IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice, Antitrust Division
450 5th Street, N.W., Suite 7000
Washington, D.C. 20530

Plaintiff,

v.

NEXSTAR BROADCASTING GROUP, INC.,
545 E. John Carpenter Freeway, Suite 700
Irving, Texas 75062

MISSION BROADCASTING, INC.,
30400 Detroit Road
Westlake, Ohio 44145

COMMUNICATIONS CORPORATION
OF AMERICA,
700 Saint John Street, Suite 300
Lafayette, Louisiana 70501

and

SILVER POINT CAPITAL FUND, L.P.,
2 Greenwich Plaza, 1st Floor
Greenwich, Connecticut 06830

Defendants.

Case:

COMPLAINT

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil action to enjoin the proposed acquisition of Communications Corporation of America (CCA), a wholly-owned subsidiary of Silver Point Capital Fund, L.P., by Nexstar Broadcasting, Inc. (Nexstar) and Mission Broadcasting, Inc. (Mission) (Nexstar and

Mission are referred to collectively as the Buyers), and to obtain other equitable relief. The transaction would likely lessen competition substantially in the sale of broadcast television spot advertising in the Evansville, Indiana Designated Marketing Area (DMA) of the United States in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. The United States alleges as follows:

I. NATURE OF THE ACTION

1. Pursuant to a Stock Purchase Agreement dated April 24, 2013, Nexstar and Mission will acquire all of the issued and outstanding voting securities of CCA for $270 million. Both Nexstar and CCA own or operate many broadcast television stations in multiple television DMAs across the United States. Through various local services agreements, Nexstar sells the advertising for all of the television stations owned by Mission, which Nexstar effectively controls.

2. In Evansville, Indiana, Nexstar owns and operates WEHT, an ABC broadcast network affiliate. As the owner-operator of that station, Nexstar sells WEHT's advertising. Pursuant to a local services agreement, Nexstar also sells the advertising of WTVW, a CW broadcast network affiliate in Evansville that is owned by Mission. Accordingly, WEHT and WTVW do not meaningfully compete with one another for advertisers.

3. In Evansville, CCA owns and operates WEVV, a CBS broadcast network affiliate. WEVV also operates a digital subchannel on which it runs television programming affiliated with the FOX broadcast network. Although Nexstar and Mission intend to transfer CCA's WEVV license to a related third party, the third party is expected to have Nexstar sell its advertising pursuant to a local services or similar agreement. Nexstar would likely have effective control of this third party as it does of Mission.

4. Currently, Nexstar (on behalf of WEHT and WTVW) and CCA (on behalf of WEVV) compete for the business of local and national advertisers that seek spot advertising on broadcast television stations in the Evansville, Indiana DMA. Advertisers benefit from this competition.

5. If consummated, Nexstar's acquisition of control of CCA's advertising would result in Nexstar controlling the sale of advertising for three out of four major broadcast network affiliates (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's already high market share of spot advertising in the DMA would increase from approximately 42 to 60 percent.

6. The transaction would eliminate head-to-head competition between Nexstar and CCA and all the benefits from this competition. Unless the transaction is blocked, it will lead to higher prices for broadcast television spot advertising in the Evansville, Indiana DMA in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18.

II. JURISDICTION AND VENUE

7. The United States brings this action pursuant to Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain Defendants from violating Section 7 of the Clayton Act, 15 U.S.C. § 18.

8. Nexstar and CCA sell broadcast television spot advertising, a commercial activity that substantially affects, and is in the flow of, interstate commerce. The Court has subject-matter jurisdiction over this action pursuant to Section 15 of the Clayton Act, 15 U.S.C. § 25, and 28 U.S.C. §§ 1331, 1337(a), and 1345.

9. Nexstar transacts business and is found in the District of Columbia. Defendants have consented to venue and personal jurisdiction in this District. Therefore, venue is proper in

this District under Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. § 1391(c). Venue is also proper in the District of Columbia for defendant Nexstar under 28 U.S.C. § 1391(d).

III. THE DEFENDANTS

10. Nexstar, a Delaware corporation with headquarters in Irving, Texas, owns or operates 72 broadcast television stations located in 41 DMAs in 18 states. Nexstar reported revenues of $378 million for 2013.

11. Mission, a Delaware corporation with headquarters in Westlake, Ohio, owns 17 broadcast television stations. Nexstar receives substantially all of Mission’s available cash and is deemed to have a controlling interest in Mission under generally accepted accounting principles. Accordingly, Mission’s economic incentives are aligned with Nexstar’s.

12. CCA, a Delaware corporation with headquarters in Lafayette, Louisiana, owns or operates 25 broadcast television stations in 10 DMAs throughout Louisiana, Texas, and Indiana. CCA reported revenues of $98.3 million for 2012.

13. Silver Point Capital Fund, L.P., based in Greenwich, Connecticut, controls and is the ultimate parent entity of CCA.

IV. TRADE AND COMMERCE

A. Broadcast Television Spot Advertising Is a Relevant Product Market

14. Broadcast television stations attract viewers through their programming, which is delivered for free over the air or retransmitted to viewers, mainly through wired cable or other terrestrial television systems and through satellite television systems. Broadcast television stations then sell advertising time to businesses that want to advertise their products to television viewers. Broadcast television “spot” advertising is sold directly by the station itself or through its

national representative on a localized basis and is purchased by advertisers who want to target potential customers in specific geographic areas. Spot advertising differs from network and syndicated television advertising, which are sold by the major television networks and producers of syndicated programs on a nationwide basis and broadcast in every geographic area where the network or syndicated program is aired.

15. Broadcast television spot advertising possesses a unique combination of attributes that sets it apart from advertising using other types of media. Television combines sight, sound, and motion, thereby creating a more memorable advertisement. Moreover, of all media, broadcast television spot advertising reaches the largest percentage of all potential customers in a particular target geographic market and is therefore especially effective in introducing, establishing, and maintaining the image of a product or service. For a significant number of advertisers, broadcast television spot advertising, because of its unique attributes, is an advertising medium for which there is no close substitute. Advertisers generally do not consider other media, such as radio, newspapers, or outdoor billboards, to be desirable substitutes for broadcast television advertising. None of these media can provide the important combination of sight, sound, and motion that makes television unique and impactful as a medium for advertising.

16. Like broadcast television, subscription television channels, such as those carried over cable or satellite television, combine elements of sight, sound, and motion, but they are not generally considered within the advertising industry as a desirable substitute for broadcast television spot advertising for two important reasons. First, satellite, cable, and other subscription content delivery systems do not generally have the "reach" of broadcast television. Typically in the United States, broadcast television can reach well over 90% of homes in a DMA, while cable television often reaches fewer homes. Second, because subscription services may offer more than

100 channels, they fragment the audience into small demographic segments. Because broadcast television programming typically has higher rating points than subscription television programming, broadcast television is generally viewed as providing a much easier and more efficient means for an advertiser to reach a high proportion of its target demographic. Generally in the industry, media buyers purchase time on subscription television channels not so much as a substitute for broadcast television, but rather to supplement a broadcast television message, to reach a narrow demographic (*e.g.*, 18–24 year olds) with greater frequency, or to target narrow geographic areas within a DMA.

17. Typically, advertisers do not consider internet-based media to be a substitute for broadcast television spot advertising. Although online video distributors (OVDs) such as Netflix and Hulu are important sources of video programming, as with cable television advertising, the local video advertising of OVDs lacks the reach of broadcast television spot advertising. And non-video internet advertising (*e.g.*, website banner advertising) lacks the important combination of sight, sound, and motion that gives television its impact. Consequently, the typical local media advertiser purchases internet-based advertising primarily as a supplement to broadcast television spot advertising.

18. Consequently, a small but significant increase in the price of broadcast television spot advertising is unlikely to cause a sufficient number of broadcast television spot advertising customers to switch enough of their advertising purchases to other media such that the price increase would be unprofitable.

19. The sale of broadcast television spot advertising is a line of commerce under Section 7 of the Clayton Act and a relevant product market for purposes of analyzing the proposed transaction under Section 7 of the Clayton Act.

B. The Evansville, Indiana DMA Is the Relevant Geographic Market

20. A Designated Marketing Area or DMA is a geographic unit defined by A.C. Nielsen Company, a firm that surveys television viewers and furnishes broadcast television stations, advertisers, and advertising agencies in a particular area with data to aid in evaluating audience size and composition. The Evansville, Indiana DMA encompasses 21 counties in Indiana, Kentucky, and Illinois. Signals from broadcast television stations located in the Evansville, Indiana DMA reach viewers located throughout the DMA, but signals from broadcast television stations located outside the DMA reach few viewers within the DMA. DMAs are used to analyze revenues and shares of broadcast television stations in the *Investing in Television BIA Market Report 2014* (1st ed.), a standard industry reference.

21. Advertisers use broadcast television stations within the Evansville, Indiana DMA to reach the largest possible number of viewers within the entire DMA. Some of these advertisers are located in the Evansville, Indiana DMA and need to reach customers there; others are regional or national businesses that want to target consumers in the Evansville, Indiana DMA. Advertising on television stations outside the Evansville, Indiana DMA is not an alternative for these advertisers because such stations cannot be viewed by the vast majority of potential customers within the DMA. Thus, if there were a small but significant increase in broadcast television spot advertising prices within the Evansville, Indiana DMA, advertisers would not switch enough advertising purchases to television stations outside the Evansville, Indiana DMA to render the price increase unprofitable.

22. The Evansville, Indiana DMA is a section of the country under Section 7 of the Clayton Act and a relevant geographic market for the sale of broadcast television spot

advertising for the purposes of analyzing the proposed transaction under Section 7 of the Clayton Act.

C. The Transaction Will Lead to Harm to Competition in the Evansville, Indiana DMA

23. Broadcast television stations compete for advertisers by offering programs that attract viewers to their stations. Broadcast television stations select programs that appeal to the greatest number of viewers and that differentiate their stations from other stations by appealing to specific demographic groups. Advertisers, in turn, are interested in using broadcast television spot advertising to reach a large audience, as well as to reach a high proportion of the type of viewers that are most likely to buy their products.

24. By virtue of its ownership and operation of WEHT and the existing local services agreement with Mission to sell the advertising of WTVW, Nexstar currently controls the advertising of two broadcast television stations in the Evansville, Indiana DMA. Post-transaction, the market would effectively become a duopoly, with Nexstar controlling the advertising of three of the four major network affiliates (WEHT (ABC) and WEVV (CBS & FOX)) and a fourth network affiliation (WTVW (CW)) in the Evansville, Indiana DMA. Nexstar's market share of broadcast television spot advertising revenue in the Evansville, Indiana DMA would increase from 42 to 60 percent. A single television station would control the vast majority of the remaining 40 percent.

25. Using the Herfindahl-Hirschman Index (HHI), a standard measure of market concentration (defined and explained in Appendix A), the proposed transaction would increase substantially the already high concentration in the Evansville, Indiana DMA broadcast television spot advertising market. The post-transaction HHI would be approximately 5100, representing an

increase of about 1500 points. Under the *Horizontal Merger Guidelines* issued by the Department of Justice and Federal Trade Commission, mergers resulting in highly concentrated markets (with an HHI in excess of 2500) with an increase in the HHI of more than 200 points are presumed to be likely to enhance market power.

26. In the Evansville, Indiana DMA, Nexstar and CCA compete head-to-head against each other in the sale of broadcast television spot advertising and are close substitutes for a significant number of advertisers. Advertisers benefit from this competition. The proposed transaction would end this competition and thereby adversely affect a substantial volume of interstate commerce.

27. After the transaction, a significant number of Evansville, Indiana DMA advertisers would not be able to reach their desired audiences with equivalent efficacy unless they advertised on the television stations controlled by Nexstar. Advertisers would have available only one alternative broadcast channel. The transaction, therefore, will enable Nexstar unilaterally to raise prices. Given the structure of the Evansville, Indiana DMA, the economics of this industry suggest that the remaining major competitor will have substantial incentives to follow suit.

D. Entry

28. De novo entry into the Evansville, Indiana DMA is unlikely as the Federal Communications Commission (FCC) regulates entry through the issuance of broadcast television spectrum licenses, which are difficult to obtain. Even if a new license became available, commercial success would come, at best, over a period of many years. Thus, entry into the Evansville, Indiana DMA broadcast television spot advertising market would not be timely, likely, or sufficient to deter post-merger anticompetitive effects.

E. Absence of Efficiencies

29. Defendants cannot demonstrate cognizable, merger-specific efficiencies that are sufficient to reverse the anticompetitive effects of the proposed transaction.

V. VIOLATION ALLEGED

30. The United States hereby repeats and realleges the allegations of paragraphs 1 through 29 as if fully set forth herein.

31. The Buyers' proposed acquisition of CCA would likely lessen competition substantially in interstate trade and commerce in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18, and would likely have the following effects, among others:

(a) Competition in the sale of broadcast television spot advertising in the Evansville, Indiana DMA would be lessened substantially;

(b) Competition in the Evansville, Indiana DMA between Nexstar and CCA in the sale of broadcast television spot advertising would be eliminated; and

(c) The prices for broadcast television spot advertising in the Evansville, Indiana DMA would likely increase.

VI. REQUEST FOR RELIEF

32. The United States requests:

(a) That the Court adjudge the proposed transaction to violate Section 7 of the Clayton Act, 15 U.S.C. § 18;

(b) That the Court permanently enjoin and restrain the Defendants from carrying out the proposed transaction or from entering into or carrying out any other agreement, understanding, or plan by which CCA would be acquired by, acquire, or merge with the Buyers;

(c) That the Court award the United States the costs of this action; and

(d) That the Court award such other relief to the United States as the Court may deem just and proper.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES OF AMERICA:

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APPENDIX A

Herfindahl-Hirschman Index

The tern "HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. 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. Markets in which the HHI is between 1,500 and 2,500 points are considered to be moderately concentrated, and markets in which the HHI is in excess of 2,500 points are considered to be highly concentrated. *See* U.S. Department of Justice & Federal Trade Commission, *Horizontal Merger Guidelines* § 5.3 (2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets presumptively raise antitrust concerns under the *Guidelines*. *See id.*