

May 17, 2023

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

Dear Chair Rosenworcel:

I write to express my continued support for the Federal Communications Commission's (FCC) thorough review of the proposed transactions involving Standard General and Tegna Inc. (Tegna).¹ The FCC should use its statutory authority to block this \$5.4 billion acquisition if it does not serve "the public interest, convenience, and necessity."² The FCC has a duty to review the possible anticompetitive effects of the merger, including reduced media competition, higher prices, and worker layoffs.³ I urge the FCC to continue its thorough and careful review, regardless of recent calls by supporters of the deal to rush through the agency consideration.⁴

This deal presents significant competition concerns. Private-equity firm Apollo Global Management (Apollo) already holds a significant stake in Cox Media Group (Cox),⁵ a media conglomerate with television stations in nine U.S. markets, including Boston.⁶ Standard General and Apollo are attempting to acquire Tegna, which owns television stations in overlapping markets.⁷ As I warned in January 2023,⁸ this common ownership 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. The deal also risks higher

¹ Federal Communications Commission, *Media Bureau Establishes Pleading Cycle for Applications to Transfer Control of TEGNA, Inc., to Standard General, L.P., and Permit-But-Disclose Ex Parte Status for the Proceeding*, Public Notice, MB Docket No. 22-162, DA 22-443 (MB 2022); 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 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>.

⁴ Law360, "DC Circ. Asked to Force FCC's Hand on \$8.6B Tegna Deal," Nadia Dreid, March 28, 2023, <https://www.law360.com/articles/1590704/dc-circ-asked-to-force-fcc-s-hand-on-8-6b-tegna-deal>.

⁵ 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>.

⁶ Cox Media Group, "Our Brands: TV Stations," <https://www.cmg.com/brands/>.

⁷ TEGNA, "Brands," <https://www.tegna.com/brands/>.

⁸ Letter from Senator Elizabeth Warren to FCC Chair Rosenworcel, January 11, 2023, <https://www.warren.senate.gov/imo/media/doc/2023.01.11%20Letter%20to%20FCC%20re%20Standard%20General%20-%20Tegna.pdf>.

prices for cable, satellite, and other television customers across the nation as a result of increased broadcast television retransmission consent fees.⁹

The parties' pledges to avoid anticompetitive and harmful conduct provide little comfort.¹⁰ The so-called "fix it first" approach, in which corporations voluntarily commit to remedy the most troubling aspects of a proposed merger, is difficult to monitor and easy to circumvent.¹¹ The parties here have made various promises regarding fees, layoffs, the sharing of sensitive information, and increasing diverse representation.¹² But as I have detailed, these behavioral remedies have a poor track record, because they "require a merged firm to operate in a manner inconsistent with its own profit-maximizing incentives."¹³ The FCC can and should protect competition and avoid the risks of inherently flawed behavioral remedies.

I commend the FCC for taking these concerns seriously by reviewing the merger thoroughly, consistent with its statutory authority. As part of its ongoing review, the FCC's Media Enforcement Bureau referred the case to an administrative law judge (ALJ) in February 2023 for a hearing.¹⁴ The parties appealed this decision to the full Commission in March.¹⁵ The Commission rejected the appeal, explaining "the motion does not present justification ... to bypass the hearing process on these factual issues."¹⁶ The parties then appealed to the U.S. Court of Appeals for the D.C. Circuit, asking the court to order the full Commission to rule on the deal to fulfill their official duties.¹⁷ The court ruled for the FCC last month, rejecting the parties' arguments that the FCC had unreasonably delayed or had a duty to vote on the merger without

⁹ *Consent to Transfer Control and Assign Licenses of Tegna, Inc. and SGCI Holdings III LLC, et al.*, MB Docket No. 22-162, Hearing Designation Order, DA 23-149 ¶ 3 (February 24, 2023).

¹⁰ NextTV, "Standard General-Tegna Up Deal Commitment Ante," John Eggerton, April 2023, <https://www.nexttv.com/news/standard-general-tegna-up-deal-commitment-ante>.

¹¹ American Antitrust Institute, "Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," John Kwoka and Diana Moss, November 2011, p. 9, https://www.antitrustinstitute.org/wp-content/uploads/2011/11/AAI_wp_behavioral-remedies_final.pdf.

¹² Business Wire, "Standard General Announces New Momentum for FCC Vote on Its TEGNA Deal as Leading Civil Rights Groups Sign Agreement Formalizing Shared Diversity Goals," press release, May 8, 2023, <https://www.businesswire.com/news/home/20230507005052/en/Standard-General-Announces-New-Momentum-for-FCC-Vote-on-Its-TEGNA-Deal-as-Leading-Civil-Rights-Groups-Sign-Agreement-Formalizing-Shared-Diversity-Goals>; Axios, "Standard General Makes Last Ditch Attempts to Save Tegna Deal," Tim Baysinger, April 17, 2023, <https://www.axios.com/pro/media-deals/2023/04/17/standard-general-makes-last-ditch-attempts-to-save-tegna-deal>.

¹³ American Antitrust Institute, "Behavioral Merger Remedies: Evaluation and Implications for Antitrust Enforcement," John Kwoka and Diana Moss, November 2011, p. 5, https://www.antitrustinstitute.org/wp-content/uploads/2011/11/AAI_wp_behavioral-remedies_final.pdf.

¹⁴ Federal Communications Commission, "Media Bureau Issues Hearing Designation Order for Pending Standard General-Tegna Transactions," press release, February 24, 2023, <https://docs.fcc.gov/public/attachments/DOC-391262A1.pdf>; Axios, "FCC move could kill \$5.4 billion Tegna takeover," Dan Primack and Sarah Fischer, February 27, 2023, <https://www.axios.com/2023/02/27/fcc-delay-tegna-takeover-standard-general>.

¹⁵ *Consent to Transfer Control and Assign Licenses of Tegna, Inc. and SGCI Holdings III LLC, et al.*, MB Docket No. 22-162, Motion to Certify Application for Review of Hearing Designation Order, (March 3, 2023).

¹⁶ *Consent to Transfer Control and Assign Licenses of Tegna, Inc. and SGCI Holdings III LLC, et al.*, MB Docket No. 22-162, Order denying motion to certify, FCC 23M-06 ¶ 4 (March 16, 2023).

¹⁷ Law360, "DC Circ. Asked to Force FCC's Hand on \$8.6B Tegna Deal," Nadia Dreid, March 28, 2023, <https://www.law360.com/articles/1590704/dc-circ-asked-to-force-fcc-s-hand-on-8-6b-tegna-deal>.

referring the matter to an ALJ.¹⁸ This month, the ALJ gave the parties notice that she cannot feasibly conduct and rule on a full hearing prior to May 22, when the parties allege that the funding for the deal will expire.¹⁹ Supporters of the merger continue to complain that the FCC should proceed directly to a full Commission vote.²⁰

The FCC's evaluation of the Standard General-Tegna merger has been consistent with the agency's legal authority and obligations. Each contrary argument raised by proponents of the deal falls flat. Some claim the FCC has veered from its standard process. But the FCC's bureaus often evaluate the effects of a proposed transaction on the public interest without full Commission review.²¹ There is also no reason to accelerate Commission review here. Proponents of the deal argue the FCC was duty-bound to complete its review within 180 days,²² but the FCC's review often extends past that window and the timeline is merely "an informal benchmark" and "carries with it no procedural or substantive rights or obligations."²³ Finally, proponents of the deal object to how the Media Bureau has applied the public interest standard in its review.²⁴ The Bureau acted consistently with agency precedent, which makes clear that the public interest analysis includes consideration of "harms to consumer welfare from artificial

¹⁸ NextTV, "Court Denies Appeal To Force FCC Decision on Standard General-Tegna Deal," Jon Lafayette, April 21, 2023, <https://www.nexttv.com/news/court-denies-standard-generals-appeal-to-force-fcc-vote-on-tegna-deal-before-financing-expires>; Fierce Video, "Court rejects Standard General's initial appeal against FCC over Tegna deal," Bevin Fletcher, April 5, 2023, <https://www.fiercevideo.com/video/court-rejects-standard-generals-initial-appeal-against-fcc-over-tegna-deal#:~:text=The%20D.C.%20Circuit%20Court%20of,a%20proposed%20%248.6%20billion%20deal.>

¹⁹ TheDesk, "FCC Judge won't review Standard General deal for Tegna," Matthew Keys, May 1, 2023, <https://thedesk.net/2023/05/standard-general-tegna-indefinitely-delay-law-judge-fcc/>.

²⁰ Business Wire, "Leading Civil Rights Organizations Call on FCC to Vote on Standard General's Pending Acquisition of TEGNA," press release, April 26, 2023, <https://www.businesswire.com/news/home/20230426006016/en/Leading-Civil-Rights-Organizations-Call-on-FCC-to-Vote-on-Standard-General%E2%80%99s-Pending-Acquisition-of-TEGNA>; NextTV, "Standard General Wants Full FCC Vote on Delayed Tegna Acquisition," Jon Lafayette, February 27, 2023, <https://www.nexttv.com/news/standard-general-wants-full-fcc-vote-on-delayed-tegna-acquisition>.

²¹ See, e.g., *Applications of Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order, 34 FCC Rcd 8436 (MB 2019); *Consent to Transfer Control of Certain License Subsidiaries of Raycom Media, Inc. to Gray Television, Inc.*, Memorandum Opinion and Order, 33 FCC Rcd 12349 (MB 2018); and *Applications of Media General, Inc. (Transferor) and Nexstar Media Group, Inc. (Transferee) et al.*, Memorandum Opinion and Order 32 FCC Rcd 183 (MB/WTB 2016). In each of the proposed transactions, Media Bureau staff, in conducting their public interest analysis pursuant to their delegated authority, considered the transactions' potential impact on retransmission consent fees and blackouts, as well as the amount local news and public affairs programming available to the public.; *Consent to Renew and Assign Licenses of Entertainment Media Trust, KFTK, et al.*, MB Docket No. 19-156, Hearing Designation Order, DA 19-506 ¶ 34 (June 5, 2019).

²² The Desk, "NAB Slams FCC's latest move on TEGNA Deal," Matthew Keys, February 28, 2023, <https://thedesk.net/2023/02/nab-curtis-legeyt-tegna-fcc-standard-general-deal/>.

²³ Letter from FCC Chair Rosenworcel to Senator Cruz and Rep. McMorris Rodgers, April 19, 2023, p. 7-8, <https://docs.fcc.gov/public/attachments/DOC-393048A1.pdf>; Federal Communications Commission, "Informal Timeline for Consideration of Applications for Transfers or Assignments of Licenses or Authorizations Relating to Complex Mergers," <https://www.fcc.gov/general/informal-timeline-consideration-applications-transfers-or-assignments-licenses-or>.

²⁴ TV News Check, "FCC's Blow to Standard General-Tegna Deal is Runaway Regulation," Mark Fowler, March 2, 2023, <https://tvnewscheck.com/regulation/article/fccs-blow-to-standard-general-tegna-deal-is-runaway-regulation/>.

increases in retransmission fees, and harms to broadcast localism through cuts to local journalism and news staffing.”²⁵

The FCC’s careful review of this proposed acquisition reflects the understanding that competition fuels the American economy. As the Biden Administration has recognized, “excessive market concentration threatens basic economic liberties, democratic accountability, and the welfare of workers, farmers, small businesses, startups, and consumers.”²⁶ The Administration specifically highlighted the FCC’s important role in ensuring competition and healthy markets in its 2021 Executive Order promoting competition in the American economy.²⁷

As I’ve emphasized in the past, media mergers and acquisitions can result in less diversity and inclusion in the industry, perpetuating harmful stereotypes and eliminating competition for marginalized workers.²⁸ I have called for federal agencies to review proposed mergers and acquisitions with an eye towards these effects on diversity.²⁹ Economic justice cannot be realized without ensuring that all communities—especially low income and minority communities—are protected from the exploitation and abuse that often accompanies concentrated economic power.

I continue to be concerned that a Standard General (Apollo)-TEGNA merger would have negative effects on competition between broadcast television stations for advertisers, prices for television services that retransmit broadcast station programming, and labor. I appreciate your thorough review of this potential deal and am seeking to better understand the FCC’s review process. To that end, please answer the following questions no later than May 31, 2023. Thank you for your attention to this issue.

1. In what ways can a transaction, such as the proposed transaction between Standard General and Tegna, harm the public interest?
 - a. Can a proposed merger or transaction harm public interests related to consumer prices? If yes, has FCC completed its assessment of any effects of the proposed Standard General-Tegna merger on those interests?

²⁵ Resp. FCC’s Opp’n to Pet. for Writ of Mandamus, In re SGCI Holdings III LLC, No. 23-1084 (D.C. Cir. filed Apr. 11, 2023) at ¶ 17 (Opposition to Petition for Writ of Mandamus) (quoting FCC v. Prometheus Radio Project, 141 S. Ct. 1150, 1155, 1156, 1157, 1158, 1160 (2021)); see also Letter from FCC Chair Rosenworcel to Senator Cruz and Rep. McMorris Rodgers, April 19, 2023, p. 2, <https://docs.fcc.gov/public/attachments/DOC-393048A1.pdf>; *Consent to Transfer Control and Assign Licenses of Tegna, Inc. and SGCI Holdings III LLC, et al.*, MB Docket No. 22-162, Hearing Designation Order, DA 23-149 ¶ 2 (February 24, 2023); 47 U.S.C. § 309(d)(2) (“If a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity],” it must formally designate the application for a hearing in accordance with Section 309(e) of the Act). See also 47 U.S.C § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly . . . except upon application to the Commission.”).

²⁶ White House, “Executive Order on Promoting Competition in the American Economy,” July 9, 2021, <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/07/09/executive-order-on-promoting-competition-in-the-american-economy/>.


²⁷ *Id.*

²⁸ Letter from Senator Warren and colleagues to DOJ Attorney General Garland and Assistant Attorney General Kanter, December 4, 2021, [https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DOJ%20\(Press\)_pdf](https://www.warren.senate.gov/imo/media/doc/Letter%20to%20DOJ%20(Press)_pdf).

²⁹ *Id.*

- b. Can a proposed merger or transaction harm public interests related to competition for advertising placements? If yes, has FCC completed its assessment of any effects of the proposed Standard General-Tegna merger on those interests?
 - c. Can a proposed merger or transaction harm public interests related to station-level staffing? If yes, has FCC completed an assessment of any effects of the proposed Standard General-Tegna merger on those interests?
 - d. Can a proposed merger or transaction harm public interests related to diversity, including diversity of programming? If yes, has FCC completed an assessment of any effects of the proposed Standard General-Tegna merger on those interests?
2. What factors may cause the FCC's review of a merger or transaction to extend beyond 180 days?

Sincerely,



Elizabeth Warren
United States Senator

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