UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, STATE OF ILLINOIS, COMMONWEALTH OF PENNSYLVANIA, and COMMONWEALTH OF VIRGINIA, *Plaintiffs*, v. NEXSTAR MEDIA GROUP, INC. and TRIBUNE MEDIA COMPANY, *Defendants*.	Civil Action No. 1:19-cv-2295

COMPETITIVE IMPACT STATEMENT

The United States of America, under Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. § 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. NATURE AND PURPOSE OF THE PROCEEDING

On November 30, 2018, Defendant Nexstar Media Group, Inc. ("Nexstar") agreed to acquire Tribune Media Company ("Tribune," and together with Nexstar, "Defendants") for approximately $6.4 billion. The United States filed a civil antitrust Complaint on July 31, 2019, seeking to enjoin the proposed merger. The Complaint alleges that the likely effect of this merger would be to substantially lessen competition in violation of Section 7 of the Clayton Act,

15 U.S.C. § 18, in thirteen Designated Market Areas ("DMAs" [1]): (1) twelve DMAs in which Defendants license the television programming of NBC, CBS, ABC, and FOX (collectively, "Big 4") affiliate stations to cable, satellite, fiber optic television, and over-the-top providers (referred to collectively as multichannel video programming distributors, or "MVPDs") for retransmission to their subscribers (collectively referred to in this Competitive Impact Statement as the "Big 4 Overlap DMAs"), and (2) those twelve DMAs plus the Indianapolis, Indiana DMA in which Defendants sell broadcast television spot advertising (collectively referred to in this Competitive Impact Statement as the "Overlap DMAs").

At the same time the Complaint was filed, the United States filed a Hold Separate Stipulation and Order ("Hold Separate") and proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, Defendants are required to divest the following broadcast television stations (the "Divestiture Stations") to acquirers acceptable to the United States in its sole discretion: (i) WQAD-TV, located in the Davenport, Iowa-Rock Island-Moline, Illinois, DMA; (ii) WOI-DT and KCWI-TV, located in the Des Moines-Ames, Iowa, DMA; (iii) KFSM-TV, located in the Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas, DMA; (iv) WXMI, located in the Grand Rapids-Kalamazoo-Battle Creek, Michigan, DMA; (v) WPMT, located in

[1] A DMA is a geographic unit for which A.C. Nielsen Company—a firm that surveys television viewers—furnishes broadcast television stations, MVPDs, cable and satellite television networks, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. DMAs are widely accepted by industry participants as the standard geographic areas to use in evaluating television audience size and demographic composition. The Federal Communications Commission ("FCC") also uses DMAs as geographic units with respect to its MVPD regulations.

the Harrisburg-Lancaster-Lebanon-York, Pennsylvania, DMA; (vi) WTIC-TV and WCCT-TV, located in the Hartford-New Haven, Connecticut, DMA; (vii) WZDX, located in the Huntsville-Decatur-Florence, Alabama, DMA; (viii) WNDY-TV and WISH-TV, located in the Indianapolis, Indiana, DMA; (ix) WATN-TV and WLMT, located in the Memphis, Tennessee, DMA; (x) WTKR and WGNT, located in the Norfolk-Portsmouth-Newport News, Virginia, DMA; (xi) WTVR-TV, located in the Richmond-Petersburg, Virginia, DMA; (xii) KSTU, located in the Salt Lake City, Utah, DMA; and (xiii) WNEP-TV, located in the Wilkes-Barre-Scranton, Pennsylvania, DMA. Under the terms of the Hold Separate, Defendants will take certain steps to ensure that the Divestiture Stations are operated as competitively independent, economically viable, and ongoing business concerns, which will remain independent and uninfluenced by the non-owner Defendant, and that competition is maintained during the pendency of the required divestitures.

The United States and Defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. DESCRIPTION OF EVENTS GIVING RISE TO THE ALLEGED VIOLATION

A. The Defendants and the Proposed Transaction

Nexstar is a Delaware corporation with its headquarters in Irving, Texas. Nexstar owns 171 television stations in 100 DMAs, of which 136 stations are Big 4 affiliates. In 2018, Nexstar reported revenues of $2.8 billion.

Tribune is a Delaware corporation with its headquarters in Chicago, Illinois. Tribune owns 44 television stations in 33 DMAs, of which 27 stations are Big 4 affiliates. In 2018, Tribune earned revenues of more than $2.0 billion.

B. Big 4 Television Retransmission Consent

1. Background

MVPDs, such as Comcast, DirecTV, and Charter, typically pay the owner of each local Big 4 broadcast station in a given DMA a per-subscriber fee for the right to retransmit the station's content to the MVPD's subscribers. The per-subscriber fee and other terms under which an MVPD is permitted to distribute a station's content to its subscribers are set forth in a retransmission agreement. A retransmission agreement is negotiated directly between a broadcast station group, such as Nexstar or Tribune, and a given MVPD, and this agreement typically covers all of the station group's stations located in the MVPD's service area, or "footprint."

Each broadcast station group typically renegotiates retransmission agreements with the MVPDs every few years. If an MVPD and a broadcast station group cannot agree on a retransmission consent fee at the expiration of a retransmission agreement, the result may be a "blackout" of the broadcast group's stations from the particular MVPD—i.e., an open-ended period during which the MVPD may not distribute those stations to its subscribers, until a new contract is successfully negotiated.

2. Relevant Markets

Big 4 broadcast content has special appeal to television viewers in comparison to the content that is available through other broadcast stations and cable channels. Big 4 stations

usually are the highest ranked in terms of audience share and ratings in each DMA, largely because of unique offerings such as local news, sports, and highly ranked primetime programs. Viewers typically consider the Big 4 stations to be close substitutes for one another. Because of Big 4 stations' popular national content and valued local coverage, MVPDs regard Big 4 programming as highly desirable for inclusion in the packages they offer subscribers. Non-Big 4 broadcast stations are typically not close substitutes for viewers of Big 4 stations. Stations that are affiliates of networks other than the Big 4, such as the CW Network, MyNetworkTV, or Telemundo, typically feature niche programming without local news or sports—or, in the case of Telemundo, aimed at a Spanish-speaking audience. Stations that are unaffiliated with any network are similarly unlikely to carry programming with broad popular appeal.

If an MVPD suffers a blackout of a Big 4 station in a given DMA, many of the MVPD's subscribers in that DMA are likely to turn to other Big 4 stations in the DMA to watch similar content, such as sports, primetime shows, and local news and weather. This willingness of viewers to switch between competing Big 4 broadcast stations limits an MVPD's expected losses in the case of a blackout, and thus limits a broadcaster's ability to extract higher fees from that MVPD—since an MVPD's willingness to pay higher retransmission consent fees for content rises or falls with the harm it would suffer if that content were lost. Due to the limited programming typically offered by non-Big 4 stations, viewers are much less likely to switch to a non-Big 4 station than to switch to other Big 4 stations in the event of a blackout of a Big 4 station. Accordingly, competition from non-Big 4 stations does not typically impose a significant competitive constraint on the retransmission consent fees charged by the owners of Big 4 stations. For the same reasons, subscribers—and therefore MVPDs—generally do not

view cable network programming as a close substitute for Big 4 network content. This is primarily because cable channels offer different content. For example, cable channels generally do not offer local news, which provides a valuable connection to the local community that is important to viewers of Big 4 stations.

Because viewers do not regard non-Big 4 broadcast stations or cable networks as close substitutes for the programming they receive from Big 4 stations, these other sources of programming are not sufficient to discipline an increase in the fees charged for Big 4 television retransmission consent. Accordingly, a small but significant increase in the retransmission consent fees of Big 4 affiliates would not cause enough MVPDs to forego carrying the content of the Big 4 stations to make such an increase unprofitable for the Big 4 stations.

The relevant geographic markets for the licensing of Big 4 television retransmission consent are the individual DMAs in which such licensing occurs. The Complaint alleges a substantial reduction of competition in the market for the licensing of Big 4 television retransmission consent in the following twelve DMAs: (i) Davenport, Iowa-Rock Island-Moline, Illinois; (ii) Des Moines-Ames, Iowa; (iii) Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; (iv) Grand Rapids-Kalamazoo-Battle Creek, Michigan; (v) Harrisburg-Lancaster-Lebanon-York, Pennsylvania; (vi) Hartford-New Haven, Connecticut; (vii) Huntsville-Decatur-Florence, Alabama; (viii) Memphis, Tennessee; (ix) Norfolk-Portsmouth-Newport News, Virginia; (x) Richmond-Petersburg, Virginia; (xi) Salt Lake City, Utah; and (xii) Wilkes Barre-Scranton, Pennsylvania (collectively, "the Big 4 Overlap DMAs").

In the event of a blackout of a Big 4 network station, FCC rules generally prohibit an MVPD from importing the same network's content from another DMA. Thus, Big 4 viewers in

one DMA cannot switch to Big 4 programming in another DMA in the face of a blackout. Therefore, substitution to stations outside the DMA cannot discipline an increase in the fees charged for retransmission consent for broadcast stations in the DMA.

3. Anticompetitive Effects

In each of the Big 4 Overlap DMAs, Nexstar and Tribune each own at least one Big 4 affiliate broadcast television station. By combining the Defendants' Big 4 stations, the proposed merger would increase the Defendants' market shares in the licensing of Big 4 television retransmission consent in each Big 4 Overlap DMA, and would increase the market concentration in that business in each Big 4 Overlap DMA. The chart below summarizes the Defendants' approximate Big 4 retransmission consent market shares, and market concentrations measured by the widely used Herfindahl-Hirschman Index ("HHI")[2], in each Big 4 Overlap DMA, before and after the proposed merger.

[2] The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2{,}600$). The HHI takes into account the relative size distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size, and reaches its maximum of 10,000 points when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Big 4 Overlap DMA[3]	Nexstar Share	Tribune Share	Merged Share	Pre-Merger HHI	Post-Merger HHI	HHI Increase
Wilkes Barre, PA	54.0%	24.7%	78.7%	3981	6645	2664
Ft. Smith, AR	63.4%	15.0%	78.4%	4708	6613	1906
Norfolk, VA	56.0%	21.1%	77.1%	4104	6465	2361
Grand Rapids, MI	43.4%	16.3%	59.7%	2974	4391	1417
Hartford, CT	33.5%	25.4%	58.9%	2636	4338	1702
Memphis, TN	38.4%	17.6%	56.1%	2762	4118	1356
Davenport, IA	36.8%	14.9%	51.6%	2744	3838	1094
Des Moines, IA	34.5%	13.9%	48.4%	2798	3756	958
Huntsville, AL	32.5%	16.6%	49.1%	2630	3710	1080
Salt Lake City, UT	32.1%	15.5%	47.5%	2691	3683	992
Harrisburg, PA	25.3%	22.1%	47.4%	2553	3670	1117
Richmond, VA	28.0%	16.9%	44.9%	2672	3617	945

As indicated by the preceding chart, in each Big 4 Overlap DMA the post-merger HHI would exceed 2,500 and the merger would increase the HHI by more than 200 points. As a result, the proposed merger is presumed likely to enhance market power under the *Horizontal Merger Guidelines* issued by the Department of Justice and the Federal Trade Commission.

The proposed merger would enable Nexstar to black out more Big 4 stations simultaneously in each of the Big 4 Overlap DMAs than either Nexstar or Tribune could black out independently today, likely leading to increased retransmission consent fees to any MVPD whose footprint includes any of the Big 4 Overlap DMAs. Retransmission consent fees generally are passed through to an MVPD's subscribers in the form of higher subscription fees or as a line item on their bills.

[3] In this chart and the one below, sums that do not agree precisely reflect rounding.

C. Broadcast Television Spot Advertising

1. Background

Broadcast television stations, including both Big 4 broadcast stations and non-Big 4 stations in the Overlap DMAs, sell advertising "spots" during breaks in their programming. Advertisers purchase spots from a broadcast station to communicate with viewers within the DMA in which the broadcast television station is located. Broadcast television spot advertising is distinguished from "network" advertising, which consists of advertising time slots sold on nationwide broadcast networks by those networks, and not by local broadcast stations or their representatives. Nexstar and Tribune compete with one another to sell broadcast television spot advertising in each DMA in which both Defendants have stations.

2. Relevant Markets

Broadcast television spot advertising, including spot advertising on both Big 4 and non-Big 4 broadcast stations, constitutes a relevant product market and line of commerce under Section 7 of the Clayton Act. Advertisers' inability or unwillingness to substitute to other types of advertising in response to a price increase in broadcast television spot advertising supports this relevant market definition.

Typically, an advertiser purchases broadcast television advertising spots as one component of an advertising strategy that may also include cable spots, newspaper advertisements, billboards, radio spots, digital advertisements, email advertisements, and direct mail. Different components of an advertising strategy generally target different audiences and serve distinct purposes. Advertisers that advertise on broadcast stations do so because the stations offer popular programming such as local news, sports, and primetime and syndicated

shows that are especially attractive to a broad demographic base and a large audience of viewers. Other categories of advertising may offer different characteristics, making them potential complements to broadcast television advertising, but not close substitutes. For example, ads associated with online search results target individual consumers or respond to specific keyword searches, whereas broadcast television advertising reaches a broad audience throughout a DMA. Technological developments may bring various advertising categories into closer competition with each other. For example, broadcasters and cable networks are developing technology to make their spot advertising addressable, meaning that broadcasters could deliver targeted advertising in live broadcast and on-demand formats to smart televisions or streaming devices. For certain advertisers, these technological changes may make other categories of advertising closer substitutes for advertising on broadcast television in the future. However, at this time, for many broadcast television spot advertising advertisers, these projected developments are insufficient to mitigate the effects of the merger in the Overlap DMAs.

MVPDs sell spot advertising to be shown during breaks in cable network programming. For viewers, these advertisements are similar to broadcast ads. That, however, does not mean that cable television spot advertising should be included in the product market. For the following reasons, cable television spot advertising is at this time a relatively ineffective substitute for broadcast television spot advertising for most advertisers. First, broadcast television spot advertising is a more efficient option than cable television spot advertising for many advertisers. Because broadcast television offers highly rated programming with broad appeal, each broadcast television advertising spot typically offers the opportunity to reach more viewers (more "ratings points") than a single spot on a cable channel. By contrast, MVPDs offer dozens of cable

channels with specialized programs that appeal to niche audiences. This fragmentation allows advertisers to target narrower demographic subsets by buying cable spots on particular channels, but it does not meet the needs of advertisers who want to reach a large percentage of a DMA's population. Second, households that have access to cable networks are divided among multiple MVPDs within a DMA. In some DMAs, MVPDs sell some spot advertising through consortia called "interconnects." Sometimes these interconnects include all of the largest MVPDs in a DMA, approaching but not matching broadcast stations' reach. But in other, especially smaller DMAs, the interconnect only contains a subset of MVPDs, which reduces the reach of the interconnect's advertisements. In contrast, broadcast television spot advertising reaches all households that subscribe to an MVPD and, through an over-the-air signal, most households with a television that do not. Finally, MVPDs' inventory of cable television spot advertising is limited—typically to two minutes per hour—contrasting sharply with broadcast stations' much larger number of minutes per hour. The inventory of DMA-wide cable television spot advertising is substantially further reduced by the large portion of those spots allocated to local zone advertising, in which an MVPD sells spots by geographic zones within a DMA, allowing advertisers to target smaller geographic areas. Due to the limited inventories and lower ratings associated with cable television spot programming, cable television spot advertisements cannot offer a sufficient volume of ratings points, or broad enough household penetration, to provide a viable alternative to broadcast television spot advertising, at this time. Because of these limitations, MVPDs and interconnects would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

Digital advertising is not a sufficiently close substitute for broadcast television spot advertising. Some digital advertising, such as static and floating banner advertisements, static images, text advertisements, wallpaper advertisements, pop-up advertisements, flash advertisements, and paid search results, lacks the combination of sight, sound, and motion that makes television spot advertising particularly impactful and memorable, and therefore effective for advertisers. Digital video advertisements, on the other hand, do allow for a combination of sight, sound, and motion, and on this basis are more comparable to broadcast television spot advertising than other types of digital advertising, but are still not close substitutes for broadcast television spot advertising for the reasons stated below. First, digital advertisements typically reach a different audience than broadcast television spot advertising. Whereas advertisers use broadcast television spots to reach a large percentage of households in a DMA, advertisers use digital advertising to reach a variety of different audiences. While a small portion of advertisers purchase DMA-wide advertisements on digital platforms, digital advertisements usually are targeted either very broadly, such as nationwide or regional, or to a smaller geographic target, such as a city or a zip code, or to narrow demographic subsets of a population. Second, inventory of ad-supported, high-quality, long-form video on the internet is limited. Advertisers see value to advertising on video that is watched by the audience they seek to target. High-quality, long-form video is the most similar content to broadcast television programming available on the internet. The most popular high-quality, long-form video available on the internet is provided through ad-free subscription services (like Netflix or Amazon Prime), over-the-top MVPDs that sell cable television spot advertisements (like Sling and YouTube TV), or sold directly by the networks on their own network sites. The remaining inventory of digital advertisements attached

to high-quality, long-form video on the internet, which is primarily sold by digital advertising platforms, is small today. Because of these limitations, digital video advertising would be unable to expand output or increase sales sufficiently to defeat a small but significant increase in the prices charged for broadcast television spot advertising in a given DMA.

Other forms of advertising, such as radio, newspaper, billboard, and direct-mail advertising, also do not constitute effective substitutes for broadcast television spot advertising. These forms of media do not reach as many local viewers or drive brand awareness to the same extent as broadcast television does. Broadcast television spot advertising possesses a unique combination of attributes that advertisers value in a way that sets it apart from advertising on other media. Broadcast television spot advertising combines sight, sound, and motion in a way that makes television advertisements particularly memorable and impactful. For all of these reasons, advertisers likely would not respond to a small but significant non-transitory increase in the price of broadcast television spot advertising by switching to other forms of advertising—such as cable, digital, print, radio, or billboard advertising—in sufficiently large numbers to make the price increase unprofitable.

While cable spot or digital advertising may constrain broadcast television spot advertising prices in the future, it does not do so today. On a cost-per-point basis (cost to reach one percent of a relevant target population), over the last few years broadcast television spot advertising prices have generally remained steady or increased. If cable spot or digital advertising was a close and robust competitor to broadcast television spot advertising, then, all else being equal, this competition from cable spot or digital advertising would place downward pressure on broadcast television spot advertising pricing. But they have not had this effect.

The differentiation between broadcast television spot advertising and cable spot and digital advertising bears out in negotiations between broadcasters and advertisers. Advertisers usually will put an advertising buy out to bid to many or all broadcast stations in a DMA, and will not include MVPDs or digital advertisers in that same bid. In negotiations with broadcast stations, advertisers regularly discuss offered prices and opportunities from other broadcast stations in the same DMA to try to bargain down price, but they rarely discuss price offers or opportunities from MVPDs or digital advertisers in those negotiations. When a broadcaster salesperson internally analyzes the station's performance on any particular buy, the salesperson typically looks at the percentage of the buy that was allocated to each broadcast station, adding up to 100% of the buy. The salesperson typically does not consider any allocation of an advertiser's spending on cable or digital advertising. Likewise, if an advertiser reports to a broadcaster salesperson the percentage of a buy that the broadcaster received, the advertiser typically reports the broadcaster's percentage of the amount awarded to all broadcast stations in the DMA, but does not include any amount spent on cable or digital advertising.

Internally, broadcasters make most of their competitor comparisons against other broadcasters in the same DMA, not against MVPDs in that DMA or digital advertisers. When reporting to their station managers and corporate headquarters, broadcast station sales executives regularly report on their performance vis-à-vis other broadcast stations in the DMA; they rarely report on their performance against cable or digital platforms. When looking for new business, broadcast stations use third-party services to identify advertisers advertising on those other broadcast stations, but do not subscribe to similar services for cable or digital advertising. Similarly, the national sales representation firms regularly report to broadcast stations about

competition from representatives for other broadcasters in the same DMA, but rarely report on competition from representatives for cable or digital platforms. Many broadcasters use a third-party data analysis service to help set their spot advertising rate cards; that service uses market share estimates from other broadcasters as input data to generate the rate cards, but does not use market share estimates from cable or digital advertising platforms.

The relevant geographic markets for the sale of broadcast television spot advertising are the individual DMAs in which such advertising is viewed. The Complaint alleges a substantial reduction of competition in the market for sale of broadcast television spot advertising in the following thirteen DMAs: (i) Davenport, Iowa-Rock Island-Moline, Illinois; (ii) Des Moines-Ames, Iowa; (iii) Ft. Smith-Fayetteville-Springdale-Rogers, Arkansas; (iv) Grand Rapids-Kalamazoo-Battle Creek, Michigan; (v) Harrisburg-Lancaster-Lebanon-York, Pennsylvania; (vi) Hartford-New Haven, Connecticut; (vii) Huntsville-Decatur-Florence, Alabama; (viii) Indianapolis, Indiana; (ix) Memphis, Tennessee; (x) Norfolk-Portsmouth-Newport News, Virginia; (xi) Richmond-Petersburg, Virginia; (xii) Salt Lake City, Utah; and (xiii) Wilkes-Barre-Scranton, Pennsylvania (collectively, "the Overlap DMAs"). For an advertiser seeking to reach potential customers in a given DMA, broadcast television stations located outside of the DMA do not provide effective access to the advertiser's target audience. The signals of broadcast television stations located outside of the DMA generally do not reach any significant portion of the target DMA through either over-the-air signal or MVPD distribution. Accordingly, a small but significant increase in the spot advertising prices of stations broadcasting into the DMA would not cause a sufficient number of advertisers to switch to stations outside the DMA to make such an increase unprofitable for the stations.

3. Anticompetitive Effects

The chart below summarizes Defendants' approximate market shares and the result of the transaction on the HHIs in the sale of broadcast television spot advertising in each of the Overlap DMAs.

Overlap DMA	Nexstar Share	Tribune Share	Merged Share	Pre-Merger HHI	Post-Merger HHI	HHI Increase
Wilkes Barre, PA	35.8%	47.6%	83.4%	3749	7161	3412
Norfolk, VA	44.0%	31.4%	75.4%	3277	6038	2761
Ft. Smith, AR	29.1%	41.3%	70.3%	3361	5761	2400
Davenport, IA	27.0%	27.1%	54.2%	3568	5035	1467
Grand Rapids, MI	36.0%	19.0%	55.0%	2700	4065	1365
Des Moines, IA	11.2%	34.6%	45.8%	3235	4009	774
Richmond, VA	20.9%	29.9%	50.8%	2733	3981	1248
Huntsville, AL	13.9%	33.0%	46.9%	2786	3704	918
Memphis, TN	14.5%	33.3%	47.9%	2558	3527	969
Harrisburg, PA	21.8%	20.8%	42.5%	2524	3427	903
Indianapolis, IN	13.1%	31.0%	44.2%	2577	3393	815
Hartford, CT	22.7%	20.6%	43.3%	2306	3240	934
Salt Lake City, UT	16.0%	24.1%	40.0%	2329	3098	769

Defendants' large market shares reflect the fact that, in each Overlap DMA, Nexstar and Tribune each own one or more significant broadcast stations

As indicated by the preceding chart, the post-merger HHI in each Overlap DMA is well above 2,500, and the HHI increase in each Overlap DMA far exceeds the 200-point threshold above which a transaction is presumed to enhance market power and harm competition. Defendants' proposed transaction is thus presumptively unlawful in each Overlap DMA. In addition to substantially increasing the concentration levels in each Overlap DMA, the proposed merger would combine Nexstar's and Tribune's broadcast television stations, which

are close substitutes and generally vigorous competitors in the sale of broadcast television spot advertising.

In each Overlap DMA, Defendants' broadcast stations compete head-to-head in the sale of broadcast television spot advertising. Advertisers obtain lower prices as a result of this competition. In particular, advertisers in the Overlap DMAs can respond to an increase in one station's spot advertising prices by purchasing, or threatening to purchase, advertising spots on one or more stations owned by different broadcast station groups—"buying around" the station that raises its prices. This practice allows the advertisers either to avoid the first station's price increase, or to pressure the first station to lower its prices.

If Nexstar acquires Tribune's stations, advertisers seeking to reach audiences in the Overlap DMAs would have fewer competing broadcast television alternatives available to meet their advertising needs, and would find it more difficult and costly to buy around higher prices imposed by the combined stations. This would likely result in increased advertising prices, lower quality local programming to which the spot advertising is attached (for example, less investment in local news), and less innovation in providing advertising solutions to advertisers.

D. Entry

Entry of a new broadcast station into an Overlap DMA would not be timely, likely, or sufficient to prevent or remedy the proposed merger's likely anticompetitive effects in the relevant markets. The FCC regulates entry through the issuance of broadcast television licenses, which are difficult to obtain because the availability of spectrum is limited and the regulatory process associated with obtaining a license is lengthy. Even if a new signal were to become available, commercial success would come over a period of many years, if at all.

III. EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The divestitures required by the proposed Final Judgment will remedy the loss of competition alleged in the Complaint by maintaining the Divestiture Stations as independent and economically viable competitors. The proposed Final Judgment requires Nexstar, within thirty days after the entry of the Hold Separate by the Court, to divest the station or stations owned by either Nexstar or Tribune in each of the Overlap DMAs, as shown in the following chart:

Overlap DMA	Divestiture Stations	Primary Affiliations of Divestiture Stations	Current Owner of Divestiture Stations
Wilkes Barre, PA	WNEP-TV	ABC	Tribune[4]
Norfolk, VA	WTKR and WGNT	CBS/CW	Tribune[5]
Ft. Smith, AR	KFSM-TV	CBS	Tribune
Davenport, IA	WQAD-TV	ABC	Tribune
Grand Rapids, MI	WXMI	FOX	Tribune
Des Moines, IA	WOI-DT and KCWI-TV	ABC/CW	Nexstar
Richmond, VA	WTVR-TV	CBS	Tribune
Huntsville, AL	WZDX	FOX	Nexstar
Memphis, TN	WATN-TV and WLMT	ABC/CW	Nexstar
Harrisburg, PA	WPMT	FOX	Tribune
Indianapolis, IN	WNDY-TV and WISH-TV	MyNetworkTV/CW	Nexstar
Hartford, CT	WTIC-TV and WCCT-TV	FOX/CW	Tribune
Salt Lake City, UT	KSTU	FOX	Tribune

[4] WNEP-TV is currently owned by Dreamcatcher Broadcasting LLC; however, Tribune will exercise its option to acquire the station prior to the divestiture.

[5] WTKR and WGNT are currently owned by Dreamcatcher Broadcasting LLC; however, Tribune will exercise its option to acquire the stations prior to the divestiture.

The Divestiture Stations must be divested in such a way as to satisfy the United States in its sole discretion that the Divestiture Stations can and will be operated by each purchaser as part of a viable, ongoing commercial television broadcasting business with the intent and capability to compete effectively in the applicable DMA in (1) the licensing of Big 4 network content to MVPDs for distribution to their subscribers (except as to the Indianapolis DMA), and (2) the sale of broadcast television spot advertising to advertisers interested in reaching viewers in the DMA. The United States has determined that the following companies are acceptable purchasers of Divestiture Stations: Circle City Broadcasting I, Inc.; The E.W. Scripps Company; and TEGNA Inc. (respectively, together with their subsidiaries and affiliated entities and individuals, "Circle City," "Scripps," and "TEGNA"). The following table sets out the proposed purchaser for each Divestiture Station.

Overlap DMA	Divestiture Stations	Proposed Purchaser
Wilkes Barre, PA	WNEP-TV	TEGNA
Norfolk, VA	WTKR and WGNT	Scripps
Ft. Smith, AR	KFSM-TV	TEGNA
Davenport, IA	WQAD-TV	TEGNA
Grand Rapids, MI	WXMI	Scripps
Des Moines, IA	WOI-DT and KCWI-TV	TEGNA
Richmond, VA	WTVR-TV	Scripps
Huntsville, AL	WZDX	TEGNA
Memphis, TN	WATN-TV and WLMT	TEGNA
Harrisburg, PA	WPMT	TEGNA
Indianapolis, IN	WNDY-TV and WISH-TV	Circle City
Hartford, CT	WTIC-TV and WCCT-TV	TEGNA
Salt Lake City, UT	KSTU	Scripps

Defendants must take all reasonable steps necessary to accomplish the divestiture quickly and must cooperate with the purchasers.

To facilitate the immediate and continuous operations of the relevant Divestiture Stations until the acquirer can provide such capabilities independently, Paragraph IV(H) of the proposed Final Judgment requires Defendants, at each acquirer's option, to enter into a transition services agreement. After an initial period of six months, a transition services agreement may be extended by an additional six months, subject to the United States' sole discretion, with exceptions regarding Tribune proprietary software and master control and hubbing services and distribution services, which can be extended for up to an additional eighteen months, subject to the United States' sole discretion.

If Defendants do not accomplish the divestiture within the period prescribed in the proposed Final Judgment, the proposed Final Judgment provides that the Court will appoint a divestiture trustee selected by the United States to effect the divestiture. If a divestiture trustee is appointed, the proposed Final Judgment provides that Defendants will pay all costs and expenses of the trustee. The divestiture trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which the divestiture is accomplished. After the divestiture trustee's appointment becomes effective, the trustee will provide monthly reports to the United States and the Plaintiff States setting forth his or her efforts to accomplish the divestiture. At the end of six months, if the divestiture has not been accomplished, the divestiture trustee and the United States will make recommendations to the Court, which will enter such orders as appropriate, in order to carry out the purpose of the trust, including by extending the trust or the term of the divestiture trustee's appointment.

The proposed Final Judgment also contains provisions designed to promote compliance and make the enforcement of the Final Judgment as effective as possible. Paragraph XIII(A) provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. Under the terms of this paragraph, Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that Defendants have waived any argument that a different standard of proof should apply. This provision aligns the

standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.

Paragraph XIII(B) provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The proposed Final Judgment was drafted to restore all competition that the Complaint alleges would otherwise be harmed by the transaction. Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, as interpreted in light of this procompetitive purpose.

Paragraph XIII(C) of the proposed Final Judgment provides that if the Court finds in an enforcement proceeding that Defendants have violated the Final Judgment, the United States may apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, to compensate American taxpayers for any costs associated with investigating and enforcing violations of the proposed Final Judgment, Paragraph XIII(C) provides that in any successful effort by the United States to enforce the Final Judgment against a Defendant, whether litigated or resolved before litigation, that Defendants will reimburse the United States for attorneys' fees, experts' fees, and other costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

Paragraph XIII(D) states that the United States may file an action against a Defendant for violating the Final Judgment for up to four years after the Final Judgment has expired or been terminated. This provision is meant to address circumstances such as when evidence that a violation of the Final Judgment occurred during the term of the Final Judgment is not discovered

until after the Final Judgment has expired or been terminated or when there is not sufficient time for the United States to complete an investigation of an alleged violation until after the Final Judgment has expired or been terminated. This provision, therefore, makes clear that, for four years after the Final Judgment has expired or been terminated, the United States may still challenge a violation that occurred during the term of the Final Judgment.

Finally, Section XIV of the proposed Final Judgment provides that the Final Judgment will expire ten years from the date of its entry, except that after five years from the date of its entry, the Final Judgment may be terminated upon notice by the United States, after consultation with the Plaintiff States, to the Court and Defendants that the divestiture has been completed and that the continuation of the Final Judgment is no longer necessary or in the public interest.

IV. REMEDIES AVAILABLE TO POTENTIAL PRIVATE LITIGANTS

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment neither impairs nor assists the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. § 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against Defendants.

V. PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

The United States and Defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the

United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the Federal Register, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the U.S. Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time before the Court's entry of the Final Judgment. The comments and the response of the United States will be filed with the Court. In addition, comments will be posted on the U.S. Department of Justice, Antitrust Division's internet website and, under certain circumstances, published in the Federal Register.

Written comments should be submitted to:

Owen M. Kendler
Chief, Media, Entertainment, & Professional Services Section
Antitrust Division
United States Department of Justice
450 Fifth Street, NW, Suite 4000
Washington, DC 20530

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the Parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

As an alternative to the proposed Final Judgment, the United States considered a full trial on the merits against Defendants. The United States could have continued the litigation and sought preliminary and permanent injunctions against Nexstar's acquisition of Tribune. The United States is satisfied, however, that the divestiture of assets described in the proposed Final Judgment will preserve competition for (1) the provision of the licensing of Big 4 network content to MVPDs for distribution to their subscribers in each of the Big 4 Overlap DMAs, and (2) the sale of broadcast television spot advertising to advertisers interested in reaching viewers in each of the Overlap DMAs. Thus, the proposed Final Judgment achieves all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VII. STANDARD OF REVIEW UNDER THE APPA FOR THE PROPOSED FINAL JUDGMENT

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific

> injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to "broad discretion to settle with the defendant within the reaches of the public interest." *United States v. Microsoft Corp.*, 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States v. U.S. Airways Grp., Inc.*, 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the "court's inquiry is limited" in Tunney Act settlements); *United States v. InBev N.V./S.A.*, No. 08-1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft*, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States v. BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988) (quoting *United States v. Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62; *United States v. Alcoa, Inc.*, 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *3. Instead:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "*within the reaches of the public interest*." More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[6]

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g.*, *Microsoft*, 56 F.3d at 1461 (recognizing courts should give "due respect to the Justice Department's . . . view of the nature of its case"); *United States v. Iron Mountain, Inc.*, 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) ("In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.") (internal citations omitted); *United States v. Republic Servs., Inc.*, 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting "the deferential review to which the government's proposed remedy is accorded"); *United States v. Archer-Daniels-Midland Co.*, 272 F. Supp. 2d 1, 6 (D.D.C. 2003) ("A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case"). The ultimate question is whether "the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the

[6] *See also BNS*, 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States v. Gillette Co.*, 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to "look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass").

public interest.'" *Microsoft*, 56 F.3d at 1461 (*quoting United States v. Western Elec. Co*., 900 F.2d 283, 309 (D.C. Cir. 1990)).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459; *see also U.S. Airways*, 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev*, 2009 U.S. Dist. LEXIS 84787, at *20 ("the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged"). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft*, 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Pub. L. 108-237 § 221, and added the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2); *see also U.S. Airways*, 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the

statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). "A court can make its public interest determination based on the competitive impact statement and response to public comments alone." *U.S. Airways*, 38 F. Supp. 3d at 76 (citing *United States v. Enova Corp.*, 107 F. Supp. 2d 10, 17 (D.D.C. 2000).

VIII. DETERMINATIVE DOCUMENTS

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: August 1, 2019

Respectfully submitted,

/s/ Lee F. Berger
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CERTIFICATE OF SERVICE

I, Lee F. Berger, hereby certify that on August 1, 2019, I caused true and correct copies of the Competitive Impact Statement to be served via the Court's CM/ECF system and electronic mail on:

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