

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
HAWAIIAN TELCOM SERVICES)
COMPANY, INC.) MB Docket No. 23-228
)
Complainant,) File No. CSR-9012-C
)
v.)
)
NEXSTAR MEDIA INC.,)
)
Defendant.)

MEMORANDUM OPINION AND ORDER AND
NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: February 7, 2024

Released: February 7, 2024

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it a complaint¹ filed by Hawaiian Telcom Services Company, Inc. (Hawaiian Telcom) against Nexstar Media Inc. (Nexstar) alleging violations of the requirement to negotiate retransmission consent in good faith pursuant to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act), and the Commission’s implementing rules.² Hawaiian Telcom asserts that Nexstar, as the licensee of six television broadcast stations (Stations) on whose behalf it negotiated renewal of a 2020 agreement governing carriage of the Stations’ signals in the Honolulu, Hawaii Designated Market Area (DMA), breached its statutory duty to negotiate in good faith by: (i) refusing to extend the agreement until the parties reached either a new agreement or an impasse (Count I);³ and (ii) conditioning retransmission consent on Hawaiian Telcom’s acceptance of three proposals that, among other things, sought to prevent it from seeking further relief at the Commission

¹ Verified Retransmission Consent Complaint, MB Docket No. 23-228, File No. CSR-9012-C (filed July 5, 2023) (July 5 Complaint); Amended Verified Retransmission Consent Complaint, MB Docket No. 23-228, File No. CSR-9012-C (filed July 17, 2023). As discussed *infra*, Hawaiian Telcom’s Amended Complaint, filed on July 17, 2023, alleged additional grounds for finding that Nexstar failed to negotiate in good faith. Because Hawaiian Telcom in that complaint also reasserted the initial claims put forth in its July 5 Complaint, for ease of reference, we refer to the Amended Complaint as the “Complaint” or “July 17 Complaint.”

² 47 U.S.C. § 325(b)(3)(C); 47 CFR § 76.65. See also 47 CFR § 76.7.

³ Complaint at 2; Hawaiian Telcom’s Reply to Answer, MB Docket No. 23-228, File No. CSR-9012-C (filed Aug. 17, 2023) at 17 (Reply).

with respect to the parties' negotiation and final renewal agreement (Count II).⁴ For the reasons set forth below, we find that Hawaiian Telcom: (i) has failed to meet its burden of proof with respect to Count I; and (ii) has satisfied its burden of proof with respect to Count II, in particular, that Nexstar breached its duty to negotiate in good faith under the "totality of the circumstances" test by proposing terms for renewal of the parties' agreement that would have foreclosed Hawaiian Telcom from filing complaints with the Commission.⁵ We, therefore, grant the Complaint, in part, and propose a forfeiture amount of \$120,000 against Nexstar with respect to each of the six continuing violations in this case.

II. BACKGROUND

A. Relevant Law

2. Section 325(b)(3)(C) of the Act imposes on television broadcast stations and multichannel video programming distributors (MVPDs) a duty to negotiate retransmission consent in good faith.⁶ Specifically, section 325(b)(3)(C)(ii) directs the Commission to establish rules that "prohibit a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith."⁷ Section 325 also provides that "enter[ing] into retransmission consent agreements containing different terms and conditions . . . with different [MVPDs]," is not a violation of the duty to negotiate in good faith "if such different terms and conditions are based on competitive marketplace considerations."⁸ In the 2000 *Good Faith Order*, the Commission adopted rules that implemented the statutory good faith negotiation provision and established complaint procedures for alleged violations of the rules.⁹ The *Good*

⁴ Specifically, Hawaiian Telcom asserts that Nexstar proposed to condition the grant of retransmission consent by requiring that Hawaiian Telcom "release Nexstar from claims that it acted in bad faith, withdraw the Initial Complaint, and forego all rights to file future complaints against Nexstar." Complaint at 14.

⁵ We decline to address at this time whether the other contemporaneous proposals put forth by Nexstar – specifically the proposals to require that Hawaiian Telcom release Nexstar from its bad faith claims and to require that Hawaiian Telcom withdraw its complaint – were a dereliction of its duty to negotiate retransmission consent in good faith. *See id.* at 4 (claiming that each of three proposals put forth by Nexstar constitutes a breach of its good faith duty). In contrast to Nexstar's proposal to foreclose the filing of future complaints, the Commission has not spoken directly to the issue whether release/settlement provisions of this kind would violate the good faith duty, and such provisions may not in all cases run counter to the public interest. *See Application of Robert L. Kile*, File No. 00376–CL–AL–87, Memorandum Opinion and Order, 5 FCC Rcd 513, 514, para. 11 & n.11 (1990) ("Generally, we would hold that an agreement to withhold evidence of a serious violation of the Act or the Commission's Rules would be void as against public policy. However, Section 6.7 of the agreement does not have such sinister overtones and appears to be typical of settlement agreements in that it seeks to enforce a settling party's expectation that no further litigation will be brought by the settling parties."). Given that we have found Nexstar to have clearly violated its duty to negotiate in good faith as discussed herein and proposed significant forfeitures for its violations, further action at this time to deter future breaches of its duty (whether via use of the same, or similar, contract provisions) may not be necessary. We will not hesitate to revisit these issues and take appropriate action should Nexstar continue to fail in its duty to negotiate retransmission consent in good faith.

⁶ 47 U.S.C. § 325(b)(3)(C).

⁷ *Id.* § 325(b)(3)(C)(ii).

⁸ *Id.*

⁹ *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, First Report and Order, CS Docket No. 99-363, 15 FCC Rcd 5445 (2000) (*Good Faith Order*), *recon. granted in part*, Order on Reconsideration, 16 FCC Rcd 15599 (2001).

Faith Order adopted a two-part test for good faith.¹⁰ The first part of the test sets forth an objective list of negotiation standards.¹¹ Each of the standards applies to “Negotiating Entit[ies],” which the rules define as “a broadcast television station or [MVPD].”¹² A Negotiating Entity that engages in any of the acts or practices set forth in the list is deemed to have committed a *per se* breach of its statutory duty to negotiate retransmission consent in good faith.¹³ One of the *per se* standards, which is implicated in this case, provides that “a Negotiating Entity may not refuse to negotiate regarding retransmission consent.”¹⁴ As the Commission has explained, “[t]his requirement goes to the very heart of Congress’ purpose in enacting the good faith negotiation requirement.”¹⁵ Under this standard, Negotiating Entities must actively participate in retransmission consent negotiations with the intent of reaching agreement; however, the failure to reach agreement, in itself, is not a violation of the statute or its implementing rules.¹⁶

3. The second part of the good faith test considers whether a Negotiating Entity has failed to negotiate in good faith based on the “totality of the circumstances.”¹⁷ Under this standard, a broadcast station or MVPD may present facts to the Commission that, viewed in totality, amount to a failure to negotiate in good faith.¹⁸ When adopting this standard, the Commission explained that specific retransmission consent proposals could be “sufficiently outrageous. . . as to breach [the] good faith negotiation obligation.”¹⁹ The Commission stated further that, while it was “difficult to develop a . . . list of proposals that indicate an automatic absence of competitive marketplace considerations . . . it is implicit in section 325(b)(3)(C) that any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement.”²⁰ Consistent with this reasoning, the Commission identified several examples of “bargaining proposals [that] presumptively are not consistent with competitive marketplace considerations and the good faith negotiation requirement,” including “proposals for contract terms that would foreclose the filing of complaints with the Commission.”²¹

¹⁰ *Good Faith Order*, 15 FCC Rcd at 5457, para. 30.

¹¹ 47 CFR §§ 76.65(b)(1)(i)–(ix) (listing *per se* standards for good faith negotiation). Although the requirement to negotiate in good faith originally was imposed only on television broadcast stations, a reciprocal obligation later was imposed on MVPDs. *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005).

¹² 47 CFR § 76.65(b)(1).

¹³ *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40-46.

¹⁴ 47 CFR § 76.65(b)(1)(i).

¹⁵ *Good Faith Order*, 15 FCC Rcd at 5462, para. 40.

¹⁶ *Id.*

¹⁷ 47 CFR § 76.65(b)(2).

¹⁸ *Id.*

¹⁹ *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

²⁰ *Id.* at 5470, para. 58.

²¹ *Id.*

4. A broadcast station or MVPD that believes itself aggrieved under the good faith rules may file a complaint pursuant to section 76.7 of the Commission's rules.²² The burden of proof in good faith complaint proceedings is on the complainant.²³

B. Factual Summary

5. Hawaiian Telcom is an MVPD that began offering cable television service in Hawaii in 2011.²⁴ Nexstar is the licensee of several television broadcast stations that serve the Honolulu, Hawaii DMA, including KHON-TV (Fox, CW, GRIT and Rewind TV) and KHII (MyNetwork TV), and their satellite stations (KHAW-TV, KGMV, KGMD-TV and KAI-TV).²⁵ In May 2023, Hawaiian Telcom and Nexstar began negotiating renewal of a 2020 agreement for retransmission of the Stations' broadcast signals, which was set to expire the following month.²⁶ On June 29 and again on June 30, 2023, Hawaiian Telcom requested a one-week extension of the parties' agreement.²⁷ Nexstar denied those requests, and instead granted a one-hour extension.²⁸ As that hour drew to a close, Hawaiian Telcom, lacking further extension of retransmission consent, notified Nexstar that it would be ceasing transmission of the Stations' signals.²⁹ Nexstar thereafter offered an additional one-hour extension, and was informed that the signals had been taken down.³⁰ Despite continuing negotiations, Hawaiian Telcom on July 5, 2023 filed a complaint against Nexstar alleging good faith violations.³¹ During the course of subsequent exchanges, Nexstar on July 12, 2023 presented three additional proposals that, among other things, sought to prevent Hawaiian Telcom from seeking further action from the Commission concerning the negotiation or execution of the parties' renewal agreement.³² Hawaiian Telcom rejected those proposals and filed an

²² 47 CFR §§ 76.65(c), 76.7.

²³ *Id.* § 76.65(d).

²⁴ Complaint at 5. Hawaiian Telcom asserts that its cable television subscribers rely on its service to receive the Stations' signals due to large areas where off-air reception is not possible due to mountainous terrain. July 5 Complaint at 9.

²⁵ Complaint at 6.

²⁶ Reply at 5; Nexstar's Answer to Retransmission Consent Complaint of Hawaiian Telcom Services Company, Inc., MB Docket No. 23-228, File No. CSR-9012-C (filed Aug. 7, 2023) at 3 (Answer). Nexstar asserts that the Answer contains commercial proprietary information relating to Nexstar's retransmission agreements and negotiation thereof, and, consequently, should be treated confidentially and withheld from public inspection under section 0.457(c)(5) and 0.457(d) of the Commission's rules. Letter from Eve Reed and Gregory L. Masters, Counsel for Nexstar Media Inc., Wiley Rein LLP, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 23-228, CSR-9012-C (Aug. 7, 2023) (Request for Confidential Treatment). While we do not rule on this request at this time, we have relied on information placed in the public portion of the record.

²⁷ Complaint at 2; Answer at 4.

²⁸ July 5 Complaint at 10.

²⁹ Answer at 5; July 5 Complaint at 10.

³⁰ Answer at 5.

³¹ Complaint at ii. In particular, Hawaiian Telcom alleged in the Complaint that Nexstar breached its duty to negotiate in good faith by refusing to maintain the *status quo* of the existing retransmission agreement while the parties were actively negotiating for renewal. *Id.* at 13, 15; Reply at 8, 10-11, 16.

³² Complaint at 4; Reply at 7, 13. In particular, Hawaiian Telcom asserts that the proposed contract provision would have required it to forgo any right to "petition or otherwise seek any actions, involvement or remedies from the FCC pertaining to the negotiation or execution of this Agreement." Complaint at 12.

amended complaint on July 17, 2023 alleging additional good faith violations stemming therefrom.³³ Two days later, Nexstar notified Hawaiian Telcom that it was withdrawing the proposals,³⁴ and the parties executed a renewal agreement on July 20, 2023.³⁵ On August 7, 2023, Nexstar filed an Answer to the Complaint;³⁶ on August 17, 2023, Hawaiian Telcom filed a Reply.³⁷

6. On the basis of these facts, Hawaiian Telcom asserts that Nexstar breached its duty to negotiate retransmission consent in good faith by: (i) refusing to extend the parties' 2020 retransmission agreement until the parties reached either a new agreement or an impasse (Count I); and (ii) conditioning retransmission consent on Hawaiian Telcom's acceptance of Nexstar's three additional proposals (Count II).³⁸

III. DISCUSSION

7. Based on our review of the record, we find that: (i) Hawaiian Telcom has failed to meet its burden of proving that Nexstar breached its duty to negotiate retransmission consent in good faith (under the *per se* standards or the totality of the circumstances test) by refusing to extend the parties' 2020 agreement until the parties reached either a new agreement or an impasse; and (ii) Hawaiian Telcom has met its burden of proving that Nexstar, based on the totality of the circumstances, breached its duty to negotiate in good faith by proposing terms for renewal of the parties' agreement that sought to foreclose Hawaiian Telcom from filing complaints with the Commission. We, therefore, deny the Complaint with respect to Count I, and grant the Complaint with respect to Count II to the extent discussed herein.

8. *Count I.* We find that Nexstar's refusal to extend the parties' 2020 agreement until the parties reached either a new agreement or an impasse did not constitute a violation of the requirement to negotiate retransmission consent in good faith. Hawaiian Telcom argues:

Inherent in the duty to negotiate the terms and conditions of retransmission consent . . . in good faith is the duty to *actually negotiate*. Circumvention of that obligation is the epitome of bad faith and constitutes a *per se* violation of the good faith negotiating requirement. In renewal negotiations, a broadcaster's withdrawal of retransmission in the absence of impasse is . . . a failure to negotiate.³⁹

9. Although Hawaiian Telcom acknowledges that the Commission lacks authority to compel a grant of consent during negotiations, it asserts that the agency "can nevertheless enforce its good faith rules by finding that, absent [an] impasse, a broadcaster's termination of retransmission consent is an act

³³ See generally Complaint. Hawaiian Telcom requested expedited treatment of its amended complaint, but subsequently withdrew that request after the parties reached a new agreement and carriage of the Stations' signals had been restored. Reply at 16.

³⁴ *Id.* at 14.

³⁵ *Id.* at 5.

³⁶ See generally Answer.

³⁷ See generally Reply.

³⁸ Complaint at 14.

³⁹ July 5 Complaint at 5 (emphasis in original), citing 47 CFR § 76.65(b)(1)(i) ("The following actions or practices violate a broadcast television station's or [MVPD's] duty to negotiate retransmission consent agreements in good faith...(i) Refusal by a Negotiating Entity to negotiate retransmission consent...").

of bad faith,” subject to potential forfeitures.⁴⁰ In support of this claim, Hawaiian Telcom references the Commission’s statement in the *Good Faith Order* that “Congress intended that the [agency] follow established precedent, particularly in the field of [federal] labor law,” and asserts that under labor law precedent, “unilateral action changing the status quo of a mandatory subject of bargaining” absent an impasse “circumvent[s] . . . the duty to negotiate.”⁴¹ As applied to its renewal negotiations with Nexstar, Hawaiian Telcom contends that Nexstar’s withdrawal of retransmission consent “change[d] the status quo” and therefore would have been lawful only if the parties had “reached an impasse.”⁴² It asserts, moreover, that no impasse was reached because “[the parties] continue[d] to exchange proposals” notwithstanding the blackout.⁴³ Hawaiian Telcom alternatively argues that, under the totality of the circumstances test, a cable operator may prove a violation of the good faith negotiation requirement by presenting facts that “reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties.”⁴⁴ It argues that in this case, Nexstar’s withdrawal of retransmission consent during active negotiations evidences an “active effort[] to force acceptance of . . . terms and conditions . . . that are [not] mutually acceptable. . . .”⁴⁵

10. We find no merit to these claims. In establishing the framework for good faith negotiation of retransmission consent, the Commission specifically rejected a proposal by MVPDs that “where an MVPD shows a willingness to negotiate for continued carriage of a local broadcast station, the station should have an affirmative duty to negotiate terms for such carriage and should not be permitted to withhold retransmission consent while such negotiations are pending.”⁴⁶ In so doing, the Commission reasoned that such a requirement was “foreclose[d]” by “unambiguous” provisions of the Act, and that there was “no latitude for [it] to adopt regulations permitting retransmission during good faith negotiation . . . where the broadcaster has not consented to such retransmission.”⁴⁷ Although the Commission “strongly encourage[d]”⁴⁸ parties engaged in “protracted . . . negotiations [to] agree to short-term . . . extensions,”⁴⁹ the *Good Faith Order* makes clear that such extensions cannot lawfully be required under the Act. The Commission later reinforced this conclusion in a separate rulemaking exploring ways to update its good faith negotiation rules:

We do not believe that the Commission has authority to adopt . . . interim carriage mechanisms . . . applicable to retransmission consent negotiations. . . . [T]he Act and its legislative history . . . convince[] us that the Commission lacks authority to order carriage in the absence of a broadcaster’s consent due to a retransmission consent dispute. Rather, [s]ection 325(b) of the Act expressly prohibits the retransmission of a broadcast signal

⁴⁰ *Id.* at 7.

⁴¹ *Id.* at 5-6 (asserting that in the context of retransmission consent renewal negotiations, the grant of retransmission consent is a “mandatory subject”).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.* at 8.

⁴⁵ *Id.*

⁴⁶ *Good Faith Order*, 15 FCC Rcd at 5471, para. 59.

⁴⁷ *Id.*

⁴⁸ *Id.* at 5472, para. 61.

⁴⁹ *Id.*

without the broadcaster's consent. Furthermore, . . . the legislative history of section 325(b) . . . states that the retransmission consent provisions were not intended 'to dictate the outcome of the ensuing marketplace negotiations' and that broadcasters would retain the 'right to control retransmission and to be compensated for others' use of their signals.' We thus interpret [s]ection 325(b) to prevent the Commission from ordering carriage over the objection of the broadcaster, even upon a finding of a violation of the good faith negotiation requirement.⁵⁰

11. To the extent Hawaiian Telcom asserts that the Commission is authorized to impose remedies *other than* carriage (*e.g.*, a monetary forfeiture) for Nexstar's refusal to extend the parties' 2020 agreement pending a renewal or an impasse,⁵¹ we find that argument unpersuasive. Given the Commission's conclusion that a broadcast station's refusal to allow carriage during the pendency of negotiations does not constitute a breach of its good faith duty under section 325 of the Act and its implementing rules,⁵² there would be no basis for imposing a forfeiture in such circumstances. For these reasons, we deny Count I of the Complaint.⁵³

12. *Count II.* We find, based on the totality of the circumstances in this case, that Nexstar has breached its duty to negotiate retransmission consent in good faith by proposing terms for renewal of the parties' agreement that would have foreclosed Hawaiian Telcom from filing complaints with the Commission relating to the parties' negotiation and final renewal agreement.

13. We note that Nexstar does not dispute that it proposed so-called "mutual release" or "clean slate" provisions that contained language seeking to prevent Hawaiian Telcom from bringing future complaints to the Commission.⁵⁴ Rather, Nexstar's defense is that such provisions were not unlawful because: (i) they would have applied mutually to both parties (*i.e.*, not just to Hawaiian

⁵⁰ *Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718, 2727-2729, paras. 17-19 (2011). See also *Gray Television Licensee, LLC and Gray Media Group, Inc., Complainants, v. Citizens Telecom Services Company, LLC d/b/a Frontier Communications, Defendant*, Memorandum Opinion and Order, 36 FCC Rcd 7450, 7457, para. 16 (MB 2021) ("[T]he Commission does not require broadcasters and MVPDs to reach agreement or *to agree to an extension*." (emphasis added)).

⁵¹ July 5 Complaint at 7 (conceding that the Commission lacks authority to compel carriage, but asserting that it nevertheless can "satisfy its statutory obligations with respect to good faith negotiations by assessing . . . fines to dissuade conduct violative of its rules").

⁵² See *Good Faith Order*, 15 FCC Rcd at 5471, para. 59 (rejecting MVPD arguments that the duty to negotiate in good faith imposes an "affirmative duty to negotiate terms for . . . carriage and [prohibits broadcast stations] from withhold[ing] retransmission consent while such negotiations are pending"). See also *Echostar Satellite Corp. v. Young Broadcasting, Inc., et al.*, Memorandum Opinion and Order, 16 FCC Rcd 15070, 15081, para. 24 (CSB 2001) (finding that "refus[al] to enter into a short-term extension while efforts were made between the parties to resolve their differences" did not constitute bad faith, and that the Commission previously has not suggested "that failure to agree to such an extension would violate [its] rules under either the objective or totality of the circumstances tests").

⁵³ Because the Commission has spoken directly to the issue whether it is empowered under section 325 of the Act to order interim carriage even upon a finding that a party has failed to negotiate in good faith, we need not address the labor law precedent referenced by Hawaiian Telcom in support of Count I. See July 5 Complaint at 6-8; Reply at 8-10, 13.

⁵⁴ Answer at 6-7, 14-15.

Telcom);⁵⁵ and (ii) they would not have prevented Hawaiian Telcom from filing *any* future complaint against Nexstar, but rather, only complaints stemming from the specific negotiation leading to a renewal agreement.⁵⁶ We find these arguments unpersuasive. As noted, the *Good Faith Order* plainly states that “proposals for contract terms that would foreclose the filing of complaints with the Commission” are presumptively at odds with the good faith negotiation requirement.⁵⁷ In denouncing this and similar proposals, the Commission explained:

[A]ny effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement. Considerations that are designed to frustrate the functioning of a competitive market are not ‘competitive marketplace considerations.’ Conduct that is violative of national policies favoring competition . . . is not within the competitive marketplace considerations standard included in the statute.⁵⁸

14. Contrary to Nexstar’s suggestion, the *Good Faith Order* contains no exception or qualifying language that supports interpreting the phrase “proposals for contract terms that would foreclose the filing of complaints” as narrowly as Nexstar advocates. In particular, the fact that the provisions called for a mutual release of claims is irrelevant, as is the fact that Hawaiian Telcom was not prevented (nor would have been prevented) from filing *any* complaint. This is because Hawaiian Telcom, under the express terms of Nexstar’s proposal, would have been foreclosed from filing complaints with the Commission, a proposal deemed presumptively inconsistent with good faith bargaining based on a straightforward reading of the *Good Faith Order*.⁵⁹ Moreover, Nexstar’s assertion that such proposals are not novel and are routinely included in carriage agreements is also inapposite;⁶⁰ the Commission’s rules expressly contemplate the possibility that Negotiating Entities may reach an agreement despite bad faith conduct on the part of one of the entities, and permit complaints in those scenarios.⁶¹

IV. NOTICE OF APPARENT LIABILITY FOR FORFEITURE

15. Based on our review of the record, we find that Nexstar, as licensee of the Stations, has apparently willfully and repeatedly violated section 325(b)(3)(C) of the Act⁶² and section 76.65 of the Commission’s rules⁶³ by proposing terms for renewal of the Stations’ agreement with Hawaiian Telcom

⁵⁵ *Id.* at 6 (acknowledging its proposal that the parties “mutually agree to release their claims against one another”). Hawaiian Telcom asserts that it neither requested, nor desired, a mutual release provision because it did nothing unlawful. Reply at 14.

⁵⁶ Answer at 15 (arguing in defense of its proposal that “parties typically agree . . . to forbear from further requesting legal relief arising from the settled matters” once retransmission consent agreements have been reached).

⁵⁷ *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

⁵⁸ *Id.*

⁵⁹ Answer at 14.

⁶⁰ We note that Hawaiian Telcom disputes Nexstar’s claim, asserting that mutual release provisions such as those proposed here are overwhelmingly insisted upon by broadcasters, not MVPDs. Reply at 14 (“Facing the prospect of either granting the release or having a signal blacked out, MVPDs typically grant the release and withdraw complaints.”).

⁶¹ See 47 CFR § 76.65(e)(1).

⁶² 47 U.S.C. § 325(b)(3)(C).

⁶³ 47 CFR § 76.65.

that are presumptively inconsistent with their duty to negotiate retransmission consent in good faith.⁶⁴ In particular, we find that Nexstar has apparently breached its duty to negotiate in good faith by proposing contract terms that would have foreclosed Hawaiian Telcom from filing complaints with the Commission with respect to the parties' negotiation and final renewal agreement.

16. Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that “willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission.”⁶⁵ Section 312(f)(1) of the Act defines “willful” as the “conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law.⁶⁶ This definition of willful applies to section 503(b) of the Act.⁶⁷

17. In addition, section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture against Nexstar with respect to each of the Stations (which are “Negotiating Entities” under the Commission’s retransmission consent rules and thus obligated to negotiate in good faith) of up to \$59,316 per violation or day of a continuing violation, up to a statutory maximum of \$593,170 for a single act or failure to act.⁶⁸ In exercising our forfeiture authority, we consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, substantial economic gain, and such other matters as justice may require.⁶⁹ As required by the Act, the Commission applies these statutory factors to determine an appropriate forfeiture amount based on its evaluation of the merits of each case.⁷⁰ Additionally, the Commission has established base forfeitures to reflect “the degree of harm or potential for harm that may arise from the violation.”⁷¹ In cases where it has not established a base forfeiture amount for an apparent violation, it has looked to

⁶⁴ *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

⁶⁵ 47 U.S.C. § 503(b)(1)(B).

⁶⁶ 47 U.S.C. § 312(f)(1).

⁶⁷ See, e.g., *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991) (“[C]onsistent with congressional intent, recent Commission interpretations of ‘willful’ do not require licensee intent to engage in a violation.”), *recon. denied*, 7 FCC Rcd 3453 (1992).

⁶⁸ 47 U.S.C. § 503(b)(2)(A). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A) of the Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) required agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. 47 CFR § 1.80(b)(1). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (4). The Enforcement Bureau of the FCC released the order making the 2023 annual adjustment on December 23, 2022. See *Amendment of Section 1.80(b) of the Commission’s Rules, of Civil Monetary Penalties to Reflect Inflation*, Order, 37 FCC Rcd 15060 (EB 2022) (setting January 15, 2023, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase. See 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended § 6.

⁶⁹ 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11), Note § II.

⁷⁰ 47 U.S.C. § 503(b).

⁷¹ *Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098, para. 20 (*Forfeiture Policy Statement*), *recon. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

forfeitures issued in analogous cases for guidance.⁷² The Commission, moreover, is authorized to adjust the base forfeiture amount upward or downward, taking into account the particular facts in each case.⁷³

18. The Commission’s *Forfeiture Policy Statement* establishes a base forfeiture of \$7,500 for “violation of the cable broadcast carriage rules.”⁷⁴ Nexstar’s apparently violative conduct arose from its proposing, as licensee for the Stations, contract provisions that sought to foreclose Hawaiian Telcom from filing complaints with the Commission.⁷⁵ We, therefore, find that the conduct at issue was a “single act” that continued over a period of several days.⁷⁶ Furthermore, we find that Nexstar breached its duty to

⁷² See *DirectTV, LLC; AT&T Services, Inc. v. Deerfield Media, Inc.*, Forfeiture Order, 35 FCC Rcd 10695, 10718, para. 57 (2020) (*Deerfield*) (citing *Cumulus Radio LLC; Radio Licensing Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 7289, 7294-95, para. 14 (2019) (internal citations omitted)).

⁷³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099, para. 22 (noting that “[a]lthough [the Commission has] adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, [the Commission] retain[s the] discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under [the] general forfeiture authority contained in Section 503 of the Act”). See also 47 CFR § 1.80, note to (b)(11)(section II):

Upward Adjustment Criteria

- (1) Egregious misconduct.
- (2) Ability to pay/relative disincentive.
- (3) Intentional violation.
- (4) Substantial harm.
- (5) Prior violations of any FCC requirements.
- (6) Substantial economic gain.
- (7) Repeated or continuous violation.

Downward Adjustment Criteria

- (1) Minor violation.
- (2) Good faith or voluntary disclosure.
- (3) History of overall compliance.
- (4) Inability to pay.

⁷⁴ *Forfeiture Policy Statement*, 12 FCC Rcd at 17113; 47 CFR § 1.80(b)(11), Table 2 (setting the base forfeiture amount for violations of the cable broadcast carriage rules at \$7,500).

⁷⁵ Complaint at 4; Reply at 7, 13.

⁷⁶ See, e.g., *Acerome Jean Charles, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744, 12747, para. 15 (2019) (“[D]uring the 27-day period . . . Jean Charles was apparently committing a single, continuing violation of section 301 of the Act. We therefore propose a base forfeiture of \$10,000 for each day during this 27-day period, resulting in a proposed base forfeiture of \$270,000.”). We note that in another matter involving violations of the retransmission consent provisions of the Act and our rules, the Commission used a different method for calculating the forfeiture. See *TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, et al.*, MB Docket Nos. 12-113, 12-181, 12-222, and 12-266, Forfeiture Order, 29 FCC Rcd 8648 (2014) (*TV Max*). *TV Max* involved a cable operator that was found to have retransmitted the signals of six full-power commercial television broadcast stations for more than a year without the express written consent of the stations. *Id.* In that case, the Commission considered each day that the cable operator carried broadcast programming in violation of the retransmission consent requirements to be a separate, repeated violation for which a forfeiture could be imposed. See *id.* at 8659 n.75 (“We consider each day that TV Max retransmitted each of the six Stations without consent to be a separate violation”); *id.* at 8660 n.77 (explaining that calculation of a “straightforward application of the base forfeiture amount” in that case would be: “\$7,500 base forfeiture amount x 365 violations [within the one year statute of limitations] x 6 unlawfully carried

negotiate in good faith with respect to each of the six stations whose carriage was the subject of the parties' negotiations.⁷⁷ As noted, the "Negotiating Entities" subject to the rules are individual television broadcast stations, not licensees or station groups.⁷⁸ We also take into account that the harm suffered by Hawaiian Telcom's subscribers was multiplied with each station that went dark, which in this case, included "three of the big six broadcast stations, including the top-rated station."⁷⁹ The record indicates that Nexstar proposed the violative contract provision on July 12, 2023.⁸⁰ For each of the stations, therefore, an apparent violation began on July 12, 2023 and continued for eight days until July 20, 2023, the date on which the parties executed a renewal agreement that no longer contained that provision.⁸¹ We multiply the \$7,500 per day base forfeiture amount set forth in section 1.80 of the Commission's rules by the number of days that the apparent violations continued (8). This calculation (\$7,500 x 8) yields a base forfeiture of \$60,000 for each of the six apparent violations, which we then adjust upward, as discussed below, based on our assessment of the statutory factors.

19. As noted, the Commission, in exercising its forfeiture authority, has discretion to adjust the base forfeiture amount depending on the particular facts and circumstances of the violation.⁸² In

stations = \$16,425,000"). We find the nature of the apparent violations at issue in this case, however, to be distinguishable from the factual circumstances presented in *TV Max*. Specifically, we find that the conduct here (unlike that sanctioned in *TV Max*) more closely resembles a situation involving a single dereliction (e.g., here, proposing contract provisions that the Commission has deemed to be presumptively at odds with the statutory duty to negotiate in good faith) which persists until remedied (e.g., here, until the licensee withdraws or abandons the proposed contract provisions in its negotiations). In other words, here there existed a continuing or persistent legal duty that the licensee steadily failed to fulfill. See, e.g., *Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 10 (2000) (treating unauthorized transfer of control as a continuing violation that does not end until the Commission grants a transfer of control application).

⁷⁷ As noted, four of the six stations for whom Nexstar negotiated in this case are satellite stations. The Commission has defined "satellite station" as one "operating on a channel specified in the...Table of Assignments and meeting all of the technical requirements of our rules, but one which usually originates no local programming.... It rebroadcasts the programming of the parent station." *Multiple Ownership Rules*, 3 RR2d 1554, 1562, para. 3 (1964). Satellite stations are "full power terrestrial broadcast stations authorized under Part 73 of the Commission's [r]ules to retransmit all or part of the programming of a parent station that is ordinarily commonly owned." *Television Satellite Stations Review of Policy and Rules*, Report and Order, 6 FCC Rcd 4212, para. 3 (1991). Each of the four satellite stations in the present case thus qualifies as a "television broadcast station" with individual retransmission consent rights -- and responsibilities -- under section 325 of the Act. See 47 U.S.C. § 325(b)(3)(C) (referencing the exercise by "television broadcast stations" of the right to grant retransmission consent), § 325(b)(7) (defining "television broadcast station" as "an over-the-air commercial or noncommercial television broadcast station licensed by the Commission under subpart E of part 73 of title 47, Code of Federal Regulations, except that such term does not include a low-power or translator television station"). See also *DIRECTV, LLC; AT&T Services, Inc., Complainants, v. Deerfield Media, et. al., Defendants*, Forfeiture Order, 36 FCC Rcd 12078, 12095, para. 38 (2021) (declining to cancel or reduce a forfeiture with respect to a satellite station because the station was identified as part of the station group represented in retransmission consent negotiations, "separately listed in the Complaint without objection by the Defendants," and among the stations covered by a prior Bureau decision without objection from the defendants). Nexstar makes no assertion to the contrary.

⁷⁸ *Supra* para. 2.

⁷⁹ Reply at 1.

⁸⁰ Complaint at iii, 12.

⁸¹ Answer at 8.

⁸² *In the Matter of Globalcom, Inc. D/B/A Globalcom Global Communications*, Apparent Liability for Forfeiture, 21 FCC Rcd 4710, at 4721, para. 30 (2006).

addition, the Commission has identified upward and downward adjustment factors that it may consider in determining forfeitures.⁸³ For example, the Commission has stated that “for large or highly profitable communications entities, the base forfeiture amounts . . . are generally low,”⁸⁴ and that such entities thus “should expect . . . that the forfeiture amount” could “be above, or even well above, the relevant base amount.”⁸⁵ After reviewing the facts and circumstances of this case, we find that, in light of Nexstar’s revenues and prior violations of Commission rules,⁸⁶ the public interest would be served by upwardly adjusting to \$120,000 the per violation base forfeiture amount to ensure that Nexstar’s ability to pay⁸⁷ does not render the proposed forfeiture “merely an affordable cost of doing business” and that the forfeiture acts as a “meaningful sanction and deterrent against future misconduct.”⁸⁸ In this regard, we note that the Commission in a separate enforcement proceeding recently observed that “Nexstar is a large,

⁸³ *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

⁸⁴ *Id.*

⁸⁵ See *SBC Communications Inc.*, Order on Review, 17 FCC Rcd 4043, 4052, para. 20 (2002).

⁸⁶ See, e.g., *Nexstar Broadcasting, Inc., Licensee of Station WQRF-TV Rockford, Illinois*, Forfeiture Order, 25 FCC Rcd 1171 (Video Div. 2010) (issuing a \$10,000 monetary forfeiture to Nexstar for its willful and repeated violation of section 73.3526(e)(11)(iii) of the Commission’s rules, which requires licensees to publicize the existence and location of Children’s Television Programming Reports).

⁸⁷ Nexstar’s 2022 net revenues were significantly in excess of five billion dollars, and have been trending consistently upwards. Nexstar Media, Inc., *Form 10-K 2022* (February 28, 2023) <https://www.sec.gov/ix?doc=/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm>. See also *In the Matter of Notice of Apparent Liability for Forfeiture of Enserch Corp.*, Notice of Apparent Liability for Forfeiture, 1999 WL 519302 *3 (1999) (“To ensure that [this licensee’s] . . . extraordinary ability to pay a forfeiture does not attenuate the remedial effect forfeitures are designed to impart, we . . . issue a forfeiture commensurate with the . . . licensee’s ability to pay.”). See also *Gray Television, Inc. Parent of Gray Television Licensee, LLC, Licensee of Stations KYES-TV, Anchorage, AK and KTUU-TV, Anchorage, AK*, Notice of Apparent Liability for Forfeiture, 36 FCC Rcd 10856, 10862, para. 13 (2021) (stating that the “[a]bility to pay/relative disincentive” criterion would support an upward adjustment for [Gray] with its significantly higher-than-usual ability to pay and establish a deterrent to such transgressions in the future”); *Gray Television, Inc. Parent of Gray Television Licensee, LLC, Licensee of Stations KYES-TV, Anchorage, AK and KTUU-TV, Anchorage, AK*, Forfeiture Order, 2022 WL 16647929, **10-11 (Nov. 1, 2022) (observing that Gray’s ability to pay and the “need for a relative disincentive” and “scaled deterrence” justifies an upward adjustment to the forfeiture amount).

⁸⁸ *Notice of Apparent Liability for Forfeiture of Enserch Corp. Licensee of 23 Fixed Microwave Service Stations and 147 Private Land Mobile Radio Service Stations Operating throughout Texas*, File No. 92EF0033, Notice of Apparent Liability for Forfeiture, 14 FCC Rcd 16757, para. 8 (1999). See also *Cumulus Radio LLC; Radio License Holding CBC, LLC; Cumulus Licensing LLC; and Radio License Holdings LLC*, File No.: EB-IHD-18-00027598, Forfeiture Order, 36 FCC Rcd 738, 743-47, paras. 16-22 (doubling base forfeiture based on company’s prior rule violations, including of unrelated rules); *Time Warner Entertainment-Advance/Newhouse Partnership Kansas City, MO*, File No.: EB-11-KC-0058, Forfeiture Order, 28 FCC Rcd 15826, para. 6 (increasing the base forfeiture by 150% based on company’s ability to pay and prior violations); *AT&T Inc., Parent Company Of New Cingular Wireless Pcs, LLC and AT&T Mobility Puerto Rico, Inc.*, File No.: EB-SED-13-00008891, Notice of Apparent Liability for Forfeiture, 30 FCC Rcd 856, 862, para. 14 (2015) (“We also recognize that AT&T is a multi-billion dollar global enterprise. In this respect, the Commission has determined that large or highly profitable companies should expect the assessment of higher forfeitures for violations of the Act and the Rules. Thus, to ensure that the forfeiture liability serves as an effective deterrent and not simply a cost of doing business for AT&T, a significant upward adjustment of the base forfeiture amount is warranted.”) (*internal footnotes omitted*) (*resolved via consent decree*) citing *GCI Commc’ns Corp., Notice of Apparent Liability for Forfeiture*, File No.: EB-FIELDWR-12-00004576, Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 12991, 12994, para. 9 (Enf. Bur. 2013) (doubling base forfeiture based on company’s ability to pay) (*forfeiture paid*).

publicly traded company with significant revenue,” a factor that warranted a “substantial” upward adjustment.⁸⁹

20. We also consider whether there are any grounds for adjusting the proposed forfeiture downward.⁹⁰ Here, we find none. After considering the record, the *Forfeiture Policy Statement*, section 1.80 of the Commission’s rules, and the factors set forth above, we find that a proposed forfeiture amount of \$120,000 for each of the six continuing violations in this case, is appropriate.

Licensee	Broadcast Station	Forfeiture Amount per Violation	NAL Account No.
Nexstar Media, Inc.	KHON-TV	\$120,000	MB-202441430003
Nexstar Media, Inc.	KHII	\$120,000	MB-202441430003
Nexstar Media, Inc.	KHAW-TV	\$120,000	MB-202441430003
Nexstar Media, Inc.	KGMV	\$120,000	MB-202441430003
Nexstar Media, Inc.	KGMD-TV	\$120,000	MB-202441430003
Nexstar Media, Inc.	KAIL-TV	\$120,000	MB-202441430003
TOTAL		\$720,000	

V. ORDERING CLAUSES

21. **ACCORDINGLY, IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,⁹¹ and section 1.80 of the Commission’s rules,⁹² that Nexstar Media, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of Seven Hundred Twenty Thousand Dollars (\$720,000) for willfully and repeatedly violating section 76.65(b)(2) of the Commission’s rules.

⁸⁹ *Cunningham Broadcasting Corporation, et al.*, Notice of Apparent Liability for Forfeiture, 2022 WL 4445690, *7 (2022) (upwardly adjusting an \$8,000 per violation base forfeiture to \$26,000 based on, among other factors, Nexstar’s ability to pay a higher forfeiture, given its status as the second-highest revenue earner among the defendant licensees). *Id.*, citing 2021 Annual Report on SEC Form 10-K, at 46 (Feb. 28, 2022). Nexstar reports that its net revenues for the year ending December 31, 2022 were \$5.2 billion. See <https://www.nexstar.tv/wp-content/uploads/2023/04/NXST-2022-Annual-Report-Bookmarked.pdf>. Although the Commission has stated that “[i]n general, gross revenues are the best indicator of [a company’s] ability to pay a forfeiture,” *Unipoint Techs., Inc.*, Forfeiture Order, 29 FCC Rcd 1633, 1643, para. 29 (2014) (citing *PJB Communc’ns. of Virginia, Inc.*, 7 FCC Rcd at 2088, para. 8), we use Nexstar’s 2022 net revenues as a proxy for its gross revenues because Nexstar’s 2022 SEC Form 10-K filing does not report “gross revenues.”

⁹⁰ See *supra* note 73.

⁹¹ 47 U.S.C. § 503(b).

⁹² 47 CFR. § 1.80.

22. **IT IS FURTHER ORDERED** that the complaint filed by Hawaiian Telcom on July 17, 2023 pursuant to section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), and sections 76.7 and 76.65 of the Commission's rules, 47 CFR §§ 76.7 and 76.65, **IS DENIED** with respect to Count I, and **GRANTED** with respect to Count II, to the extent described above.

23. **IT IS FURTHER ORDERED**, pursuant to section 1.80 of the Commission's rules,⁹³ that within thirty (30) calendar days of the release of this Notice of Apparent Liability for Forfeiture, Nexstar Media Group, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 26-27 below.

24. Nexstar shall send electronic notification of payment to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and the Senior Deputy Chief, Media Bureau, Policy Division at Steven.Broeckaert@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),⁹⁴ or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:⁹⁵

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).⁹⁶ For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.
- Payment by credit card must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account from paragraph 59, above – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a \$24,999.99 limit on credit card transactions.
- Payment by ACH must be made by using the Commission's Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. Select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account– the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the

⁹³ *Id.*

⁹⁴ Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

⁹⁵ For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

⁹⁶ Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

25. Any request for making full payment over time under an installment plan should be sent to: Jae Song, Chief Financial Officer - Financial Operations, Federal Communications Commission, 45 L Street, NE, Room 3-103, Washington, DC 20002.⁹⁷ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

26. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.⁹⁸ The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20002, ATTN: Media Bureau – Policy Division, and must include the relevant NAL/Account Number(s) referenced in the caption. The statement must also be e-mailed to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and Steve Broeckaert at Steve.Broeckaert@fcc.gov.⁹⁹

27. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation.

28. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, to Nexstar Media Group, Inc., 545 E. John Carpenter Freeway, Suite 700, Irvine, Texas 75062, Attention: Rachel Morgan, Executive Vice President and General Counsel; to counsel for Nexstar Media Group Inc., Gregory L. Masters, Eve Reed, and Kyle M. Gutierrez, Wiley Rein, LLP, 2050 M Street, NW, Washington, D.C. 20036; to Hawaiian Telcom Services Company, Inc., 221 East Fourth Street, Cincinnati, Ohio, 45202, Attention: Mary E. Talbott, Chief Legal Officer; and to Hawaiian Telcom's counsel, Eric E. Breisach and Lisa Chandler Cordell, Breisach Cordell, PLLC, 5335 Wisconsin Avenue, NW, Suite 440, Washington, D.C. 20015.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief
Media Bureau

⁹⁷ 47 CFR § 1.1914.

⁹⁸ *Id.* §§ 1.16, 1.80(f)(3).

⁹⁹ *See id.* § 1.1914.