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Skullduggery at the FCC

Gigi Sohn withdraws, but Chair Jessica Rosenworcel tries to kill a merger on her own.

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Tegna Inc. headquarters in McLean, Va.

PHOTO: ANDREW HARRER/BLOOMBERG NEWS

Gigi Sohn withdrew her stalled nomination for the Federal Communications Commission on Tuesday after Joe Manchin (D., W.Va.) announced his opposition. Chair Jessica Rosenworcel will now have to advance her progressive agenda without a wingman, but her effort to kill a major media acquisition on the sly shows what she's up to.

Ms. Sohn blamed “unrelenting, dishonest and cruel attacks” for her failure to be confirmed in two Congresses. But she has a long record as an unrelenting partisan and her attacks on conservative media suggested she couldn't be trusted to be fair-minded in regulating the airwaves.

All of the more so given the political mischief currently going on at the agency. The Standard General hedge fund last February proposed a \$5.4 billion deal to acquire TV station operator Tegna, in part with financing from Apollo Global Management, a private-equity firm. Cue the howls from progressive groups, the NewsGuild-Communications Workers of America, and Democrats in Congress.

Reps. Nancy Pelosi and Frank Pallone told Ms. Rosenworcel in an Oct. 6 letter that the “transaction deserves your full and complete attention to determine if it truly serves the public interest.” Sen. Elizabeth Warren asked Ms. Rosenworcel to use the agency’s “full statutory authority to block this acquisition and address increasing consolidation in the media industry.”

They say Standard General will lay off employees and raise re-transmission fees charged to TV providers for carrying Tegna’s local content despite its commitments to the contrary. The goal of the acquisition is to increase—not slash—investment in local news coverage, which often rates higher than cable news.

As an aside, media mogul Byron Allen, a major Democratic donor, was reportedly a spurned suitor of Tegna. Could that have anything to do with Mrs. Pelosi’s intervention?

The Justice Department antitrust cops declined to challenge the acquisition before its waiting period expired. While the FCC lacks authority to enjoin mergers, the 1934 Communications Act lets the agency block transfers of station licenses if it finds they don’t serve “the public interest, convenience, and necessity.”

Prior FCC reviews have considered how deals promote diversity. Progressives should be pleased that Standard General is led by South Korean immigrant Soo Kim, and the deal would create the largest minority-owned, female-led broadcaster in U.S. history. Yet they say racial diversity in this case shouldn’t matter. Does Mr. Kim not belong to the correct minority group?

Instead of calling a commission vote on the deal as is usually done, Ms. Rosenworcel’s Media Bureau chief issued a memo on Feb. 24 designating the deal for an administrative hearing. She knows this could de facto kill the transaction. In the past 30 years, no broadcast license transfer has completed the hearing process in fewer than 358 days, and the average time is 799.

The deadline for the deal’s financing expires on May 22, and it would be difficult after that for Standard General to obtain comparable terms. As a general rule, an FCC bureau hearing order cannot be appealed in court. Were the administrative law judge to rule in favor of the deal, the Media Bureau controlled by Ms. Rosenworcel could still overrule him

ROSENWORCEL COULD SIGN OFF ON THE MERGER.

This is the first time the FCC has used an administrative action to effectively block a merger of this size that hasn't been challenged by antitrust regulators. It sets a precedent that the chairman can pocket veto any deal for any reason. Why have a bipartisan commission if the chair can unilaterally dictate policy?

Standard General has few options, though it could mount a constitutional challenge to the commission's administrative process and structure as some businesses have done to the Federal Trade Commission under Chair Lina Khan. Amid the FCC's 2-2 partisan deadlock, Ms. Rosenworcel will now likely try to bypass her fellow commissioners.

Ms. Sohn's defeat is good news for freedom of the airwaves, but Ms. Rosenworcel seems happy to do plenty of damage on her own.

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