

January 11, 2023

The Honorable Jessica Rosenworcel
Chair
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

Dear Chair Rosenworcel:

I write to express my serious concerns that Standard General's proposed, private-equity-backed, \$5.4 billion acquisition of broadcaster Tegna Inc. (Tegna)¹ does not serve "the public interest, convenience, and necessity"² and to ask that the Federal Communications Commission (FCC) use its full statutory authority to block this acquisition and address increasing consolidation in the media industry. By offering "a series of formal commitments"³ that might address the FCC's potential concerns about higher prices, worker layoffs, and collusion, the parties themselves have acknowledged that this deal is likely to produce anticompetitive effects. However, behavioral remedies like those offered by the parties are historically ineffective⁴ and should provide no comfort that these Wall Street firms will not engage in anticompetitive practices after the deal is completed.

The FCC has significant and underutilized authorities to protect competition in the media industry by preventing deals that harm the public interest⁵ or reduce competition.⁶ Given the admitted threats to competition and the known futility of behavioral remedies, I urge you to fulfill your statutory duty by blocking this acquisition.

¹ Wall Street Journal, "Standard General to Buy TV Broadcaster Tegna for \$5.4 Billion," Will Feuer, February 22, 2022, <https://www.wsj.com/articles/standard-general-to-buy-tv-broadcaster-tegna-for-5-4-billion-11645548301>.

² 47 U.S.C. 310(d).

³ Fierce Video, "FCC to continue Standard General-Tegna probe into 2023," Masha Abarinova, December 29, 2022, <https://www.fiercevideo.com/video/fcc-continue-standard-general-tegna-probe-2023>.

⁴ American Antitrust Institute, "Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," John Kwoka and Diana Moss, November 2011, https://www.antitrustinstitute.org/wp-content/uploads/2011/11/AAI_wp_behavioral-remedies_final.pdf.

⁵ 47 U.S.C. 310(d).

⁶ Federal Communications Commission, "FCC Transaction Review: Competition and the Public Interest," Jon Sallet, August 12, 2014, <https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest>.

The Standard General-Tegna Deal Would Likely Reduce Media Competition.

This deal presents straightforward competition concerns. On one side, hedge fund Standard General and private-equity firm Apollo Global Management (Apollo) hold a significant stake in Cox Media Group (“Cox”),⁷ a media conglomerate that owns television stations in nine markets across the nation.⁸ On the other side is Tegna, which owns television stations in overlapping markets including Atlanta, Charlotte, Jacksonville, and Seattle.⁹ Given these overlaps, the common ownership in some markets will reduce the number of competitors that can place spots on television for advertisers, produce programming for television audiences, and employ workers in the television industry. However, a deeper investigation into this complex financial transaction reveals three additional potential harms that also pose a threat to competition down the road.

Higher Prices

First, this deal could lead to higher prices for customers across the nation because the acquisition would allow Standard General to renegotiate certain retransmission fees, which would ultimately be passed on to advertisers or cable TV customers.¹⁰ Reports indicate that Apollo plans to sell a Boston, Massachusetts television station to Standard General, which “would allow Standard General to have new Tegna stations charge pay-TV companies as much for relaying their signals to subscribers as the Boston station charges.”¹¹ Since the Boston station charges a higher retransmission fee than Tegna’s stations currently charge, the effect would be for Tegna (operating in 51 different markets¹²) to raise its retransmission fees nationwide. Stations would pass these increased fees down to “hardworking consumers” in the form of higher prices, according to the journalists’ union NewsGuild-CWA.¹³ Thus, this deal could have anticompetitive effects beyond the handful of markets in which Tegna and Cox compete head-to-head.

⁷ Wall Street Journal, “Standard General to Buy TV Broadcaster Tegna for \$5.4 Billion,” Will Feuer, February 22, 2022, <https://www.wsj.com/articles/standard-general-to-buy-tv-broadcaster-tegna-for-5-4-billion-11645548301>.

⁸ Cox Media Group, “Our Brands: TV Stations,” <https://www.cmg.com/brands/>.

⁹ TEGNA, “Brands,” <https://www.tegna.com/brands/>.

¹⁰ Retransmission fees are the fees that cable providers pay local affiliate stations for the right to retransmit their signal to customers. *See e.g.*, Great Plains Communications, “Retransmission Consent Fees and What They Mean,” January 8, 2015, <https://gpcom.com/retransmission-consent-fees-and-what-they-mean/>.

¹¹ Bloomberg, “Standard General’s \$5.4 Billion Tegna Deal Draws DOJ Concern Over Potential Price Hikes,” Leah Nylen and Todd Shields, November 3, 2022, <https://www.bloomberg.com/news/articles/2022-11-03/standard-general-s-tegna-deal-draws-doj-queries-over-potential-tv-price-hikes>.

¹² Wall Street Journal, “Standard General to Buy TV Broadcaster Tegna for \$5.4 Billion,” Will Feuer, February 22, 2022, <https://www.wsj.com/articles/standard-general-to-buy-tv-broadcaster-tegna-for-5-4-billion-11645548301>.

¹³ Bloomberg, “Standard General’s \$5.4 Billion Tegna Deal Draws DOJ Concern Over Potential Price Hikes,” Leah Nylen and Todd Shields, November 3, 2022, <https://www.bloomberg.com/news/articles/2022-11-03/standard-general-s-tegna-deal-draws-doj-queries-over-potential-tv-price-hikes>.

Employee Layoffs

Second, Standard General, according to press reports, “told investors it planned to eliminate jobs at Tegna Inc. after completing its \$5.4 billion acquisition of the TV broadcaster, according to opponents, despite assertions to regulators that it had no such intention.”¹⁴ NewsGuild-CWA alleges that the FCC possesses documents that demonstrate Standard General’s intent to “eliminate jobs at Tegna” after the acquisition.¹⁵ Although many of the specific details have been redacted from public filings, the union claims that financial projections related to the deal show that lenders to Standard General supported staffing cuts, which were viewed as “cost synergies,” and that such cuts were a “feature of the proposed transaction.”¹⁶ If true, this would not be a surprise; job cuts are a well-known feature of the private-equity model itself. Recent studies show that “employment in the private-equity backed companies decreases by over 4% in the first two years following the buyout” and jumps up to a “13% decrease in jobs” when private-equity firms take private large publicly traded companies like Tegna.¹⁷ The FCC must take seriously any plans to cut jobs as a motivating factor for the deal when assessing whether to block it.

Enabled Collusion

Third, this deal could facilitate collusion among Standard General, Apollo, and Tegna in violation of antitrust laws. NCTA – The Internet & Television Association filed comments with the FCC claiming that without “binding conditions,” the parties’ “interlocking relationships” might “allow one station to exert significant influence over another” through certain joint sales and local marketing agreements (sidecar agreements) or incentivize the parties to share competitively sensitive information.¹⁸ The Department of Justice (DOJ) has targeted collusion in this sector before. During the course of an industry-wide investigation in 2018 and 2019, the DOJ banned several broadcast companies from sharing non-public sensitive information with their competitors,¹⁹ and in 2021, the DOJ noted the possible anticompetitive impacts of sidecar agreements and banned a major broadcaster from entering such arrangements with divested stations.²⁰ This history of collusion in this industry counsels against permitting further sector consolidation.

¹⁴ Bloomberg, “Tegna Buyer Planned Layoffs Without Telling the FCC, Unions Say,” Todd Shields, October 28, 2022, <https://www.bloomberg.com/news/articles/2022-10-28/teгна-buyer-plotted-layoffs-it-didn-t-tell-fcc-about-unions-say#xj4y7vzkg>.

¹⁵ *Id.*

¹⁶ In the Matter of Tegna-Standard General, MB Docket 22-162, Supplement to Petition to Dismiss or Deny of the NewsGuild-CWA at p. 3, October 27, 2022, <https://www.fcc.gov/ecfs/document/1028172206998/1>.

¹⁷ Forbes, “Private Equity Firms Have Caused Painful Job Losses And More Are Coming,” Mayra Rodriguez Valladares, October 30, 2019, <https://www.forbes.com/sites/mayrarodriguezvalladares/2019/10/30/private-equity-firms-have-caused-painful-job-losses-and-more-are-coming/?sh=7e10f6bc7bff>.

¹⁸ NextTV, “NCTA Seeks FCC Retrans Conditions on Standard General-Tegna,” John Eggerton, June 24, 2022, <https://www.nexttv.com/news/ncta-seeks-fcc-retrans-conditions-on-standard-general-teгна>.

¹⁹ Department of Justice, “Justice Department Requires Six Broadcast Television Companies to Terminate and Refrain from Unlawful Sharing of Competitively Sensitive Information,” press release, November 13, 2018, <https://www.justice.gov/opa/pr/justice-department-requires-six-broadcast-television-companies-terminate-and-refrain-unlawful>.

²⁰ U.S. v. Gray Television and Quincy Media, Competitive Impact Statement at p. 18, July 28, 2021, <https://www.justice.gov/atr/case-document/file/1418276/download>.

History Suggests the Proposed Remedies Will Fail.

The parties to the transaction have attempted to preempt charges that this deal would be anticompetitive with a so-called fix-it-first approach: they have voluntarily committed to remedy the most troubling aspects regarding their proposed acquisition.²¹ Through a series of letters submitted to the FCC in December 2022, the parties have promised that after the deal is completed, (i) they will irrevocably leave in place the retransmission fees that apply to any Tegna station; (ii) they will not lay off any journalism or newsroom staff for a minimum of two years; and (iii) Standard General and Tegna, on the one hand, and Cox and Apollo, on the other hand, will not share any nonpublic competitively sensitive information or enter sidecar agreements with each other.²² Even if the FCC imposed all of these conditions on the parties, they would likely not protect competition in the future.

Studies have noted that behavioral remedies are “difficult to craft” and “eas[y]...to circumvent,” and they also require the government “to expend resources on monitoring and enforcement,” in large part because behavioral remedies are designed to “require a merged firm to operate in a manner inconsistent with its own profit-maximizing incentives.”²³ Such requirements include “lower[ing] entry barriers, erect[ing] a firewall to protect competitively sensitive information, or commit[ting] not to discriminate against competitors in the market that rely on the merged firm for supply, distribution, or other inputs.”²⁴ In light of the poor track record of both structural and behavioral remedies with regard to protecting competition, Federal Trade Commission (FTC) Chair Lina Khan recently expressed her belief that “agencies should more frequently consider opposing problematic deals outright” rather than imposing remedies of any sort.²⁵

In fact, the FCC recently approved T-Mobile’s acquisition of Sprint at least in part because the agency believed certain remedies would cause the deal to ultimately serve the public interest.²⁶ However, the speculative benefits of that deal, subject to the imposed remedies, have not born fruit. In July 2019, both the DOJ and the FCC were satisfied that as long as the parties divested Sprint’s prepaid-wireless business to satellite provider DISH, thereby setting DISH up to be the nation’s fourth major wireless carrier, the deal would

²¹ NextTV, “FCC Wont Complete Standard General-Tegna Deal Vetting This Year,” John Eggerton, December 26, 2022, <https://www.nexttv.com/news/fcc-wont-complete-standard-general-tegna-deal-vetting-this-year>.

²² *Id.*

²³ American Antitrust Institute, “Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement,” John Kwoka and Diana Moss, November 2011, https://www.antitrustinstitute.org/wp-content/uploads/2011/11/AAI_wp_behavioral-remedies_final.pdf.

²⁴ Jones Day, “Federal Antitrust Enforcers Taking More Regulatory, but More Flexible, Approach to Merger Remedies,” J. Bruce McDonald, June 2010, <https://www.jonesday.com/en/insights/2010/06/federal-antitrust-enforcers-taking-more-regulatory-but-more-flexible-approach-to-merger-remedies>.

²⁵ Letter to Senator Elizabeth Warren from FTC Chair Lina Khan, August 6, 2021, https://www.warren.senate.gov/imo/media/doc/chair_khan_response_on_behavioral_remedies.pdf.

²⁶ T-Mobile-Sprint Order, 34 FCC Rcd 10578 (13) at para. 40, https://docs.fcc.gov/public/attachments/FCC-19-103A1_Rcd.pdf.

promote competition and accelerate DISH's deployment of 5G service across the country.²⁷ But T-Mobile shut down its cell service that DISH's new prepaid customers used nearly two years earlier than expected, meaning those customers would have to "get new devices, new SIMs, or upgrade via software" and DISH would have to take on "an unexpected upgrade that will cost hundreds of millions of dollars."²⁸ This turn of events has threatened DISH's ability to compete and raised questions about DISH's ability to increase 5G connectivity as promised.²⁹ At this point, however, there is little that can be done to force compliance with the imposed conditions, and this could have been avoided had the FCC simply blocked the acquisition.

It will be similarly challenging for the FCC to monitor the parties in this transaction and ensure that they are complying with any required remedies. Furthermore, Standard General's, Apollo's, and Tegna's voluntary concessions are an obvious attempt to weaken whatever case the DOJ or state attorneys general may decide to bring in court. For instance, after the DOJ and the FCC decided to allow the Sprint-T-Mobile merger to proceed subject to various remedies, a federal judge ruled in part that the deal did not violate antitrust law because those conditions eliminated possible competition concerns in the future.³⁰ As noted above, that prediction did not hold up. In this case involving Standard General's possible purchase of Tegna, the FCC can and should take action to protect competition and avoid the risks of inherently flawed behavioral remedies.

The FCC Must Fully Utilize Its Competition Authorities Under the *Communications Act*.

The FCC must make its own independent competition assessment of the Tegna deal and take its own regulatory actions even while the DOJ conducts its antitrust investigation under the *Clayton Act*. As the FCC has noted in the past, the FCC's "competitive analysis, which forms an important part of the public interest evaluation, is informed by, but not limited to, traditional antitrust principles. The DOJ has independent authority to examine the competitive impacts of proposed mergers and transactions involving transfers of [FCC] licenses, but the [FCC]'s competitive analysis under the public interest standard is somewhat broader."³¹ Indeed, the *Communications Act* makes clear that Congress intended for the FCC to have a separate, unique role in regulating the telecommunications sector because the FCC has particular expertise in this industry. For that reason, section 310(d) of that legislation explicitly grants the FCC the authority to block any transfers of station licenses if those transfers do not serve "the public interest, convenience, and necessity."³² Among other factors, serving the public interest includes "preserving and enhancing competition in relevant

²⁷ Verge, "The Dish 'fix' for the T-Mobile-Sprint merger seems more shortsighted than ever," Karl Bode, July 21, 2021, <https://www.theverge.com/2021/7/21/22585761/dish-t-mobile-att-sprint-competition-editorial>.

²⁸ ProMarket, "The Real Dish on the T-Mobile/Sprint Merger: A Disastrous Deal From the Start," Melody Wang and Fiona Scott Morton, April 23, 2021, <https://www.promarket.org/2021/04/23/dish-t-mobile-sprint-merger-disastrous-deal-lessons/>.

²⁹ Verge, "The Dish 'fix' for the T-Mobile-Sprint merger seems more shortsighted than ever," Karl Bode, July 21, 2021, <https://www.theverge.com/2021/7/21/22585761/dish-t-mobile-att-sprint-competition-editorial>.

³⁰ *New York v. Deutsche Telekom AG*, 439 F. Supp. 3d 179 (S.D.N.Y. 2020).

³¹ T-Mobile-Sprint Order, 34 FCC Rcd 10578 (13) at para. 40, https://docs.fcc.gov/public/attachments/FCC-19-103A1_Rcd.pdf.


³² 47 U.S.C. 310(d).

markets.”³³ Accordingly, the FCC should block any transaction that it knows is likely to harm competition or the public interest such as Standard General’s proposed acquisition of Tegna.

* * *

You have an enormous opportunity to protect workers and consumers nationwide by using this authority aggressively in this matter and in other matters going forward. Thank you for your attention to this issue.

Sincerely,


Elizabeth Warren
United States Senator

CC:

Jonathan Kanter, Assistant Attorney General – Antitrust Division, Department of Justice
Lina Khan, Chair, Federal Trade Commission

³³ Federal Communications Commission, “FCC Transaction Review: Competition and the Public Interest,” Jon Sallet, August 12, 2014, <https://www.fcc.gov/news-events/blog/2014/08/12/fcc-transaction-review-competition-and-public-interest>.