

Congress of the United States

Washington, DC 20515

May 16, 2023

The Honorable Sharon Diskin
Acting Inspector General
Federal Communications Commission
45 L Street, N.E.
Washington, DC 20554

Dear Ms. Diskin,

As the Chair of the Committee on Energy and Commerce and the Ranking Member of the Committee on Commerce, Science, and Transportation (“Senate Commerce Committee”), we write to request that you, as the Acting Inspector General of the Federal Communications Commission (“FCC”), investigate Chairwoman Jessica Rosenworcel’s unprecedented actions against Standard General’s application to acquire TEGNA (the “Standard General-TEGNA transaction”), specifically, the decision to have the FCC’s Media Bureau send the Standard General-TEGNA transaction to an Administrative Law Judge (“ALJ”). No less than five aspects of that decision and the circumstances surrounding it suggest that it was motivated by a biased desire to defeat the Standard General-TEGNA transaction. If that is true, then the FCC is serving as a partisan cudgel, rather than fulfilling its mission to ensure a robust and competitive market.

First, Chairwoman Rosenworcel refused to engage with the applicants prior to the Media Bureau’s issuance of a Hearing Designation Order (“HDO”). We understand that during the Department of Justice’s (“DOJ”) monthslong review of the Standard General-TEGNA transaction, FCC staff repeatedly informed Standard General that if and when the DOJ’s review concluded, they would present the applicants with any concerns, allowing the applicants time to address them. Yet after the DOJ completed its review without mounting any challenges, the FCC went radio silent: reportedly, in the three months prior to issuing the HDO, the Media Bureau either declined or ignored Standard General’s sixteen attempts to engage with it. During this same period, the FCC, including the Media Bureau, had at least eight meetings with individuals and entities who opposed the Standard General-TEGNA transaction.¹

¹ NewsGuild Report of Oral Ex Parte Presentation, Feb. 23, 2023 (for Feb. 21, 2023 call between President of NewsGuild and Chairwoman Rosenworcel), <https://www.fcc.gov/ecfs/document/102240971925976/1>; DirecTV Notice of Ex Parte Communication, Feb. 23, 2023 (for Feb. 21, 2023 meeting with Media Bureau staff), <https://www.fcc.gov/ecfs/document/102241840404410/1>; ATVA Notice of Ex Parte Communication, Dec. 6, 2022 (for Dec. 2, 2022 meeting with Commissioner Starks’s office), <https://www.fcc.gov/ecfs/document/1206631108727/1>; ATVA Notice of Ex Parte Communication, Dec. 2, 2022

Second, the decision to refer such a large transaction to an ALJ without a Commission-level vote is itself extraordinary. This is the first time the FCC has designated for an ALJ hearing a transaction of this size that no antitrust regulator has challenged. Neither of the FCC's two justifications for doing so—the potential effect on station jobs and retransmission consent rates—has ever before been asserted as a basis for blocking a broadcast license transfer. Moreover, the Commission's own internal standards limit the Media Bureau from taking such novel action on delegated authority.

Third, the HDO conveniently extends the FCC's review beyond the Standard General-TEGNA transaction's 15-month acquisition window. Had the FCC processed the Standard General-TEGNA transaction on the same timeline as all other comparable transactions (none of which were designated for a hearing), it would have completed its review in less than six months, well within the acquisition window.

Fourth, FCC staff provided incorrect information regarding the process by which the ALJ designation may be reversed. When Chairwoman Rosenworcel's staff briefed the bipartisan staff of the Senate Commerce Committee, they said that there was no mechanism for reversing the HDO or bringing the matter back before the full FCC for a decision. That statement was misleading at best: at least two FCC rules permit immediate reversal of an HDO released under delegated authority and a chairman can bring the HDO up for a vote at any time.

Fifth and finally, Chairwoman Rosenworcel refused to respond to reasonable congressional inquiries regarding this transaction. On April 5, 2023, we wrote Chairwoman Rosenworcel seeking answers regarding the decision to send the Standard General-TEGNA transaction to an ALJ for review without a Commission-level vote. Her response to our letter was satisfactory only in that it met the deadline. She failed to respond to most of the questions, claiming that she was prevented by pending legal matters that rendered her selectively speechless in the face of congressional oversight.

Taken together, these factors strongly suggest that the true reason underlying Chairwoman Rosenworcel's unilateral decision to send the Standard General-TEGNA transaction to an ALJ was a biased desire to prevent the deal from moving forward. We therefore respectfully request that you open an investigation into whether Chairwoman Rosenworcel and her staff acted with bias towards the Standard General-TEGNA transaction by (a) directing Media Bureau staff to issue an HDO, (b) not engaging with applicants prior to the HDO, (c) misleading applicants or other Commissioners, (d) obstructing congressional oversight, or (e)

(for Nov. 30, 2022 meeting with Commissioner Carr's office, Dec. 1, 2022 meeting with Chairwoman Rosenworcel's office, and Dec. 1, 2022 meeting with Media Bureau staff), <https://www.fcc.gov/ecfs/document/1202862101264/1>; NewsGuild Report of Oral Ex Parte Presentation, Nov. 30, 2022 (for Nov. 29, 2022 call between NewsGuild and Commissioner Carr), <https://www.fcc.gov/ecfs/document/113056479008/1>; NewsGuild Report of Oral Ex Parte Presentation, Nov. 23, 2022 (for Nov. 21, 2022 call between NewsGuild and Commissioner Starks), <https://www.fcc.gov/ecfs/document/1124034616424/1>.

taking any other action. In investigating this issue, we ask that you consider the following documents and information:

1. Please review all communications concerning the Standard General-TEGNA transaction between Chairwoman Rosenworcel (including her staff), and:
 - a) Other Commissioners and their staffs;
 - b) Media Bureau staff;
 - c) The applicants; and
 - d) The opponents and adverse commenters to the Standard General-TEGNA transaction.
2. Please consider whether there were broadcast transactions during Chairwoman Rosenworcel's tenure that had or may have affected retransmission consent fees but were approved by the FCC. If so, did the applicants make remedial conditions or commitments comparable to those made by the applicants in the Standard General-TEGNA transaction?
3. Please consider whether there were broadcast transactions during Chairwoman Rosenworcel's tenure that resulted in industry consolidation and the potential for station job losses but were approved by the FCC, despite lacking jobs commitments from applicants as exist in the Standard General-TEGNA transaction?

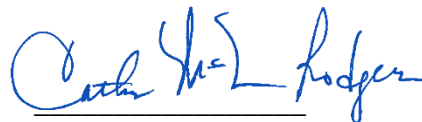
In addition, we would request that you investigate the questions and document requests raised in our April 5 letter, which Chairwoman Rosenworcel dismissed. They are enclosed for your convenience.

We appreciate your attention to this matter.

Sincerely,



Ted Cruz
Ranking Member
Committee on Commerce,
Science, and Transportation



Cathy McMorris Rodgers
Chair
Committee on Energy and
Commerce

Encl: Questions from April 5 Letter to Chairwoman Rosenworcel

Questions from April 5 Letter to Chairwoman Rosenworcel

1. Please explain why the HDO was issued by the Media Bureau under delegated authority rather than through a full Commission vote.
2. Please list all HDOs the Commission has issued in the last three decades regarding transactions exceeding \$1 billion. For each such order, please indicate whether it was issued by a full Commission vote or under delegated authority.
3. The HDO claims there are substantial and material questions of fact regarding whether the transaction will lead to rate increases “as a result of contractual clauses that take immediate effect after the consummation” of the transaction and whether the transaction will “result in labor reductions at local stations.” Please list all orders in which the Commission previously analyzed and addressed:
 - a. Retransmission rate increases that were “a result of contractual clauses that take immediate effect after the consummation” of a transaction.
 - b. “Labor reductions at local stations” as a result of a transaction.
4. Please explain the following theories advanced by the Media Bureau:
 - a. How retransmission consent rates are a part of reviewing whether a license transfer is in the public interest.
 - b. How labor relations are a part of reviewing whether a license transfer is in the public interest.
5. Please state whether the Commission has ever found the following:
 - a. An increase in retransmission consent fees resulting from a broadcast television transaction to constitute a stand-alone public interest harm. If so, please list each order in which the Commission has done so.
 - b. A change in labor relations to constitute a stand-alone public interest harm in a broadcast television transaction. If so, please list each order in which the Commission has done so.
6. Is there any principle limiting when Media Bureau staff can designate a license transfer for a hearing without any input from the full Commission? If so, please describe this principle in full.
7. When did the Media Bureau begin drafting the February 24, 2023 HDO?
8. When did the Media Bureau provide a draft(s) of the February 24, 2023 HDO to each Commissioner? Please provide documentary support for each such notification.

9. Why did the Media Bureau not give Commissioners 48 hours' notice of the February 24, 2023 HDO as is customary with significant bureau-level items?
10. Please provide all documents concerning communications between Standard General or TEGNA and anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023. If any oral communications or meetings took place between the applicants and anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023, please identify the dates on which those meetings or oral communications took place and the subject of those communications.
11. Please provide all documents concerning communications between (A) NewsGuild-CWA, David Goodfriend, or Andrew Schwartzman and (B) anyone in the Media Bureau or Chairwoman Rosenworcel's Office from September 1, 2022 to February 24, 2023. If so, please identify the dates on which those meetings or oral communications took place and the subject of those communications.
12. Has anyone in the Office of the Chairwoman or any Commission staff had any communications with Byron Allen or any board member, employee, or contractor of Allen Media Group or Entertainment Studios regarding the Standard General-TEGNA transaction? If so, please provide all documents concerning those communications and identify the dates on which any meetings or oral communications took place and the subject of those communications.
13. For the period when the Commission's review of the Standard General-TEGNA transaction was pending, did anyone in the Office of the Chairwoman or any Commission staff have any communications mentioning any person or company that sought unsuccessfully to purchase TEGNA? If so, please provide all documents and communications (including summaries and dates of any oral communications) regarding Byron Allen, Allen Media Group, or any other person or company (other than Standard General) that sought to purchase TEGNA.
14. The Commission strives to decide all transactions within 180 days and maintains a shot clock for transactions. Please list all transactions in which the Commission took 375 days or more to make a decision, including a citation for the transaction. Please also identify whether it was decided by the full Commission or under delegated authority, as well as the number of days the decision took according to the Commission's own shot clock.