

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)
Applications of TEGNA Inc., for Transfer) MB Docket 22-162
of Control to Standard General, L.P.)

**SUPPLEMENT TO PETITION TO DISMISS
OR DENY OF**

THE NEWSGUILD-CWA

and

**NATIONAL ASSOCIATION OF BROADCAST
EMPLOYEES AND TECHNICIANS-CWA**

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TABLE OF CONTENTS

Summary ii

I. MULTIPLE DOCUMENTS INVOLVING STANDARD GENERAL'S LENDERS, INCLUDING FINANCIAL PROJECTIONS AND PRESENTATIONS OVER A NINE MONTH PERIOD, SEEM TO CONTRADICT STANDARD GENERAL'S REPEATED CLAIMS THAT IT DOES NOT INTEND TO CUT STATION-LEVEL JOBS POST-CLOSING 1

II. THE APPLICANTS' OCTOBER 13, 2022 JOINT RESPONSE IMPUDENTLY DISPARAGES THE LEGITIMACY OF THE PETITION TO DENY PROCESS AND THE STAFF'S ADMINISTRATION OF IT IN THIS CASE. 10

A. Petitioners to deny have the right to full participation in the Commission's proceedings 11

B. The Commission Did Not Violate "Well-established Precedent" That Would Have Precluded the Commission from Developing a Full Record and Would Have Denied Petitioners' Right to Review the Record. 12

C. The Commission's Aspirational 180 Day "Shot Clock" Does Not Dictate That, Where There Is Insufficient Information to Reach a Decision, the Commission Must Nonetheless Act on Applications Within That Time Frame Or, Indeed, Act at All 13

D. Comparisons to the Handling of Other Applications in Other Proceedings That Were Resolved More Quickly than the Instant Proceeding Are Irrelevant 14

E. It Is Not "Unprecedented" to Afford Qualified Petitioners Access to Highly Confidential Record Documents; in Fact, it Is Routine Practice to Do So 15

F. The Commission's Review in this Case Is Not in Contradiction of Section 310(d). . 16

G. The Commission Can and Must Examine an Applicant's Programming Plans 17

III. STANDARD GENERAL'S PERSONAL ATTACKS SHOW IT HAS RUN OUT OF JUSTIFICATIONS FOR THE TRANSACTION AND A DISREGARD FOR AMERICA'S MEDIA WORKERS. 20

CONCLUSION 24

SUMMARY

Additional confidential documents that the FCC compelled the applicants to submit confirm substantial doubts as to Standard General’s repeated claim to the FCC, the public and its employees that it does not “intend” to cut jobs at TEGNA’s local stations.

Twelve sophisticated banks funding the transaction appear to have relied on Standard General presentations that showed it would realize prospective cost savings from station-level job cuts. Significantly, Standard General repeated these assertions as late as May, 2022. This time line contradicts Standard General’s subsequent effort to say that the intended job cutting had already been implemented by TEGNA.

The Applicants’ October 13 Joint Response and some recent ex parte submissions make new, sometimes inflammatory, often irrelevant, but always unavailing, arguments attempting to salvage their increasingly uphill battle to obtain Commission approval. They express extraordinary disdain for the Commission and its processes, and for the legitimacy, and even the right, of interested members of the public, to participate in FCC broadcast license proceedings.

The Applicants fail to acknowledge that permission to obtain a broadcast license is an extraordinary privilege which must be earned by establishing that such a transaction is in the public interest and that the parties can be trusted. They incorrectly argue that delays in processing the applications are because the Commission has deviated from ordinary procedures, when in fact their problems have arisen because they have not met the threshold requirement of making a prima facie case that grant of their applications is in the public interest.

The Applicants’ complaints that other cases have been handled differently ignores the fact that this transaction has been structured in a unique - and troublesome - way in which one

hedge fund that owns or operates some 14 stations would receive an ownership interest in a company being purchased by another hedge fund that operates some 64 stations (three of which are in overlapping major markets). This structure still allows myriad ways for the two entities to collaborate on retransmission fees, program contracts, and other areas of joint interest. The deal includes the sale of Apollo's Boston TV station to Standard General in a way that would permit it to exploit a contractual loophole. This would jack up revenues from retransmission consent fees for every TEGNA station across the country, the costs of which would be passed on to hardworking consumers. This financial manipulation is nothing more than sophisticated and collusive price-fixing, and absolutely should not be permitted.

The Applicants other rebuttal attempts are equally unavailing. Asking for internal documents about the options considered in structuring the deal does not violate 47 U.S.C. §310(d)'s prohibition on assessing whether a different purchaser would be superior. Having put the Applicants' past programming practices and future plans at issue, it is especially odd for them also to object that the Commission is somehow mandating "government-approved programming." In fact, the FCC's application form quite properly requires a certification that applicants certify that their program service will respond to issues of public concern. Moreover, the Communications Act directs the Commission to make a number of content-neutral determinations such as whether broadcasters are carrying certain amounts of educational and informational programming for children and to afford reasonable access to federal candidates.

Regrettably, TNG-CWA/NABET-CWA must address Standard General's inflammatory and personal attacks against the largest unions of media workers in North America. These attacks further prove its disinterest in supporting local journalism and plan to dismantle it.

The petitions to deny in this case do not mention race or gender. Their discussion of

diversity of ownership is framed entirely in terms of the policy goal of having many smaller owners rather than a few large, consolidated owners who can exercise excessive control over national and local media outlets. Indeed, as the applicants themselves concede, "Petitioners fail to make a single mention in their Petitions to Deny" of race and gender issues with respect to the applicants."

Each of the petitioners in this case have spent decades strongly supporting efforts to promote increased media ownership by women and people of color. But this advocacy should not be read as supporting Standard General's effort to purchase 64 TV stations, especially where there is doubt as to the degree of control Standard General would actually exercise. As they explained in their August 1 Joint Reply,

“[T]he Commission's public interest goals are not focused on promoting one kind of owner over another. Rather, it is promoting antagonistic and competing viewpoints in a vibrant marketplace of ideas. One reason the civil rights community and Petitioners oppose media concentration is that it results in fewer owners, fewer points of view and fewer opportunities for smaller entrepreneurs, including historically excluded entrepreneurs, to enter into the marketplace and compete against large companies.***Under the Applicants' theory of diversity, the U.S. could achieve ownership diversity through a single owner of all television and radio stations in the country as long as that owner is a person of color or a woman.***[T]his transaction does nothing to increase ownership opportunities for women and people of color to enter the marketplace. To the contrary, the applicants' business model of laying off reporters and reducing local news coverage creates a race to the bottom approach that would pose significant challenges for any new entrants to meaningfully compete with TEGNA post-transaction and provide robust local programming.

The Joint Reply also says that

“[A] single large LLP or corporation of the type proposed here is not going to ameliorate or address long-standing inequities produced by structural racism, xenophobia or misogyny - and is not likely to provide additional members of historically excluded groups the opportunity to gain wealth and influence in society....The Commission should not conflate the identity of one or two business leaders regarding a transaction that would further consolidate the marketplace with advancing its goals to promote ownership diversity.

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Ultimately, the record as recently supplemented by the Applicants provides even more reasons why the pending applications cannot be approved, and that the matter must be designated for hearing before an Administrative Law Judge.

The NewsGuild-CWA and National Association of Broadcast Engineers and Technicians (collectively, TNG-CWA/NABET-CWA) respectfully file this supplement to their June 22, 2022 Petition to Dismiss or Deny for the purpose of addressing additional documents and arguments that the applicant parties (collectively, Applicants) have submitted to the Commission in response to the Media Bureau’s June 3, 2022 Information Request and its September 29, 2022 Second Information Request.¹

I. MULTIPLE DOCUMENTS INVOLVING STANDARD GENERAL’S LENDERS, INCLUDING FINANCIAL PROJECTIONS AND PRESENTATIONS OVER A NINE MONTH PERIOD, SEEM TO CONTRADICT STANDARD GENERAL’S REPEATED CLAIMS THAT IT DOES NOT INTEND TO CUT STATION-LEVEL JOBS POST-CLOSING.

At the heart of TNG-CWA/NABET-CWA’s concerns about this transaction is their well-founded fear that approval would become a template for Standard General, AGM and other private equity and hedge funds to replicate what such funds have done to the newspaper industry: cutting jobs, selling off real estate and other assets, and reducing service to the public along the way. Because broadcasting involves use of publicly-owned spectrum, and over-the-air broadcasting is so essential to the electoral process, public safety and, indeed, democracy itself, they have called upon the Commission to scrutinize the proposed transaction with special care.

The most recent confidential document production came only after the FCC compelled the applicants to disclose financial and other planning documents. It only confirmed the unions’ worst fears and, perhaps more importantly, increased doubt about the accuracy of Standard

¹By Public Notice released on October 6, 2022, the Media Bureau directed that any supplemental pleadings be submitted by October 27, 2022. Public Notice (DA 2201068) (released October 6, 2022).

General’s representations to the Commission, the public, and TEGNA’s employees about job cuts at TEGNA’s local broadcast TV stations post-closing. Rather than alleviate concerns that TMG-CWA/NABET-CWA have about planned station-level job cuts, newly filed confidential documents reviewed by outside counsel show that the unions’ concerns are very well founded. These findings leave Standard General’s repeated assertion that it “does not intend to reduce station-level staffing”, and its subsequent explanations for those repeated assertions, sinking in quicksand. The more Standard General tries to explain away its statements to the Commission and the public about job cuts, the more its assertions collapse under the weight of the record.

Standard General repeatedly stated in filings in this docket that it has no plans to eliminate station-level jobs at TEGNA post-closing, and has tried to explain apparently contradictory documents by saying that any job cuts listed therein already have been made. Specifically, in carefully worded submissions dated June 13, July 7, September 22, October 13 and October 17, they have said:

- “Standard General does not intend to reduce station-level staffing following the Transaction.”²
- “Neither Standard General nor CMB has any intention of reducing local news or station level staffing....”³
- “Standard General does not intend to reduce station-level staffing following the Transaction.”⁴
- “Standard General does not intend to reduce station-level staffing following the Transaction.”⁵

² Applicants’ Response to Request for Documents and Information, June 13, 2022 (June 13 Response) at p. 10.

³ Applicants’ Consolidated Opposition and Response to Comments, MB Doc. No. 22-162 (July 7, 2022) (July 7 Opposition) at p. 10.

⁴ Id. at p. 35 n. 102. (quoting June 13 Response at 9-10).

⁵ Notice of Ex Parte Presentation, September 22, 2022 (quoting June 13 Response at 9-10)

- “Standard General does not intend to reduce station-level staffing following the Transaction”⁶
- “[Standard General has] repeatedly confirmed on the record that they do not intend to reduce station-level staffing following the TEGNA transaction,…”⁷

In response to doubts about job cuts raised by TMG-CWA/NABET-CWA, Standard General’s attempted rebuttal has been that its staffing plans as shown in its document disclosures are based on staff changes (presumably job cuts) that have already taken place under current ownership. They say:

Standard General's mid-2021 estimates of operating costs reflected personnel measures that TEGNA management was already planning to implement (and has since implemented).⁸

To get to the bottom of Standard General’s intent with respect to job cuts, the Commission must examine Standard General’s communications and binding agreements with the twelve banks that extended credit to finance this transaction. Starting in the fall of 2021 through the winter of 2022, when twelve lenders entered formal, binding agreements with Standard General, the record reveals acknowledgements that cost synergies, apparently including station-level job cuts, would be an integral feature of the proposed transaction.

Royal Bank of Canada (RBC) and the eleven other bank lenders appear to have relied on projected cost savings from station-level job cuts to support their extension of credit to Standard General. Significantly, Standard General repeated these assertions as late as May, 2022. This timeline contradicts Standard General’s subsequent effort to say that the intended job cutting had

⁶ Notice of Ex Parte Presentation, October 13, 2022 at pp. 1-2 (quoting June 13 Response at 9-10)

⁷ Notice of Ex Parte Presentation, October 22, 2022 at p. 1.

⁸ July 7 Opposition at p. 35 n. 102.

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already been implemented by TEGNA. Moreover, in response to questions raised by federal agencies reviewing this transaction, TEGNA confirmed that it had no plans of its own to cut any jobs as of April of this year.

Three points in time are especially relevant to this analysis.

First, in an email from RBC dated [BEGIN REDACTION]

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[END REDACTION]

Thus, based on the email from RBC to Apollo and Standard General, and corroborated by the contemporaneous financial projection document, it appears that as of September, 2021, RBC not only was aware of the planned station-level staffing cuts but wanted to promote those cost synergies as a feature of the proposed transaction and use those projected cuts to encourage other banks to extend credit to Standard General for the proposed transaction.

Second, on February 22, 2022, the bankers executed a binding, formal document that would allow the deal to go forward. That document, signed by all twelve bank lenders, coincided with financial projections made that same month by Standard General reflecting the same station-

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level staffing cuts described by Apollo and Standard General in the fall of 2021 and highlighted in the RBC email. **[BEGIN REDACTION]** ¹²¹³¹⁴

[END REDACTION]

A presentation by Standard General dated February, 2022 is critical here. Evidently just before the twelve banks signed the Commitment Letter, Standard General provided the lenders with a description of itemized station-staffing reductions identical to the Apollo/Standard General presentation from September, 2021. That presentation from February, 2022 says that Standard General: **[BEGIN REDACTION]**

[END REDACTION]

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The representations to the banks appear to be framed as contemplating *prospective* cost savings, not cuts that had previously been made by TEGNA. There is no indication in the documents that even suggest that TEGNA had already eliminated costs, including through job cuts, since September, 2021, or that any of the enumerated station level savings had already been implemented. The formal document signed by all twelve lenders in February, 2022 coincided with Standard General’s February, 2022 financial projections, which reiterated the same station-level staffing cuts previously described by Apollo and Standard General in the September, 2021 presentation and highlighted by the RBC email.

It is reasonable to assume that the bankers signing the Commitment Letter on February 22, 2022 were aware of, and relied upon in “good faith,” the financial projections and forecasts in Standard General’s February, 2022 presentation, including prospective job cuts included in the **[BEGIN REDACTION]**

[END REDACTION]

Thus, it is reasonable to conclude that, starting in September, 2021, when RBC sought to encourage other banks to join it in extending credit to finance this transaction, through February of 2022, when RBC and eleven other banks signed a Commitment Letter to Standard General extending such credit, the station-level staffing cuts remained a constant, premeditated, carefully calibrated feature driving the proposed transaction.

The lenders that signed the document are among the largest, most sophisticated financial institutions in the world:

1. Royal Bank of Canada, RBC Capital Markets, LLC
2. Bank of America, N.A. BOFA Securities, Inc.
3. Goldman Sachs Bank, USA
4. Truist Bank Securities, Inc.
5. BNP Paribas, BNP Paribas Securities Corp.
6. Credit Suisse AG, Credit Suisse Loan Funding LLC
7. Jeffries Finance LLC
8. Mizohu Bank, Ltd.
9. The Toronto-Dominion Bank, NY Branch TD Securities (USA) LLC
10. Barclays
11. Deutsche Bank AG New York Branch, Cayman Islands Branch, Deutsche Bank Securities Inc.
12. MUFG Bank Ltd.

Given the sums of money involved and the identity of the banks, it seems highly unlikely that the banks in their due diligence somehow overlooked that Standard General’s projected “synergies” were not in fact future cost cuts, but were incorporating savings that had already been realized.

Third, in May, 2022, one month before Standard General responded to the Staff’s First Information Request, Standard General yet again listed the very same station-level cuts from its February, 2022 and September, 2021 presentations. It even suggested that there could be more such cuts post-closing: **[BEGIN REDACTION]**¹⁵

[END REDACTION]

Thus, despite assertions to the contrary, as late as May, 2022, Standard General was touting what appear to be the same station-level job cuts that it listed in multiple documents and communications ever since September, 2021, and even manifested a desire for more cost cuts in the future.

Moreover, TEGNA’s own representations to the federal agencies reviewing this transaction seem to undermine the notion that it implemented the contemplated job cuts before Standard General proclaimed to the Commission a lack of intent to do so post-closing. In response to questions posed by the Committee for the Assessment of Foreign Participation in the U.S. Telecommunications Services Sector, TEGNA stated that **[BEGIN REDACTION]**¹⁶

[END

REDACTION] TEGNA’s statement to federal agencies therefore seems to indicate an intent *not* to eliminate jobs.

In an effort to substantiate the notion that any job cuts listed in documents from mid-2021 already have been implemented, Standard General provided a summary chart to the Commission showing total TEGNA jobs in December, 2020 and June, 2022. The actual employment census reports upon which that chart was based show that **[BEGIN REDACTION]**

16

¹⁷ [END REDACTION] Far from explaining away the discrepancy between what Standard General told the Commission and what it told its bankers, these figures only show that there was some organic headcount reduction at TEGNA between December, 2020 and June, 2022. This information does not address the multiple references on the confidential record to future job cuts.

Instead of putting to rest any notion that Standard General and the other Applicants may have made material misrepresentations to the Commission in this proceeding, the recently produced confidential documents cited above only seem to confirm TNG-CWA/NABET-CWA's suspicions that post-closing, station-level job cuts are an integral feature of the proposed transaction, and that the Applicants have not been forthcoming about their intentions. The Commission need not take TNG-CWA/NABET-CWA's word for it. Rather, the Commission should designate a hearing to determine whether and how the lenders relied upon Standard General's multiple projections and forecasts, and that they expect further reductions in TEGNA's operating costs by eliminating station-level jobs as described in the confidential documents cited herein. If the banks are counting on those station-level job cuts, those expectations cannot be reconciled with what Standard General has stated to the FCC.

17

II. THE APPLICANTS’ OCTOBER 13, 2022 JOINT RESPONSE IMPUDENTLY DISPARAGES THE LEGITIMACY OF THE PETITION TO DENY PROCESS AND THE STAFF’S ADMINISTRATION OF IT IN THIS CASE.

In their October 13, 2022 Joint Response to the Media Bureau’s Request for Information (“Joint Response”) and some recent notices of ex parte presentations, the Applicants have made a number of new, sometimes inflammatory, often irrelevant, but always unavailing arguments in attempting to salvage what they evidently believe is an increasingly uphill battle to obtain Commission approval.

In these submissions, the Applicants express extraordinary disdain for the Commission and its processes, and for the legitimacy, and even the right, of interested members of the public, to participate in FCC broadcast license proceedings. While purporting to have “deep respect for the regulatory process and [to] remain committed to cooperating with the Commission’s review...,” Joint Response at p. 5,¹⁸ the Applicants repeatedly denigrate the Commission staff for doing its job, arrogantly claiming that the questions it has asked unfairly treat them differently from other Applicants and, in some cases, are outside its statutory authority. These charges are utterly without foundation. The submissions vainly attempt to elide the applicants’ burden to demonstrate that grant of their applications is in the public interest by casting blame on the petitioners and the commission staff. It is to no avail.

¹⁸See also id. at 4. (“Applicants recognize and value the importance of the Commission’s public interest review of broadcast transactions and remain committed to working with the Commission to ensure that it has the information it needs to approve the Transactions.”)

A. Petitioners to deny have the right to full participation in the Commission’s proceedings.

The public’s right to standing to file petitions to deny was confirmed some 57 years ago in *Office of Communication of the United Church of Christ v. FCC*, 359 F.2d 994, 1003 (D.C. Cir. 1965),¹⁹ a case brought by the predecessor body of one of the petitioners in this proceeding.

Speaking in the context of renewal proceedings, then-Judge Burger declared that

A broadcaster seeks and is granted the free and exclusive use of a limited and valuable part of the public domain; when he accepts that franchise it is burdened by enforceable public obligations. A newspaper can be operated at the whim or caprice of its owners; a broadcast station cannot. After nearly five decades of operation the broadcast industry does not seem to have grasped the simple fact that a broadcast license is a public trust subject to termination for breach of duty.

The underlying principles of this holding apply equally to parties seeking to purchase a broadcasting station: an applicant seeking the transfer of control of a broadcast licensee is not entitled to purchase the station unless and until it demonstrates that it is qualified to serve as a trustee for valuable public property.

Receiving permission to obtain a broadcast license is an extraordinary privilege which must be earned by establishing that such a transaction is in the public interest. Notwithstanding

¹⁹The cited case addressed associational standing of the petitioner’s members. As discussed in their respective petitions to deny, TNG-CWA/NABET-CWA and Common Cause have demonstrated that they also have organizational standing. TNG-CWA/NABET-CWA Petition to Dismiss or Deny at pp. 8-10, UCC/Common Cause Petition to Deny at pp. 7-9, Joint Reply to Applicants’ Consolidated Opposition and Response to Comments Of the NewsGuild-CWA, National Association of Broadcast Employees and Technicians-CWA, United Church of Christ Media Justice Ministry and Common Cause (Joint Reply) at pp. 10-13. See *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 n.19 (1982) (“[O]rganizations are entitled to sue on their own behalf for injuries they have sustained.”)

that fact, the Applicants manifest an attitude of entitlement and aggrievement, even expressing anger that they have been called upon to prove their case.

B. The Commission Did Not Violate “Well-established Precedent” That Would Have Precluded the Commission from Developing a Full Record and Would Have Denied Petitioners’ Right to Review the Record.

The Applicants insist that once the Media Bureau issued its Public Notice accepting their applications, “well-established precedent” somehow prohibited the Commission from seeking further supporting information from the Applicants and to extend filing deadlines for opposing parties.

There is no such precedent. The facts of every application are different, and each must be treated case-by-case. What does lack precedent is the notion that the Commission would proceed to act upon an application that does not establish a prima facie case that might establish that it would be grantable. The issuance of two information requests thereafter shows that the Applicants had not yet met that burden.

C. The Commission’s Aspirational 180 Day “Shot Clock” Does Not Dictate That, Where There Is Insufficient Information to Reach a Decision, the Commission must Nonetheless Act on Applications Within That Time Frame Or, Indeed, Act at All.

The Applicants maintain that it was improper for the Commission to extend the deadline for filing petitions to deny and replies. But the very regulation they cite, 47 CFR §73.146, contemplates that, while extensions are not “routinely granted,” they can be granted when under non-routine circumstances. The Applicants do not, nor could they, assert how it was error to grant extensions under the very atypical nature of this case.

The Applicants treat the ministerial process for making sure that all the questions and minimally necessary exhibits on its Form 315 application form as if it constituted a substantive

determination as to whether the Applicants have submitted everything necessary for their application to be considered.²⁰ To the contrary, the notice accepting an application merely starts the process. It serves to inform interested parties that the application has been filed and that they can comment or object to it. This process can often disclose shortcomings that require amendment or supplementation. In this case, rather than waiting for the deadline for filing petitions to deny, some of the petitioners filed a motion pointing to shortcomings in the record. This actually had the effect of accelerating (not delaying) the process; had they held off on presenting these arguments until the original petition to deny deadline, the Request for Information sent to the Applicants on June 3, 2022 might not have been issued until several weeks thereafter.

Relatedly, the Applicants question the staff’s authority to solicit additional filings that address the Applicants’ new submissions to the record. Here, too, the staff could have directed a full additional round of pleadings rather than asking for this to be done in the reply phase, thereby accelerating what would have been a more drawn-out process.

The Applicants’ complaints over what they see as improper delays centers on their fixation that they have an absolute right to rapid and favorable action on their unorthodox and extremely complex application. Their demand for faster agency action is nothing more than an attempt to shift blame from themselves to petitioners and the Commission. The reason that this proceeding has not moved as swiftly as other, less complicated, matters is that the Applicants did

²⁰Joint Response at p. 2. (“[T]he Media Bureau determined the applications were complete....Then, despite well-established precedent...Petitioners were given multiple extensions of time....”])

not initially submit information sufficient on its face to support grant of the applications. Then, even after petitioning parties identified categories of documents that would be minimally necessary for consideration of the applications, and the Commission asked them to supplement their filings, the Applicants nonetheless did not file all such needed information. This required a second document request, with the accompanying delays. Applicants' complaints are a self-inflicted wound.

D. Comparisons to the Handling of Other Applications in Other Proceedings That Were Resolved More Quickly than the Instant Proceeding Are Irrelevant.

Acting as if all assignments and transfers are created equal, the Applicants whimper that other transactions were completed more expeditiously.²¹ Notably, their hit parade of other matters that were resolved more quickly does not include the proceeding that most closely resembles this one - Sinclair/Tribune, a case that was under consideration for over a year from the date of initial public notice.

But all applications are NOT the same, and this one has been structured in a unique - and troublesome - way in which one hedge fund that owns or operates some 14 stations would receive an ownership interest in a company being purchased by another hedge fund that operates some 64 stations (three of which are in overlapping major markets). And, even leaving aside whether the artifice of non-voting interests is sufficient to ensure that this does not constitute common ownership, this structure still allows myriad ways for the two entities to collaborate on retransmission fees, program contracts, and other areas of joint interest. The deal includes the

²¹Joint Response at p. 3. n.6.

sale of Apollo’s Boston TV station to Standard General in a way that would permit it to exploit a contractual loophole. This would jack up revenues from retransmission consent fees for every TEGNA station across the country, the costs of which would be passed on to hardworking consumers. This financial manipulation is nothing more than sophisticated and collusive price-fixing, and absolutely should not be permitted.

The numerous reasons why this case is different than others explain why it has taken longer for the Commission to compile a complete record.

E. It Is Not “Unprecedented” to Afford Qualified Petitioners Access to Highly Confidential Record Documents; in Fact, it Is Routine Practice to Do So.

Applicants’ contention that it is “unprecedented” to allow certain petitioners’ outside counsel access to documents in the record because they are sensitive amounts to a call for restricting all petitioners’ right to full participation in the Commission’s processes. Far from being unprecedented, giving qualified parties access to record documents is routine, as embodied in the standard protective order that the Commission regularly employs where materials that parties themselves denominate are made available only subject to highly restrictive measures. These procedures limit access to outside counsel and give Applicants the right to object to grant of access where they deem it inappropriate. The Applicants could have objected - but did not - when outside counsel for TNG-CWA/NABET-CWA requested access subject to the protective order in this case, and there has been no suggestion that they have failed to comply with the terms of the protective order.

The purpose of allowing interested parties to file comments and petitions to deny is to help the Commission by providing information and arguments that will contribute to an informed

decision as to what is in the public interest. Denying petitioners access to all information submitted to the Commission would defeat that objective.

F. The Commission’s Review in this Case Is Not in Contradiction of Section 310(d).

The Applicants seize on language in the Second Request for Documents to claim that the Commission is violating Section 310(d)²² by asking about “alternative transactions” and staffing plans.

The Commission is doing no such thing. Question 1 of the Second Document Request asks, *inter alia*, for “each company’s evaluation of this transaction (as well as alternative transactions considered among the companies)...” It is therefore carefully cabined to documents relating to permutations of possible contractual terms “among the companies...,” i.e., the buyers, the sellers and their potential financiers. The request in no way involves consideration of other possible purchasers.

Nor is it at all improper for the Commission to propound this question. In any transaction, but especially one as complex as the matter now before the Commission, it is extremely useful to know what other formulations the parties may have considered. This can inform the Commission’s public interest assessment of whether and why the final contractual provision is in compliance with Commission policies and whether it might facilitate evasion of the goals of Commission policy.

²²The relevant statutory passage says that “the Commission may not consider whether the public interest, convenience, and necessity might be served by the transfer, assignment, or disposal of the permit or license to a person other than the proposed transferee or assignee.” 47 U.S.C. §310(d).

The Applicants’ assertions about personnel plans are even more untoward. As discussed in greater detail above, it is the Applicants which have themselves put their hiring plans at issue, repeatedly asserting that Standard General “does not intend to reduce station-level staffing following the Transaction.” As TNG-CWA/NABET-CWA showed in their Petition to Dismiss or Deny, there is a strong link between station headcount and the amount and quality of locally-originated programming.²³

G. The Commission Can and Must Examine an Applicant’s Programming Plans.

The Applicants make the hyperbolic suggestion that the First Amendment precludes any assessment as to an applicant’s programming plans and that the staff’s questions indicate that the Commission will “select broadcast licensees based on whether they will air the desired amount of government-preferred programming.”²⁴

These arguments are especially odd in light of the Applicants’ public interest statement and various other assertions to the Commission that discuss the Applicants’ past and proposed programming. For example, Standard General brags that it has increased news programming at some of its stations and indicates its intention to extend such policies to TEGNA.²⁵ Apollo makes similar claims.²⁶ Having put the track record of Standard General and its proposed CEO at issue

²³ Petition to Dismiss or Deny at p. 6.

²⁴ Joint Response at p. 5.

²⁵ See, e.g., Public Interest Statement at 6. (“Post-Merger TEGNA will be in position to expand on its longtime and exemplary commitment to providing award-winning service to its local communities. At both Young Broadcasting and Media General, Mr. Kim and Ms. McDermott drove expansions in local news and station capabilities. They intend to bring those same philosophies to WFXT(TV) and TEGNA and its stations.”) (footnote omitted.)

²⁶ See Public Interest Statement at 7. (“CMG will continue to explore opportunities to devote additional capital for the creation of local content, including local news,....Going forward, among other improvements, CMG will continue to identify ways it can improve its existing

in its attempt to demonstrate that grant of the applications is in the public interest, the Applicants cannot then turn around and say that these claims cannot be examined.

It is surely true that the Commission cannot, and does not, “select” one or another applicant based on programming plans. In fact, as already noted, pursuant to Section 310(d), the Commission is not considering any application for the assignment of the TEGNA stations except to Standard General and Apollo-controlled Cox Media Group. However, under long-standing policy, the Commission does make certain viewpoint neutral decisions relating to programming. Indeed, the Applicants responded affirmatively to Question 13 on Form 315, which asks a proposed transferee to “certif[y] that it is cognizant of and will comply with its obligations as a Commission licensee to present a program service responsive to the issues of public concern facing the station's community of license and service area.” If questions are raised as to the accuracy of such certification, the Commission must make further inquiry. And, although not raised in this case, there is nothing sinister about the several situations in which the Commission does assess broadcasters’ past programming and future program plans to ascertain compliance with the requirement to carry “the desired amount of government-preferred programming.” This includes the obligation under the Children’s Television Act²⁷ to carry certain amounts of educational and informational programming for children, and to afford reasonable access to federal candidates.²⁸

industry-leading local content production while growing its stations’ online presence and making the necessary investments for full deployment of ATSC 3.0.”)

²⁷47 USC §303b.

²⁸See *CBS, Inc. v. FCC*, 453 U.S. 367 (1981) (upholding determination that licensee may not refuse to comply with Presidential candidate’s reasonable request for 30 minute programming block).

Moreover, and in any event, the Commission’s public interest determination must also take into account whether Standard General’s takeover of TEGNA would leave the public worse off. Programming is one element of that determination. Section 310(d) does not foreclose comparison of the incumbent transferor’s programming to that proposed by the transferee, especially where questions are raised about degradation of the quantity, quality or diversity of program service. *City of Camden*, 18 FCC2d 423-424 (1969). Such comparisons, the Commission held, do not improperly intrude in to the proposed transferee’s programming discretion. *Id.*, 18 FCC2d at 424.

III. STANDARD GENERAL’S PERSONAL ATTACKS SHOW IT HAS RUN OUT OF JUSTIFICATIONS FOR THE TRANSACTION AND A DISREGARD FOR AMERICA’S MEDIA WORKERS.

It is regrettable that TNG-CWA/NABET-CWA must address Standard General’s inflammatory and personal attacks against the largest unions of media workers in North America. These attacks further prove its disinterest in supporting local journalism and plan to dismantle it.

The petitions to deny filed by TNG-CWA/NABET-CWA and by UCC/Common Cause do not mention race or gender. Their discussion of diversity of ownership is framed entirely in terms of the policy goal of having many smaller owners rather than a few large, consolidated owners who can exercise excessive control over national and local media outlets. Indeed, as the applicants themselves concede, “Petitioners fail to make a single mention in their Petitions to Deny” of race and gender issues with respect to the applicants.” Opposition at 16.

In their desire to politicize and polarize this case, the applicants pretend race and gender are a central issue. In fact, TNG-CWA/NABET-CWA focused entirely on the number of properties that the applicants would control, taking into account as yet unresolved questions as to

the degree of control that Apollo Global Management (which controls Cox Media Group’s major market TV stations and was a major financier of the 2019 merger of Gatehouse and Gannett) and various unnamed investors might exercise over post-transaction TEGNA. Applicants quoted out-of-context passages from briefs and comments the one or another of the petitioners to deny filed in 2021 (one quote), 2018 (one quote), 2011 (one quote) and 2007 (four quotes) because they wanted a way insert race and gender questions into the case. They use these snippets to show what should be obvious to anyone who has followed FCC policy deliberations on media ownership: each of the petitioners in this case strongly support efforts to promote increased media ownership by women and people of color.

The petitioners’ support of expanding ownership for persons of color and women should not be read as supporting Standard General’s effort to purchase 64 TV stations, especially where there is doubt as to the degree of control Standard General would actually exercise. Rather than reacting to personal attacks, TNG-CWA/NABET-CWA point to what all the petitioners have already said to the Commission in their reply:

The Applicants express concern that the Petitioners’ long-standing support for ownership diversity means that they should automatically support a transaction as long as a woman or person of color is at the helm of a transaction. As the civil rights community often explains, “meaningful protection of civil rights and advancement of key policy objectives rely in great measure on an accurate, diverse, and independent media that serves our constituencies.” The proposed transactions will do nothing to create a more accurate, diverse or independent media.

Just as the Commission and the Supreme Court have consistently found, the Commission's public interest goals are not focused on promoting one kind of owner over another. Rather, it is promoting antagonistic and competing viewpoints in a vibrant marketplace of ideas. One reason the civil rights community and Petitioners oppose media concentration is that it results in fewer owners, fewer points of view and fewer opportunities for smaller entrepreneurs, including historically excluded entrepreneurs, to enter into the marketplace and

compete against large companies. Indeed, petitioners have consistently called on the Commission not to relax media ownership limits in order to create more ownership opportunities for people of color and women. Therefore, the Commission's media ownership diversity objectives are grounded in creating pathways for multiple owners with multiple viewpoints and backgrounds to enter the marketplace. A single owner controlling numerous stations throughout the country, producing news often far from the local communities those stations serve and likely reducing the number of journalists (who could be women, people of color, people with disabilities, members of the LGBTQ community to name a few) would not produce diversity or advance the Communications Act's public interest standard. Under the Applicants' theory of diversity, the U.S. could achieve ownership diversity through a single owner of all television and radio stations in the country as long as that owner is a person of color or a woman. Further, this transaction does nothing to increase ownership opportunities for women and people of color to enter the marketplace. To the contrary, the applicants' business model of laying off reporters and reducing local news coverage creates a race to the bottom approach that would pose significant challenges for any new entrants to meaningfully compete with TEGNA post-transaction and provide robust local programming.²⁹

As part of the campaign to turn this case into a conflict over race and gender, counsel for Standard General met with Commissioner Starks' chief of staff on October 17. That meeting's evident purpose was to place a press release Standard General issued that very morning into the FCC record. This press statement, which is unrelated to any of the issues that petitioners raised in their challenges to the transaction, mischaracterized TNG-CWA/NABET-CWA's statements so that Standard General's CEO could accuse The NewsGuild-CWA, the largest labor union of media workers in North America, and its counsel of making "sexist and racially charged ad hominem" attacks. The statement also treats petitioners' concerns about the source of the funds that are being used to finance the proposed transaction as evidencing xenophobic anti-Asian prejudice.

²⁹ Joint Reply at pp. 4-6.

TNG-CWA/NABET-CWA leave it to others to consider why, as of the date of this filing, these charges were presented only to one Commissioner’s office and what that may say about Standard General’s understanding of diversity issues. Its attacks on the largest union of journalists also show its clear animosity to the profession. As to the substance of the allegations, TNG-CWA/NABET-CWA again point to the statements in the Joint Reply to which Standard General was purportedly responding:

Petitioners, as well as the progressive and civil rights communities also support economic success for all people, counteracting centuries of policies that exclude people of certain backgrounds or with particular attributes from the opportunity to acquire and pass down wealth. Broad participation by members of historically excluded groups is not only just, but also a sign that a market is robustly competitive. It is certainly a good thing that Mr. Kim is not barred by his race from becoming a successful entrepreneur with the acumen and business relationships giving him access to capital such that he is at the lead of this transaction. It is certainly a good thing that Ms. McDermott is not barred by her gender to be selected to run a large corporation. Unfortunately, it is rare for members of either of these groups to be in such a position. But a single large LLP or corporation of the type proposed here is not going to ameliorate or address long-standing inequities produced by structural racism, xenophobia or misogyny - and is not likely to provide additional members of historically excluded groups the opportunity to gain wealth and influence in society. The identity of the executives leading these companies should not and does not insulate a transaction of this scope from a thorough and searching review by federal regulators. The Commission should not conflate the identity of one or two business leaders regarding a transaction that would further consolidate the marketplace with advancing its goals to promote ownership diversity. Conflating the identity of one or two business leaders with the achievement of civil rights objectives is a serious error.³⁰

³⁰ Joint Reply at pp. 6-7.

It is particularly troublesome that Standard General has used petitioning parties' very legitimate inquiry into the funding and control of post-transaction TEGNA as a vehicle to suggest that there is something wrong with the Commission exercising its statutorily mandated obligation to assure that applicants are in compliance with the Communications Act.

Sections 310(a)(3)-(4) provide that the Commission may not grant a broadcast license to:

(3) any corporation of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country; [or]

(4) any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

The applicants are well aware of this law, because it is they - not TNG-CWA/NABET-CWA - who have called on the Commission to consider the post-transaction ownership and financing by filing a request for declaratory ruling allowing up to 100% foreign equity and voting interests.³¹ So, too, they are fully cognizant that on May 4, 2022, the Department of Justice National Security Division's Foreign Investment Review Section notified the Commission that the Chair of the Committee for the Assessment of Foreign Participation in the United States Telecommunications Sector had asked the Commission to defer action on the TEGNA matter so that it can "review[] the applications for any national security and law enforcement concerns that

³¹Amended Petition for Declaratory Ruling of Teton Parent Corp. (filed Apr. 1, 2022)(Docket 22-166).

may be raised by foreign participation in the United States telecommunications sector.”³² Of course, that inquiry is not a determination that any such concerns would prove to be justified. That is not the point here; rather, it demonstrates that it is entirely appropriate, and neither racist nor xenophobic, for the government - or petitioners, to ask such questions.³³ A chief ethical obligation of journalists is to hold power to account and Standard General is deflecting accountability at the wrong moment in full view of the Commission and the American people.

CONCLUSION

The Commission has given the Applicants several opportunities to submit information sufficient to establish that grant of their applications is in the public interest. They have failed to take advantage of the agency’s patience, preferring instead to complain that they are entitled to obtain Commission approval because the Commission granted other, differently situated applications

Wherefore, the Commission should dismiss the applications or designate them for hearing and grant all such other relief as may be just and proper.

³² Letter from Makenzie D. Briglia, U.S. Department of Justice to Marlene Dortch (May 4, 2022).

³³As to the charge of anti-Asian bias, TNG-CWA/NABET-CWA are constrained to point out that the word “Asia” and its variants do not appear in their filings. What petitioners have wished to explore is the “involvement of large hedge funds headquartered in the Cayman Islands and the British Virgin Islands....” Joint Reply at p. 20.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Andrew Jay Schwartzman, certify that on October 13, 2022, a copy of the unredacted version of the foregoing document containing highly confidential information was served by electronic mail upon the following:

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