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Nexstar-Tribune Merger: Potential Competition Issues

On December 3, 2018, Nexstar Media Group and Tribune Media Company announced a merger agreement that would create the largest broadcast television station owner in the United States. Nexstar values Tribune at approximately \$6.4 billion. The proposed merger is subject to approval by both the Federal Communications Commission (FCC) and the Antitrust Division of the U.S. Department of Justice (DOJ). Because both companies already are large owners of broadcast stations, the proposed transaction raises policy issues with respect to whether the merged entity would violate limits on broadcast station ownership at the local or national levels and whether it would have excessive power over local advertising markets.

The Two Companies

Nexstar

Nexstar Media Group owns, operates, programs, and/or provides sales and other services to 174 full-power television stations in 100 markets, reaching nearly 39% of all U.S. television households. Nexstar owns 138 stations, including 10 satellite stations that are used to extend the reach of other Nexstar stations. In addition, it operates, programs, and/or provides sales and other services to 36 stations owned by other companies.

Tribune

Tribune owns, operates, programs, and/or provides sales and other services to 44 full-power television stations reaching 19 markets, or more than 36% of all U.S. television households. Tribune owns 41 stations, of which two are satellite stations, and operates, programs, and/or provides sales and other services to the remaining three stations. In addition, Tribune owns the cable network WGN America; five radio stations (one in Chicago and four in Seattle); and Tribune Studios, which produces original programming for Tribune's stations and cable network.

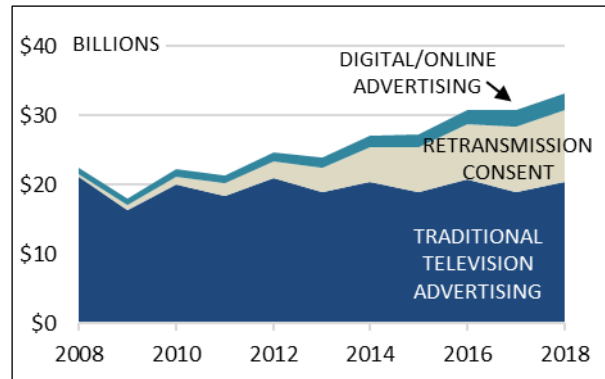
Consumer and Industry Trends

Broadcast television stations such as those owned by Nexstar and Tribune have two primary sources of revenue. They sell advertising, charging rates based on the number and demographic characteristics of viewers who watch their programs and visit their websites. They also may charge cable and satellite operators, known as *multichannel video program distributors* (MVPDs), for the right to retransmit their stations' signals to the operators' subscribers.

As **Figure 1** indicates, retransmission consent revenues have become increasingly important to television broadcasters. In 2018, retransmission consent fees generated nearly \$10 billion for the broadcast industry, accounting for 31% of industry revenues. A decade earlier, retransmission fees generated \$1 billion, representing 1% of the industry's revenue. For the first nine months of 2018,

fees from MVPDs represented 42% of Nexstar's \$1.97 billion in revenue, and 36% of Tribune's \$1.43 billion in revenue.

Figure 1. TV Industry Revenue Sources over Time



Source: S&P Global Market Intelligence.

Notes: Broadcasters' revenue tends to rise in even-numbered years due to political advertising spending. Figures not adjusted for inflation.

The increasing importance of retransmission consent revenue to broadcasters reflects increased competition from online advertising. As companies such as Facebook and Google have captured a greater share of total advertising revenue, broadcasters have sought to diversify their sources of revenue by seeking higher retransmission consent fees.

Cable and satellite operators that fail to reach retransmission agreements with broadcast stations run the risk of driving subscribers to competitors in order to watch broadcast programming. However, some MVPDs are losing subscribers and are concerned that raising prices to pay for higher retransmission consent fees will accelerate that trend. These negotiations often occur at the corporate level, between a company that owns multiple broadcast stations and an MVPD that operates many cable systems or a nationwide satellite service, rather than at the local level. Companies' quest for greater bargaining power in negotiations has driven consolidation in both the broadcast television and MVPD industries.

Regulatory Review

Before the companies may complete the merger, two government entities must review it: the FCC and the DOJ. The FCC evaluates whether the transaction would be in the public interest, pursuant to Section 310(d) of the 1934 Communications Act, as amended. The FCC may approve the merger with or without conditions, or designate the merger for a hearing by an FCC administrative law judge.

The DOJ reviews the transaction to determine whether it would substantially reduce competition, as prohibited by

Section 7 of the Clayton Antitrust Act of 1914. The agency may allow the deal to go forward unchallenged, enter into a negotiated consent agreement with the companies, or seek to stop the transaction by filing for a preliminary injunction in federal court.

Potential Issues for Regulatory Review

Local Issues

The Nielsen Company, a market research firm, assigns each U.S. county and each broadcast television station to a unique geographic television market in order to measure viewing habits. Advertisers, MVPDs, and government regulators use Nielsen’s construct, known as Designated Market Areas (DMAs), to define local television markets.

FCC Media Ownership Rules. The FCC uses DMAs to determine the number of local television stations a single entity can own within a geographic region. The FCC does not consider relationships between stations that share services, such as sales staff, to be “control” for the purpose of applying its TV local ownership rules.

Current FCC rules allow an entity to own up to two television stations within a DMA. Prior to January 2019, with limited exceptions, only one of those stations could be among the “Top Four,” ranked by the station’s share of the television viewing audience in that DMA. The recently amended rules permit the agency to evaluate, on a case-by-case basis, whether common ownership of two Top Four stations is in the public interest. Generally, Top Four stations are the local affiliates of the four major English-language broadcast television networks—ABC, CBS, Fox, and NBC.

In 13 markets, both Nexstar and Tribune own television stations. In two of those markets, only one station is among the Top Four. In two additional markets in which Nexstar owns Top Four stations, Tribune operates stations owned by a third party.

In its application filed with the FCC, Nexstar stated that it intends to divest one of the Top Four stations in 10 markets. Nexstar intends to retain Tribune’s two Top Four ranked television stations within the Indianapolis, IN, television market (as well as Tribune’s satellite station), while divesting the two stations it currently owns.

In two additional markets, Wilkes Barre-Scranton-Hazleton, PA, and Norfolk-Portsmouth-Newport News, VA, Nexstar owns and/or operates stations and Tribune operates stations ranked among the Top Four. Pursuant to the FCC’s rules, Tribune is not considered to “control” the stations it operates. Nexstar has stated that it will “acquire Tribune’s rights and obligations” with respect to those stations and that it intends to “cause the divestiture” of the stations. This phrasing does not specify whether Nexstar intends to continue to operate the stations if the current owner, Dreamcatcher Broadcasting, divests them. If so, the merger might raise antitrust concerns, as Nexstar would own and/or operate three Top Four stations in each market.

Antitrust Analysis. With respect to the advertising product market, the DOJ has traditionally treated broadcast television as a stand-alone category. In January 2019, Makan Delrahim, the assistant attorney general for antitrust, said the agency is considering whether to broaden its definition of the product market by considering online advertising as well.

Antitrust authorities often use the Herfindahl-Hirschman Index (HHI) to measure how a merger could affect market structure. The HHI is calculated by squaring the market share of each firm competing in the product market and then summing the resulting numbers. For television broadcasters, market shares can be measured by revenue or number of viewers. According to current merger guidelines, markets with HHIs above 2500 are highly concentrated.

Based on CRS analysis of 2018 broadcast television revenue market share estimates by the firm S&P Global Intelligence, the Indianapolis DMA has an HHI of 3155. In some instances, this might raise antitrust concerns. However, because the Nexstar-Tribune merger would not immediately change the HHI in this market if Nexstar divests the two stations it currently owns, the potential competitive effects on the Indianapolis advertising market may raise less concern. In addition, the DOJ may view the issue differently if it includes online advertising in the relevant product market.

National Issues

FCC National Ownership Rules. The Consolidated Appropriations Act, 2004 (P.L. 108-199) directed the FCC to adopt rules that would cap the reach of a single company’s television stations at 39% of U.S. television households. At the time Congress enacted this law, an FCC rule, originally adopted in 1985, discounted the number of television households reached by stations operating in the ultra high frequency (UHF) band by half in measuring a station owner’s reach. This adjustment reflected the physical limitations of UHF signals at the time the rule was adopted. Since then, stations have converted from analog to digital service pursuant to a statutory mandate. As a result of this switch, UHF stations had a technological advantage relative to other stations, and more broadcast television licenses began to operate on these frequencies.

In April 2017, the FCC reversed a previous decision to eliminate the “UHF discount.” In November 2017 it sought comments on whether to retain or change the rule, but has not reached a final decision.

With the UHF discount, Nexstar-owned stations currently reach 25.51% of all television households. Absent the discount, Nexstar’s national reach is 38.76%. Post-merger, Nexstar’s reach would be 47.12% with the discount and 72.57% without it. Nexstar has committed to divesting stations in order to comply with the national ownership rules. The number of stations it would need to divest may depend on whether the FCC modifies its rule on the UHF discount before or after it rules on the proposed merger.

Dana A. Scherer, dscherer@crs.loc.gov, 7-2358