REQUEST FOR WAIVER AND GRANT OF APPLICATIONS

Marshall Broadcasting Group, Inc. ("MBG") is seeking Commission consent to acquire television stations KPEJ-TV, Odessa, Texas, KMSS-TV, Shreveport, Louisiana and KLJB, Davenport, Iowa (collectively, the "Stations") pursuant to purchase agreements with Nexstar Broadcasting, Inc. ("Nexstar").[1] As disclosed in the applications, upon consummation of these acquisitions, MBG intends to enter into shared services agreements ("SSAs") and agreements for the sale of commercial time ("JSAs" and collectively with the SSAs, the "Sharing Agreements") between each MBG Station and an in-market Nexstar television station.[2] In addition, because MBG does not have a private equity backer investing substantial equity, MBG anticipates that its lenders may require that Nexstar provide contingent support for its debt financing to acquire the Stations.

On March 31, 2014, the Commission adopted a new rule (47 C.F.R. §73.3555, Note 2(k)(2), the "New JSA Rule") which states that "where two television stations are both located in the same market . . . and a party . . . with a cognizable interest in one such station sells more than 15 percent of the advertising time per week of the other such station, that party shall be treated as if it has an interest in the brokered station . . . ."[3] The JSAs between MBG and Nexstar contemplate that Nexstar will sell all of the available local advertising time on the Stations. Accordingly, MBG (and Nexstar to the extent necessary) hereby request a waiver of 47 C.F.R. §73.3555, Note 2(k)(2) with respect to the attribution of the Stations to Nexstar.

Pursuant to the Order, "the Commission has an obligation to take a hard look at whether enforcement of a rule in a particular case serves the rule's purpose or instead frustrates the public interest."[4] The Order states that in considering a request for waiver of the New JSA Rule, the Commission will review the totality of the circumstances to assess whether strict compliance with the rule is inconsistent with the public interest, including factors which demonstrate that the

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[1] Stations KPEJ-TV and KMSS-TV currently are owned by subsidiaries of Communications Corporation of America ("CCA"). Nexstar and CCA have entered into a stock purchase agreement pursuant to which Nexstar will purchase all of the outstanding shares of CCA stock from its shareholders. KLJB currently is owned by a subsidiary of The Grant Company ("Grant"). Nexstar and Grant have entered into a stock purchase agreement pursuant to which Nexstar will purchase all of the outstanding shares of Grant stock from its shareholders. Nexstar currently is the owner and licensee of KMID, Odessa, Texas, KTAL-TV, Texarkana, Arkansas and WHBF-TV, Rock Island, Illinois. Based on its ownership of KMID, KTAL-TV and WHBF-TV, Section 73.3555(b) of the Commission's rules prohibits Nexstar from acquiring the Stations. Accordingly, Nexstar has agreed to sell the Stations to MBG. Pursuant to asset purchase agreements with Nexstar that MBG will assume, Nexstar will sell stations KPEJ-TV and KMSS-TV to MBG concurrently with closing of the CCA transaction and will sell KLJB to MBG concurrently with closing of the Grant transaction.

[2] Drafts of each proposed Sharing Agreement are included with the applicable Station's application for FCC consent.

[3] *2014 Quadrennial Regulatory Review –Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant To Section 202 of the Telecommunications Act of 1996*, Further Notice Of Proposed Rulemaking And Report And Order (FCC 14-28, rel. April 15, 2014, eff. June 19, 2014) (the "Order").

[4] *Order* at para. 364 (internal citations omitted).

licensee of the station whose advertising is being sold under the JSA has the incentive and ability to maintain independent operations and programming decisions, and whether strict application of the rule would adversely affect the Commission's core principles of competition, diversity, or localism. The Commission will "review and consider any such request on an expedited basis."

As shown below, waiver of the New JSA Rule in this case will promote the core Commission principles of diversity and localism. It will allow a minority-owned entity to enter the field of broadcast television ownership with an initial purchase of three full-power network affiliated stations, and will facilitate that entity's efforts to increase those stations' offerings of locally produced news, sports and specialized programming directed to minorities in the Stations' markets. At the same time, MBG does not believe the Sharing Agreements or the possible Nexstar contingent support of MBG's financing, alone or in combination, will provide Nexstar with the opportunity, ability, or incentive to exert significant influence over the programming or operations of the Stations; thus, waiver of the New JSA Rule will not result in any harm to competition. Accordingly, Commission grant of the requested waivers and associated applications for assignment of license is in the public interest.

MBG's Shareholder

MBG's sole shareholder is Pluria Marshall, Jr. Mr. Marshall is a longtime media executive and civic activist who started his media career in 1979, while in college, with a series of media internships and part-time marketing positions at Cable News Network (CNN) and WXIA-TV in Atlanta, Georgia. Immediately after graduating, Mr. Marshall participated in a yearlong management development program at WLBT-TV in Jackson, Mississippi which led to his tenure as vice president and general manager at WLBM-TV in Meridian, Mississippi.

During his five-year tenure at WLBM-TV, Mr. Marshall attempted to become a broadcast station owner four separate times, with each transaction falling through due to his inability to obtain financing. Mr. Marshall subsequently sought to purchase several newspapers from Media General, but again was unable to obtain financing for the purchase.

In April 1996, Mr. Marshall finally was able to enter the broadcast ownership arena with his purchase of AM broadcast station WLTH, Gary, Indiana, a "news talk" radio station serving Northwest Indiana and the south Chicago suburbs.[5] Mr. Marshall was able to make this purchase only because the station was previously financed by a Black insurance company in Chicago, and Mr. Marshall's company assumed the debt and obligations of the previous owner. He continues to own this radio station today.

Mr. Marshall also currently is president and chief executive officer of Equal Access Media Inc., which owns several newspapers serving African-American and minority communities, including The Texas Freeman and Houston Informer Newspapers, The Los Angeles Wave Newspaper Group, and the Los Angeles Independent Publications Group. In 2011, Mr. Marshall founded Integrated Multicultural Media Solutions, a media rep firm that assists advertisers and agencies in marketing products and services to multicultural audiences by

5 Mr. Marshall is the sole shareholder of WLTH Radio, Inc., the licensee of WLTH.

providing marketing services, including promotions, grassroots marketing, advertising placement and custom content creation.

As an established and long-time media operator, Mr. Marshall has both the background and the skills necessary to maintain independent operations and programming decisions for the Stations.

A. Application of the New JSA Rule in This Case Would Not Adversely Affect Diversity and Localism

Diversity

The Commission has long been concerned with diversity of ownership of broadcast stations. The Commission's most recent "snapshot report" of television station ownership reflects that African-American ownership of television stations is abysmally low, with African-Americans controlling only 0.7% of all television broadcast stations.[6] In order to further diversity ownership, the Commission is again proposing to adopt several policies to encourage additional minority ownership[7]; however, the Commission need not wait until it adopts new diversity policies to increase minority ownership of television stations. Through Commission waiver of the New JSA Rule and grant of the assignment applications, Mr. Marshall, an African-American, would become the owner of three full-power Fox-affiliated television stations.

Localism

As the Commission is well aware, sharing agreements facilitate cost savings and efficiencies that enable the provision of more locally oriented programming on stations. Assuming that MBG could somehow find a way to independently acquire the Stations (which is, as discussed below, impossible), MBG could acquire the Stations and tread water thereafter, making no investments in additional service to the Stations' viewers. Doing so, however, would serve neither MBG's objectives nor the public. MBG wants its ownership of the Stations to have an impact in their communities. It wants to immediately realize its plans to improve the Stations' service by bringing additional local news and other specialized programming to the Stations' markets. These are expensive undertakings, and they cannot be accomplished on any foreseeable timetable without the support of Nexstar through the Sharing Agreements. The Sharing Agreements will result in the following additional local programming:

Midland-Odessa: Currently, there is no local programming broadcast on KPEJ-TV. Under the Sharing Agreements, MBG will work with Nexstar to launch hour-long news programs Monday through Friday at both 7:00 a.m. and 9:00 p.m. (except that on Fridays at 9:30 p.m., KPEJ-TV will broadcast a high school sports highlight program that focuses on local and regional high school football and basketball coverage). Currently, the market has no local news at either of these times due to the broadcast of network programming in those time periods.

6 *Order* at para. 254.

7 *Id.* at para. 271.

MBG also plans, with assistance from Nexstar, to launch in-depth coverage of local college football on Sunday evenings at 9:30 p.m. Accordingly, the Sharing Agreements will result in 10.5 hours of news and other local programming in periods when there currently is no local programming available in the market.

In addition to the 10.5 hours of new local programming on KPEJ-TV, Nexstar intends to leverage some of the cost savings it will achieve under the Sharing Agreements to add six (6) additional hours of programming on its station KMID. These new programs will include a new 30 minute newscast broadcast Monday through Friday at 12:00 p.m. dedicated to state wide news,[8] and a new 30 minute newscast broadcast Monday through Friday at 6:00 p.m. In addition, Nexstar will launch a 10:00 p.m. newscast on KMID on Saturday and Sunday.

In total, the Sharing Agreements will result in 16.5 hours of new local programming available in the Midland-Odessa market. The Sharing Agreements will also facilitate the construction of new state-of-the-art, HD news studios for KPEJ-TV and KMID, allowing both stations to compete more effectively against KWES and KOSA (which currently offer HD local programming).

Shreveport: Currently, CCA broadcasts 2.5 hours of news per week on KMSS-TV. That news is regional in nature and produced at CCA's Tyler, Texas station. Under the Sharing Agreements, MBG will work with Nexstar to launch hour-long news programs Monday through Friday at both 7:00 a.m. and 9:00 p.m. (except that on Fridays at 9:30 p.m., KMSS-TV will broadcast a high school sports highlight program that focuses on local and regional high school football and basketball coverage). Currently, the market has no local news at either of these times due to the broadcast of network programming in those time periods. MBG, with assistance from Nexstar, also will launch a Monday through Friday 30 minute newscast at 5:30 p.m. and a 30 minute newscast at 9:00 p.m. on Saturdays and Sundays, as well as a 30 minute program with in-depth coverage of local college football on Sunday evenings at 9:30 p.m. Accordingly, the Sharing Agreements will result in an increase from 2.5 hours per week of regional news coverage on KMSS-TV to 14 weekly hours of locally produced (in-market) news and sports programming airing each day of the week.

In addition to the 14 hours of new local programming on KMSS-TV, Nexstar intends to leverage some of the cost savings it will achieve under the Sharing Agreements to add 7.5 additional hours of programming on its station KTAL-TV. These new programs will include a new 30 minute newscast broadcast Monday through Friday at 12:00 p.m. dedicated to state wide news[9] and a new hour long local talk/variety program airing Monday through Friday at 3:00 p.m.

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8 This program will be launching on all Nexstar stations in the State of Texas upon completion of the CCA acquisition.

9 This program will be launching on all Nexstar stations in the State of Louisiana upon completion of the CCA acquisition.

In total, the Sharing Agreements will result in 21.5 hours of new local programming available in the Shreveport market. The Sharing Agreements will also give MBG access to KTAL-TV's HD news studios.

In addition to the above, MBG intends to reach out to Grambling State University to form a partnership with the University to enhance its exposure in the market and throughout the state. Specific plans will be developed in partnership with the University.

Quad Cities: KLJB currently is party to a news production contract with another in-market station (KWQC-TV, licensed to a subsidiary of Media General), which extends through December 31, 2015. Pursuant to this agreement, KLJB currently broadcasts a 30 minute news program Monday through Sunday at 9:00 p.m. (i.e., 3.5 hours of news per week). Upon expiration of this agreement, MBG will convert the existing 30 minute program to a one hour newscast Monday through Sunday at 9:00 p.m. (immediately adding an additional 3.5 hours of local news per week on KLJB). MBG also plans to add other local programming after the KWQC agreement terminates, including a weekly 30 minute sports program and additional Green Bay Packers programming, and is considering the feasibility of adding a morning news program Monday through Friday from 7:00-9:00 a.m. MBG and Nexstar also intend to explore ways in which new additional local programming may be added to KLJB prior to expiration of the KWQC-TV agreement.

In addition to the local programming above, in each of the above markets, the Sharing Agreements will allow both MBG and Nexstar to increase their programming support of local non-profits by increasing the exposure for such entities across multiple platforms.

Finally, with the efficiencies and cost savings gained from the Sharing Agreements, MBG intends to develop a minority oriented public affairs program similar to the nationally broadcast programs *Meet the Press* and *Face the Nation*. This program would include discussions and guests of significant interest to minorities in the Stations' communities; guests would include elected officials as well as prominent local minority business owners. The programs would focus on informing viewers about government and community issues.

B. MBG Will Have Ample Incentive and Ability to Operate Its Stations Independently

As demonstrated above, a waiver of the New JSA Rule and grant of the assignment applications will indisputably foster the Commission's goals of diversity and localism. Moreover, as discussed below, none of the elements of the proposed transaction will undermine MBG's incentive and ability to operate the Stations independently.

Purchase Agreements

MBG intends to assume the obligations of Mission Broadcasting, Inc. ("Mission"), as buyer of the Stations under various asset purchase agreements currently in effect between Nexstar and Mission. These purchase agreements contain standard representations, warranties and covenants which are customary for agreements of this type. The purchase agreements do not contemplate the purchase only of the FCC licenses and limited other assets. To the contrary, MBG will receive significant assets of the Stations, including program contracts, equipment, and real estate interests in connection with studio and tower sites.[10]

The JSAs

Given the high cost of establishing, training and managing sales staffs for the Stations, MBG believes its objectives of immediately bringing local programming and service improvements to the Stations' viewers can only be served by entering into JSAs with in-market stations owned by Nexstar. The JSAs will allow the Stations access to Nexstar's highly trained sales management team as well as employment of account executives trained in Nexstar's training program, which will generate higher revenue for the Stations. Further, shifting the significant bulk of sales employee benefit costs to Nexstar will save the Stations significant amounts.

The JSAs into which MBG and Nexstar will enter are standard agreements that have been approved by the Commission in numerous transactions prior to March 2014. MBG will have ultimate control over all material aired on the Stations and will have the right to reject advertising sold by Nexstar which, in MBG's sole discretion, does not comport with the public interest. Consistent with policies enforced for years by the Media Bureau, MBG will be entitled to 70% of the revenue for advertising sold by Nexstar on the Stations and will not provide for any bonus payments to Nexstar for achieving revenue goals. It will not be a fixed-fee payment. The higher the level of advertising revenue for the Stations, the higher MBG's share of that revenue will be, and the more service MBG can provide to the Stations' communities. This provides MBG with an obvious incentive to seek the best possible programming and ensure that advertising revenue on the Stations is maximized.

The SSAs

MBG and Nexstar propose to enter into SSAs, which will be the primary vehicle through which MBG will realize cost savings in its operation of the Stations. The SSAs will allow the Stations to leverage Nexstar personnel for engineering support, master control, traffic and billing, promotion creation and other administrative station functions. They will also allow the Stations to access the high-definition news and studio facilities that Nexstar is constructing in the markets served by the Stations. (To replicate these facilities for its Stations would require a multi-million dollar expenditure by MBG.) By sharing facilities with the Nexstar stations, the Stations will save facility rental payments, reduce utility costs, and reduce janitorial and other property maintenance costs. The sharing of facilities and services under the SSAs relate to administration, back-office, maintenance, and other functions that do not relate to control of the

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[10] Both KPEJ-TV and KMSS-TV operate on antenna structures owned by Crown Castle International, which agreements will become assets and liabilities of MBG. Upon consolidation of KMSS-TV into the newly constructed KTAL-TV facilities, the existing KMSS-TV office/studio lease will be terminated, saving MBG nearly $50,000 per year while giving KMSS-TV access to improved facilities. KPEJ-TV will be consolidated into KMID's improved facilities and the outdated KPEJ-TV building will be sold.

Stations and Station programming. SSAs have never been considered to implicate attribution rules, and the Commission has not proposed a rule otherwise.

The SSAs will also provide for Nexstar to produce and supply the Stations with local news and information programming, not exceeding 15% of the Stations' weekly programming hours. MBG will have full control of the content of those newscasts. The SSAs will provide for MBG and Nexstar to collaborate on an operating memo governing Nexstar's production of news programming, and MBG intends to consult closely with Nexstar and offer input into editorial decisions, story selection, newscast "look" and design, and overall direction and future plans for news and information on the Stations.

MBG will make periodic payments of fees to Nexstar for its services under the SSA. These fees will be based solely on the market value of the services rendered.

Financing

Over the last 30 years, Mr. Marshall has spent significant time and effort seeking to purchase television and/or radio stations. The single key factor in each unsuccessful opportunity has been his inability to access the funding necessary for the purchase. As noted above, on four separate occasions in the late 1980s and early 1990s, Mr. Marshall diligently sought, but was unable to obtain financing for station purchases. Over this period, Mr. Marshall made contact with at least eight institutional lenders that commonly provide broadcast financing. All of those lenders gave Mr. Marshall a myriad of reasons why they would not provide financing: unwillingness to finance "one off" acquisitions; markets too small; insufficient experience.

The purchase price for the Stations is $58,600,000. Based on Mr. Marshall's past experience with attempting to secure financing for station acquisitions, it is unlikely that he will be able to secure financing for the Station acquisitions without leveraging Nexstar's balance sheet in some manner for support. Mr. Marshall's prior experience is illustrative: banks simply will not finance new television entrants, with their modest assets and lack of operational track record, absent the backstop of an entity with greater amounts of both. It is unlikely that MBG will be able to finance its acquisition of the Stations unless Nexstar agrees to stand behind the financing in the event of MBG's default. If the presence of Nexstar support that is contingent upon a default by MBG of its loan obligations is a bar to a waiver in this case, then the Commission will have rendered it impossible for any new entrant—minority-controlled or otherwise—to obtain entry into broadcasting in any meaningful way.

Moreover, there is a reason why Note 2(e) to Section 73.3555 of the Commission's rules, which has existed for years, states that contingent interests "shall not be attributed unless and until conversion is affected." Contingent support would provide Nexstar absolutely no ability to influence or control MBG's operation of its stations. It would specify nothing in the way of programming or operational restrictions or covenants enforceable by Nexstar against MBG. All it would provide is that Nexstar will ensure payment of MBG's loan if MBG does not pay. In fact, MBG would not even be a party to any such support obligation; it would be solely between Nexstar and MBG's lenders. Unless and until Nexstar was actually required to perform under its support obligation, such obligation would provide Nexstar with no vehicle through which it could influence or control MBG's operations.

In short, leveraging Nexstar's balance sheet may be critical to MBG's ability to finance its acquisition of the Stations. If the Commission's long-proclaimed goal of fostering diversity in broadcast ownership has any meaning, the presence of such contingent support cannot be a bar to the waiver being requested here.

Competition

As demonstrated above, the various agreements governing MBG's acquisition of the Stations provide MBG with ample incentive and ability to control and independently operate the Stations. Moreover, the Department of Justice ("DOJ") has reviewed Nexstar's proposed acquisition of CCA and determined that Nexstar's entry into JSAs with Mission, the prior proposed purchaser of KPEJ-TV and KMSS-TV, did not raise competition issues. The DOJ also has not raised competition concerns with respect to Nexstar's entry into a JSA in Quad Cities with respect to station KLJB. Accordingly, MBG respectfully requests that the Commission follow the expert agency's lead and find that these proposed JSAs do not raise competition issues.

C. Conclusion

MBG believes it is presenting the Commission with a textbook case for waiver of the New JSA Rule. A waiver of the rule will allow a new, minority-controlled company to enter the television industry with the purchase of three full-power network-affiliated stations, and immediately bring its public service vision to bear on the Stations' markets. This transaction will unquestionably further the Commission's goals of diversity and localism, while not substantially harming competition. MBG respectfully requests that the Commission waive the New JSA Rule and grant its applications to acquire stations KMSS-TV, KPEJ-TV and KLJB.