claim that the availability of over-the-air reception truly "disciplines" local broadcasters or MVPDs. Yes, broadcasters could still reach consumers if they walk away from MVPD carriage. But in doing so they would forgo retransmission consent revenues completely. And yes, MVPDs could avoid paying for retransmission consent by implementing an A/B switch-like workaround. But if the use of antennas in fact could provide subscribers a seamless and reliable viewing experience, surely by now they would have implemented that fee-free strategy. Regardless, it is clear from the plain language of the Media Bureau's order – which incidentally makes no mention of either *Turner I* or *Turner II* – that the antenna alternative, which it describes as "a basic and fundamentally important fact," played a central role in its analysis.

Second, the Media Bureau's order, without engaging in an actual discussion of the relevant product market, effectively concludes that local broadcasters compete, not just with one another, but in the broader marketplace for content offerings, notably not just video:

[T]oday, broadcasters are competing in a much larger, broader, and competitive environment. They are ... competing for viewers and listeners against various technology platforms – from streamers to podcasts. Broadcasters are no longer competing against other broadcasters, but against competitors that deliver their offerings over the Internet, from satellites in orbit, over 5G networks, over fiber, and over cable plus other technologies or modes of distribution. When placed in its proper market context, the harms and arguments pressed by this Transaction's opponents melt away and are otherwise offset by the substantial, competitive benefits as well as the benefits for the FCC's core media policy goals of competition, localism, and diversity.

At the same time, the order is replete with references to the "critical news, sports, weather and emergency information" that local broadcasters – and in particular local Big Four affiliates – are in a unique position to provide. Indeed, the applicants' assertions regarding their ability to expand the amount of such content is the primary public interest benefit identified in the order: "Today, the FCC takes an action that empowers these local broadcast TV stations to serve the public interest, and it does so by enabling them to expand the production of local news and information."

In granting the TRO, Chief Judge Nunley wrote that "[t]he Court finds persuasive Plaintiff's contention that licenses to retransmit Big Four broadcast content are not reasonably interchangeable with licenses to any other stations because MVPDs cannot obtain the combination of local news and live sports that their customers demand anywhere else." This is consistent with the assertion DIRECTV made in its [reply to opposition](#) that the Department of Justice "has long held that broadcasters participate in at least two relevant product markets. They sell local advertising to advertisers. And they sell their programming to distributors through retransmission consent."

Should the position embraced by the Media Bureau ultimately survive judicial challenge, however, then it would inevitably follow that a factual basis does not exist to justify regulatory interference in the financial relationships between local broadcasters and traditional MVPDs. The content marketplace in which local television stations compete for eyeballs – and, in the case of podcasts, ears – indisputably is fully competitive: local stations, traditional MVPDs, streaming services, virtual MVPDs, short-form video, social media content, free ad-supported streaming TV (FAST), livestreaming platforms, the aforementioned podcasts, video podcasts, and so on. Indeed, the number of rival options is so great that, [as I recently argued regarding the carriage of professional sports](#), there are some who long for a "good old days" that never actually existed.

III. Conclusion

The Media Bureau's order approving the Nexstar/TEGNA transaction stakes out novel, unsupported positions regarding the regulated relationships between local broadcast stations and traditional MVPDs. Followed to their logical conclusions, those positions render the retransmission consent regime – perhaps the lone remaining instance of substantial government interference in the otherwise undeniably competitive content marketplace – obsolete.

In addition to courts reviewing the Nexstar/TEGNA merger, Congress certainly should take note as well and consider comprehensive deregulation of the media marketplace.

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Further Readings

Andrew Long, "[Consumer Choice in Sports Proves that Video Competition Abounds](#)," *FSF Blog* (March 11, 2026).

Andrew Long, "[The FCC Must Concurrently Consider the Impact of Greater Television Station Consolidation on Retransmission Consent Negotiations](#)," *FSF Blog* (February 27, 2026).

Andrew Long, "[Streaming Continues to Surge as Short-Form Video Reshapes Consumer Habits](#)," *FSF Blog* (January 27, 2026).

Daniel A. Lyons, "[A Rational Response to Market Maturity: Why the Charter-Cox Merger Serves the Public Interest](#)," *Perspectives from FSF Scholars*, Vol. 20, No. 41 (October 17, 2025).

[Comments of the Free State Foundation](#), *In the Matter of Cox Enterprises, Inc. Transferor, and Charter Communications, Inc. Transferee, Joint Application for Consent*

to Transfer Control of Domestic and International Section 214 Authorizations, WC Docket No. 25-233 (October 6, 2025).

[Comments of the Free State Foundation](#), *In the Matter of Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318 (August 4, 2025).

Andrew Long, "[Don't Revive 'Social Contracts' to Address Video Marketplace Inefficiencies](#)," *Perspectives from FSF Scholars*, Vol. 20, No. 31 (July 7, 2025).

Andrew Long, "[The Proposed Charter-Cox Merger: A Pro-Consumer Response to Today's Competitive Communications Marketplace](#)," *Perspectives from FSF Scholars*, Vol. 20, No. 28 (June 10, 2025).

Andrew Long, "[Deregulation Is the Cure for the Video Regulatory Disparity](#)," *FSF Blog* (June 9, 2025).

Andrew Long, "[No Basis Exists in 2025 for Rules Targeting Traditional Video Providers](#)," *Perspectives from FSF Scholars*, Vol. 20, No. 13 (March 6, 2025).