

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

In the Matter of
Consent to Assign the License of WADL(TV),
Mount Clemens, Michigan, from Adell
Broadcasting Corporation to Mission Broadcasting,
Inc.
LMS File No. 0000214896
Facility ID No. 455

MEMORANDUM OPINION AND ORDER

Adopted: April 23, 2024

Released: April 23, 2024

By the Chief, Media Bureau:

1. In this Order, we consider the above-captioned Application seeking consent to assign the television broadcast license of WADL(TV), Mount Clemens, Michigan (WADL or the Station) from Adell Broadcasting Corporation (Adell) to Mission Broadcasting, Inc. (Mission) (collectively, the Applicants). Two parties have filed informal objections to the proposed assignment of license alleging that Nexstar Media, Inc. (Nexstar) is either the real party in interest in this transaction or else will exercise control of the retransmission consent rights for the Station to the detriment of video programming distributors and consumers.

2. This Application presents a second instance in which Nexstar operates, or seeks to operate, a station licensed to Mission but located in a market outside of the contours of Nexstar’s current national footprint. As Nexstar’s national coverage is limited by the Commission’s structural ownership rules, Nexstar is prohibited from owning these stations directly. In the first such situation, which involved WPIX(TV), New York, New York (WPIX), the Commission has issued a Notice of Apparent Liability concluding that Nexstar improperly exercised de facto control over the station, which resulted in Nexstar violating the National Ownership Cap. The second such situation—WADL—is before us now and raises many of the same concerns at issue in the WPIX NAL. Accordingly, based on Nexstar’s significant involvement with Mission generally and with this proposed Station acquisition specifically, we find it necessary to adopt conditions in order to safeguard the public interest, our rules, and the Communications Act of 1934, as amended (the Act). Our decision today is specific to this Application, and comports with long-standing Commission precedent of adopting conditions where a transfer application could result in public interest harms by substantially frustrating or impairing the objectives of our rules or statutes or might otherwise warrant designation for hearing. For the reasons discussed below, we find that grant of the Application with the conditions set forth below is in the public interest.

1 Comments of the American Television Alliance (filed Jun. 20, 2023) (ATVA Informal Objection); Informal Objection of NCTA—The Internet & Television Association (filed Jun. 20, 2023) (NCTA Informal Objection).

2 Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY, Notice of Apparent Liability for Forfeiture, FCC 24-34 (rel. Mar. 21, 2024) (WPIX NAL). Consistent with 47 U.S.C. § 504(c), we cite the issuance of the WPIX NAL solely for the factual record on which the Commission relied in issuing that NAL.

3 47 U.S.C. § 310(d) (“No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly . . . except upon application to the Commission.”).

## I. BACKGROUND

3. *The Transaction.* On May 17, 2023, Mission and Adell filed the Application, seeking consent to assign the license and station assets for WADL, which serves the Detroit Designated Market Area (DMA), for a purchase price of \$75 million.<sup>4</sup> The station is affiliated with the MyNetwork TV network and is ranked seventh in the Detroit DMA in terms of advertising revenue.<sup>5</sup> To finance the acquisition, the Transaction Description to the Application explains, without further elaboration or documentation: “Nexstar guarantees repayment of Mission’s bank financing. Mission may utilize its bank financing to pay for some or all of the purchase price for WADL.”<sup>6</sup>

4. The Application includes, among other documents, three draft contracts between Mission and Nexstar, which Mission indicates it intends to enter into upon consummation of the proposed assignment.<sup>7</sup> The first is an agreement to sell commercial time, pursuant to which Nexstar will sell all advertising on WADL.<sup>8</sup> This commercial sales agreement would authorize Nexstar to set all advertising rates, collect all revenues, and retain 30 percent of the revenues, paying Mission the remaining 70 percent of advertising revenue collected.<sup>9</sup>

5. The second agreement is a services agreement,<sup>10</sup> under which Nexstar will provide certain services to Mission in connection with the operation of WADL, including execution of promotional policies; continuity and traffic support; master control; provision of payables support; financial services including preparation of monthly accounting services; transmission facilities maintenance; and contract negotiation.<sup>11</sup> Pursuant to the services agreement, in addition to the basic operations of the Station, Mission has also delegated to Nexstar authority to negotiate retransmission consent for the Station, as well as to collect all retransmission consent fees on behalf of the Station, if any, and remit such fees to Mission.<sup>12</sup> Under the terms of the services agreement, Mission would pay Nexstar a set monthly fee of \$155,500 for the provision of these services, as well as, potentially, an undefined “performance bonus.”<sup>13</sup> The services agreement also states that senior management personnel and any programming services will otherwise not be shared between Mission and Nexstar.<sup>14</sup>

6. The third agreement contemplated by the parties is an Option Agreement<sup>15</sup> allowing Nexstar to acquire the Station in the future. To exercise the option to purchase WADL, Nexstar would

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<sup>4</sup> Application Attach. Asset Purchase Agreement (APA) § 2.5. The Application was placed on public notice on May 19, 2023. *See* Public Notice, Report No. PN-1-230519-01 (rel. May 19, 2023).

<sup>5</sup> Mission Consolidated Response to Objections at 2 (Mission Response) (stating that “the Station is an affiliate of MyNetworkTV with fewer than five full-time employees and no local news operation. It is the seventh-ranked television station in the Detroit DMA in terms of revenue and audience share.”).

<sup>6</sup> Application Attach. Assignee’s Description of Transaction and Documents at 1 (Transaction Description).

<sup>7</sup> *See id.*

<sup>8</sup> Application Attach. Form of Agreement for the Sale of Commercial Time, “Agreement for the Sale of Commercial Time” (Agreement for Sale of Time).

<sup>9</sup> Agreement for Sale of Time at 1-3.

<sup>10</sup> Application Attach. Form of Station Services Agreement, “Station Services Agreement” (Services Agreement).

<sup>11</sup> *Id.* § 3(a)-(f), (h) at 2-3.

<sup>12</sup> *Id.* § 3(i) at 3.

<sup>13</sup> *Id.* Sched. A Services Fee. The base Services Agreement amount will increase by three percent annually.

<sup>14</sup> *Id.* § 1 at 1. However, the Agreement also provides that subject to Mission’s direction and control of Licensee, Nexstar “may upon [Mission’s] request assist [Mission] in procuring programming for broadcast on the Station.” *Id.* § 3(g) at 2.

<sup>15</sup> Application Attach. Form of Option Agreement, “Option Agreement” (Option Agreement).

assume Mission's then-existing liabilities related to the ownership and operation of the Station and pay to Mission the greater of: (1) seven times the amount of the cash flow generated by the Station during the prior year, reduced by Mission's total outstanding indebtedness as of the date of the closing of the Option Agreement, or (2) Mission's outstanding indebtedness.<sup>16</sup> The outstanding debt is termed "Existing Station Indebtedness," and is defined to mean the principal of and interest on all debt held or to be held by lenders under a specific 2017 credit agreement among Mission; Bank of America, N.A.; "and certain other parties thereto" (2017 Credit Agreement).<sup>17</sup> This indebtedness appears to include all outstanding debt held by Mission and not simply the loan or loans used to acquire the Station.

7. The parties indicate that initially Nexstar will not provide programming to the Station, although the agreements contemplate that Nexstar would assist in procuring or producing programming for the Station should Mission so request.<sup>18</sup> Further, the commercial sales agreement provides that Mission must maintain the same network affiliation that is in effect, unless Mission provides Nexstar with 90-days' notice of an affiliation change.<sup>19</sup>

8. On September 1, 2023, several months after the Application was filed, WADL began carrying programming from The CW Network, which is majority-owned by Nexstar.<sup>20</sup> In addition, on September 21, 2023, the Applicants filed an amendment to the Application, stating that they deleted a previous covenant in the APA under which Adell had agreed not to take or fail to take any action regarding the Station's carriage election, the result of which would be to elect "must carry" status for WADL for the next cycle from January 1, 2024 through December 31, 2026.<sup>21</sup> Accordingly, rather than preserving the ability for Mission to seek retransmission consent fees during the 2024-2026 carriage cycle, the Station, still under Adell's control, elected must-carry rights for the 2023 carriage election.

9. On October 30, 2023, WADL announced that it had dropped The CW Network as the parties awaited FCC approval of the sale to Mission explaining that "transitionally," with the delay in regulatory approval, "the overall deal needed to be adjusted."<sup>22</sup> As a result, Nexstar (as majority owner of The CW Network), transferred The CW Network programming to another station in the market, WMYD, owned by the E.W. Scripps Company, where that programming began airing on November 13, 2023.<sup>23</sup> At

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<sup>16</sup> Option § 2.1(b), "Definition of Cash Purchase Price," at 8.

<sup>17</sup> *Id.*, Appendix, "Existing Station Indebtedness."

<sup>18</sup> Services Agreement § 3(g) at 2-3.

<sup>19</sup> Agreement for Sale of Time at 2. It is unclear whether this means the Station must maintain its present MyNetwork affiliation or some other future affiliation.

<sup>20</sup> Matthew Keys, *Nexstar quietly moves CW affiliation to Detroit's WADL* (Sep. 2, 2023), <https://thedesk.net/2023/09/nexstar-wadl-affiliation-cw-network/> (reporting that WADL began transmitting The CW Network programming in prime-time after The CW's former co-parent Paramount Global decided to drop the affiliation from another station in the Detroit market).

<sup>21</sup> Application, Amendment to Asset Purchase Agreement (dated Sep. 14, 2023); Letter from Gregory L. Masters, counsel to Mission, and Coe W. Ramsey, counsel to Adell, to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 (dated Sep. 21, 2023) (Applicants Sep. 21, 2023 *Ex Parte* Letter). According to press reports, Adell indicated that WADL did not have an affiliation agreement with The CW Network, but agreed to air the network as an "accommodation" while the Application remained pending. Michael Malone, *WMYD Detroit Will Become Market's The CW Station* (Nov. 6, 2023), <https://www.nexttv.com/news/wmyd-detroit-will-become-markets-cw-station>.

<sup>22</sup> Press Release, WADL-TV, Kevin Adell Removes CW Network in Detroit (Oct. 30, 2023), <https://www.prnewswire.com/news-releases/kevin-adell-removes-cw-network-in-detroit-301971471.html>.

<sup>23</sup> Press Release, Detroit's WMYD-TV To Become CW Affiliate On Monday, Nov. 13 (Nov. 6, 2023), <https://www.nexstar.tv/detroit-wmyd-to-become-cw-affiliate-nov-13/>.

this time, it is unclear whether the move of The CW Network programming to the Scripps station is transitional (i.e., only until this transaction closes) or permanent.<sup>24</sup>

10. *The Proposed Assignee.* Mission, the proposed assignee of WADL, operates as a Variable Interest Entity (VIE) of Nexstar, a publicly traded company<sup>25</sup> that is the largest broadcast television station group in the country with a market capitalization of approximately \$5.5 billion and annual revenues of approximately \$5 billion.<sup>26</sup> The term VIE is an indication of the close relationship between the two entities.<sup>27</sup> In particular, Nexstar reports the revenue, assets, and financial information of the much smaller Mission<sup>28</sup> as part of its own financial calculations and reporting.<sup>29</sup> As a practical matter, the fact that Mission is a VIE means that it relies on its contractual relationships with Nexstar to such a degree that, Nexstar is considered to have a controlling financial interest in Mission for financial reporting purposes.<sup>30</sup>

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<sup>24</sup> Previously, The CW Network was affiliated with WKBD in Detroit, however, the owner of that station ended its affiliation in 2023 following Nexstar's acquisition of a controlling interest in the network. See Joe Otterson, *Eight CBS-Owned Stations to Drop CW Affiliation in September* (May 5, 2023), <https://variety.com/2023/tv/news/cbs-owned-stations-drop-cw-affiliations-september-1235604771/>.

<sup>25</sup> The company is publicly traded on the NASDAQ Global Select Market exchange under the symbol "NXST." The company reported that as of December 31, 2023, it had 13,294 employees, including 11,877 full-time employees. See Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 17 (filed Feb. 28, 2024) (reporting information for the fiscal year ending December 31, 2023) (Nexstar 10-K or Annual Report).

<sup>26</sup> Harry A. Jessel, *Updated Top 30 Station Groups: Nexstar Retains Top Spot, Gray Now No. 2 As FCC-Rejected Standard General Drops Off* (Aug. 14, 2023), <https://tvnewscheck.com/business/article/top-30-station-groups-nexstar-retains-top-spot-after-standard-general-tegna-deal-dies/>; see also Nexstar 10-K. According to Nexstar, it "owns, operates, programs or provides sales and other services to over 200 broadcast stations (including partner stations) and their related low power and digital multicast signals reaching 117 markets or more than 68% of all U.S. television households." Nexstar Media Group, Inc., Company Profile, <https://www.nexstar.tv/company/> (last visited Apr. 5, 2024). Nexstar also owns cable news network NewsNation, and a 75% controlling interest in The CW Network. Press Release, Nexstar Media Closes Acquisition of The CW Network (Oct. 3, 2022), <https://www.nexstar.tv/nexstar-closes-acquisition-of-the-cw-network/>.

<sup>27</sup> VIE status attaches where certain conditions exist, such as (1) where the total equity investment at risk is not sufficient to permit the entity at issue to finance its activities without additional subordinated financial support, or (2) the entity lacks the power to direct activities that most significantly impact its performance. Financial Accounting Standards Board, Accounting Standards Codification 810-10-15-14, <https://asc.fasb.org/1943274/2147481410/GUID-6558A531-EFBA-446C-A31D-A3D1D9D5BFA1> (last visited Apr. 5, 2024).

<sup>28</sup> Unlike the publicly traded Nexstar, Mission is a privately held company owned by two individuals, Nancie J. Smith, who holds 51% of the voting and equity stock of the company, and Dennis P. Thatcher, who holds the remaining 49% interest. See Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

<sup>29</sup> See, e.g., Nexstar 10-K at 41-45.

<sup>30</sup> As Nexstar explains in its 10-K Annual Report filed with the Securities and Exchange Commission (SEC):

Mission and the other consolidated VIEs are included in our Consolidated Financial Statements because we are deemed to have controlling financial interests in these entities as VIEs for financial reporting purposes as a result of (i) local service agreements we have with the stations they own, (ii) Nexstar's (excluding The CW) guarantee of the obligations incurred under Mission's senior secured credit facility, (iii) our power over significant activities affecting these entities' economic performance, including budgeting for advertising revenue, advertising sales and, in some cases, hiring and firing of sales force personnel and (iv) purchase options granted by each consolidated VIE which permit Nexstar to acquire the assets and assume the liabilities of all of these VIEs' stations at any time, subject to FCC consent. These purchase options are freely exercisable or assignable by Nexstar without consent or approval by the VIEs. These option

(continued....)

11. Notably, Nexstar is currently at, or even slightly above, the television station ownership limit set by the Commission's rules. The National Ownership Cap prohibits a single entity from owning television stations that, in the aggregate, reach more than 39% of the total television households in the United States.<sup>31</sup> At present, Nexstar holds interests in stations that collectively are calculated to reach 39.2% of the total television households in the United States, including the UHF discount.<sup>32</sup> This means that Nexstar cannot acquire television stations in any additional markets without first divesting itself of existing stations or obtaining a waiver of the rule. Similarly, Nexstar may not hold an attributable interest in such a station without first divesting itself of other stations or receiving a waiver of the rule.<sup>33</sup>

12. As for the proposed assignee, Mission is currently the licensee of 29 full power television stations in 26 markets around the country, all of which are operated by, or in conjunction with, Nexstar.<sup>34</sup> In 25 of the 26 markets in which Mission operates, each company holds a license for at least one full power television station. Nexstar then operates the Mission station, performing various functions for the station, typically pursuant to a shared services agreement, a joint sales agreement, a local marketing agreement (LMA), or a combination of several such agreements.<sup>35</sup> At present, the only market in which

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agreements expire on various dates between 2024 and 2033. We expect to renew these option agreements upon expiration. Therefore, these VIEs are consolidated into these financial statements.

Nexstar 10-K at 45. Nexstar explains further in its Annual Report that, “[i]n return for the services we provide, we receive substantially all of the consolidated VIEs’ available cash, after satisfaction of their operating costs and any debt obligations.” Nexstar 10-K at 23.

<sup>31</sup> 47 CFR § 73.3555(e)(1); *see also* *Amendment of Section 73.3555(e) of the Commission’s Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213 (2016) (*UHF Discount Elimination Order*), *reconsidered in part*, Order on Reconsideration, 32 FCC Rcd 3390 (2017) (*UHF Discount Recon Order*), *pet. for rev. dismissed*, *Free Press et al. v. FCC*, No. 17-1179 (D.C. Cir 2018). In determining compliance with the 39% National Ownership Cap, stations broadcasting in the VHF spectrum are attributed with all television households in their DMAs, while UHF stations are attributed with only 50% of the households in their DMAs (known as the UHF discount). *UHF Discount Recon Order*, 32 FCC Rcd at 3391, para. 2. UHF stations are those that transmit on channel 14 and above. An entity or individual is deemed to hold an attributable interest in a licensee based on ownership interests, corporate positions, and contractual relationships that, in the Commission’s long-standing experience, afford the interest holder the potential to influence the licensee to a significant degree. *See* 47 CFR § 73.3555, Note 2(i)(1)-(2); *see also infra* note 83.

<sup>32</sup> *See generally* Nielsen 2023-2024 Universe Estimates DMA TV Households by Market Section. While the current nationwide reach calculated for Nexstar is slightly above the 39.0% cap, the Commission’s rules do not penalize parties that exceed the national audience reach limitation through population growth. 47 CFR § 73.3555(e)(3).

<sup>33</sup> The attribution rules seek to identify ownership interests, corporate positions, and contractual relationships that, in the Commission’s long-standing experience, afford the interest holder the potential to influence the licensee to a significant degree. 47 CFR § 73.3555, Note 2(i)(1)-(2).

<sup>34</sup> *See* Nexstar Media Group, Inc., Securities and Exchange Commission Quarterly Report (Form 10-Q) at 9 (filed Nov. 8, 2023) (reporting information for the fiscal year ending September 30, 2023 and indicating that Nexstar holds agreements pertaining to the operation of each of the Mission stations) (Nexstar 10-Q); *see also* Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

<sup>35</sup> Nexstar 10-Q at 9. In addition to relying on Nexstar to provide station sales, programming, and operational support to every one of its stations, Mission also relies on financial support from Nexstar. In particular, Nexstar guarantees full payment of all obligations incurred under Mission’s senior secured credit facility, and Mission in turn guarantees Nexstar’s senior secured credit facility and several of its outstanding debt instruments. Nexstar 10-K at 23, 43-44, and Note 8. Nexstar also holds options permitting it to acquire each of Mission’s stations, subject to FCC consent. Nexstar 10-K at 43. Such options are freely exercisable or assignable by Nexstar without consent or approval by Mission. In addition, Nexstar also holds an option to buy all of the capital stock of Mission for the greater of: (1) five times (5x) the cashflow generated by the Mission stations in the preceding 12 months minus the company’s outstanding debt, or (2) \$100,000. The parties originally entered into the option agreement in 2011 and subsequently amended it in 2021 to extend the agreement until November 2028. *See* Stock Option Agreement,

(continued....)

Mission owns a station but Nexstar does not in New York City, where Mission holds the license for WPIX, which Nexstar programs and operates in exchange for 100% of the revenue generated by the station.<sup>36</sup>

13. The Commission has recently examined the close relationship between Mission and Nexstar in connection with the operation of television station WPIX licensed to Mission. In its *WPIX NAL*, the Commission found that Mission had apparently abdicated control of WPIX and that Nexstar had, in turn, apparently exercised *de facto* control over that station without prior Commission authorization.<sup>37</sup> Specifically, the Commission's preliminary findings were that Nexstar had exercised *de facto* control over WPIX by controlling the programming, personnel, and financing of the station, which, further, resulted in Nexstar breaching the National Ownership Cap.<sup>38</sup> Additionally, the Commission tentatively found on separate grounds that Nexstar held an attributable—and impermissible—interest in WPIX by virtue of its provision of programming to that station combined with its provision of a collateral interest for the loan by which Mission acquired the station.<sup>39</sup> Based on those facts and circumstances, the Commission asserted that Mission and Nexstar were each apparently liable for a significant monetary forfeiture, and that the parties would either need to divest themselves of WPIX or else Nexstar would need to acquire WPIX directly while divesting stations in other markets as necessary in order to maintain compliance with the National Ownership Cap.<sup>40</sup>

14. *Pleadings.* The American Television Alliance (ATVA) and NCTA—The Internet and Television Association (NCTA) (collectively, Objectors) both filed informal objections to the Application. ATVA claims that Nexstar is using Mission to acquire the station and is intentionally avoiding acquiring WADL in its own name because doing so would violate the Commission's 39% National Ownership Cap.<sup>41</sup> ATVA asserts that Nexstar, rather than Mission, is the real party in interest in acquiring WADL due to the combination of transaction documents and the overall Mission-Nexstar relationship. In support, ATVA points to the fact that Nexstar is guaranteeing Mission's financing for the transaction;<sup>42</sup> selling all of the station's advertising;<sup>43</sup> likely to negotiate future retransmission consent for the station at higher rates, when bundled with Nexstar's other stations;<sup>44</sup> and circumventing the nominal reversion of Mission's 70% of advertising revenues through a highly unusual "Performance Bonus" in the services agreement.<sup>45</sup> ATVA questions in particular an Option price that ATVA interprets as potentially allowing Nexstar to acquire the station based on its existing guarantee of Mission's financing and with no

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<https://www.sec.gov/Archives/edgar/data/1142417/000114241712000010/missionoptionagmt.htm> (last visited Apr. 5, 2024); Amendment of Option Agreement, [https://www.sec.gov/Archives/edgar/data/1142417/000156459021009747/nxst-ex104\\_14.htm](https://www.sec.gov/Archives/edgar/data/1142417/000156459021009747/nxst-ex104_14.htm) (last visited Apr. 5, 2024); *see also* Mission Broadcasting, Biennial Ownership Report FCC File Number 0000165413.

<sup>36</sup> *See* Nexstar 10-K at 7-10.

<sup>37</sup> *WPIX NAL* at 11-26, paras. 22-52.

<sup>38</sup> *Id.* at 26-27, paras. 53-55.

<sup>39</sup> *Id.* at 27-30, paras. 56-58.

<sup>40</sup> *Id.* at 30-36, paras. 69-86.

<sup>41</sup> Comments of the American Television Alliance (filed Jun. 20, 2023) at 1-3 (ATVA Informal Objection). The National Ownership Cap prohibits a single entity from owning television stations that, in the aggregate, reach more than 39% of the total television households in the United States. 47 CFR § 73.3555(e); *see UHF Discount Elimination Order*, 31 FCC Rcd 10213.

<sup>42</sup> ATVA Informal Objection at 4-5.

<sup>43</sup> *Id.* at 5-6.

<sup>44</sup> *Id.* at 6.

<sup>45</sup> *Id.* at 6-7.

additional funds, as well as the restrictions in the Option that bar Mission from selling the station to a third party without Nexstar's consent.<sup>46</sup> ATVA goes on to cite Nexstar's inclusion of Mission as a VIE in Nexstar's filings before the SEC, and recognition in its SEC filings that it anticipates it will continue to receive substantially all of the consolidated VIEs' available cash, as probative that Nexstar is the real party in interest here.<sup>47</sup>

15. For its part, NCTA asserts that while WADL is currently carried on Multichannel Video Programming Distributors (MVPDs) at no charge as a must-carry station in Detroit, it "appears highly likely – indeed, nearly certain" that Mission and Nexstar will include WADL with Nexstar's other retransmission consent contracts as an after-acquired station in its future negotiations with MVPDs.<sup>48</sup> According to NCTA, such a step would lead to a non-competitive increase in retransmission consent fees to the detriment of consumers, and thus would constitute a public interest harm.<sup>49</sup> NCTA seeks hearing designation for the Application, or a grant with conditions that include a prohibition on delegating retransmission consent negotiating authority to Nexstar; safeguards that the draft contracts are not used to circumvent the ban on joint retransmission consent negotiations among non-commonly owned same market stations; and robust reporting obligations.<sup>50</sup>

16. In response, Mission asserts that the proposed transaction complies with all Commission rules and policies because the commercial sales agreement, sharing agreement, Option Agreement, the proposed delegation of retransmission consent authority, and the Nexstar loan guarantee have been expressly disclosed in the Application, are industry standard, and have been approved by the Commission in the past.<sup>51</sup> Accordingly, Mission contends, there is no real-party-in-interest question. In particular, Mission argues that questioning the appropriateness of the "Performance Bonus" in the services agreement as being unusual is unwarranted, asserting that performance bonuses for an advertising broker are not uncommon in joint sales agreements.<sup>52</sup> Further, Mission asserts that delegation to Nexstar of authority to negotiate retransmission consent for WADL does not violate any Commission rule, and that the Objectors expressly concede that point.<sup>53</sup> Mission also argues that Nexstar's status as a VIE is irrelevant because the Commission is not bound by the "control" definition of security law.<sup>54</sup> Lastly, Mission responds that the concern of harms due to increased retransmission fees are speculative, especially because WADL is currently a must-carry station, and because Mission is not privy to the details or operation of any after-acquired clauses.<sup>55</sup>

17. Adell also responded to the objections, arguing that the proposed transaction is the result of years of work of the Kevin Adell family and investors,<sup>56</sup> and that the Objectors' claims are inconsistent with Commission precedent. Adell maintains that it has become increasingly challenging as a single station owner to operate WADL, and that Mission is well-suited to carry on the station's service to the

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<sup>46</sup> *Id.* at 7-8.

<sup>47</sup> *Id.* (citations omitted).

<sup>48</sup> NCTA Informal Objection at 2-3, 6-9.

<sup>49</sup> *Id.* at 3-4, 5-9.

<sup>50</sup> *Id.* at 12-13.

<sup>51</sup> Mission Response at 4-9.

<sup>52</sup> *Id.* at 6.

<sup>53</sup> *Id.* at 7.

<sup>54</sup> *Id.* at 8.

<sup>55</sup> *Id.* at 11-16.

<sup>56</sup> Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of the American Television Alliance (filed Jul. 6, 2023) at 2-4 (Adell Consolidated Response).

local community.<sup>57</sup> Adell argues further that the Objectors are seeking to misuse the license transfer process to try to change Commission rules and policies.<sup>58</sup> The National Association of Broadcasters (NAB) opposes the NCTA Informal Objection on the basis that the issues raised by NCTA are more appropriately addressed by a rulemaking proceeding or by Congress (if at all).<sup>59</sup>

18. ATVA advances three arguments in response to Mission, Adell, and NAB.<sup>60</sup> First, it asserts that ATVA is not seeking changes to Commission's rules and policies that require a rulemaking, but that the specific facts of the proposed transaction would grant Nexstar *de facto* control of WADL.<sup>61</sup> Second, ATVA contends that Mission is incorrect in looking at whether each component of the transaction would comply with Commission rules, as the question is whether the totality of the arrangements and relationship between Nexstar and Mission grants Nexstar *de facto* control.<sup>62</sup> Third, according to ATVA, NAB is wrong that the Commission lacks authority to consider retransmission consent in the merger context, as potential anticompetitive retail price increases are within the Commission's public interest review.<sup>63</sup> NCTA also responds on reply that the proposed transaction is not a "straightforward" one because of the retransmission consent negotiation delegation from Mission will allow Nexstar to extract artificially higher retransmission consent rates for WADL, and the structure of this transaction is similar to the fact pattern that led the Media Bureau to designate the Standard General/TEGNA transaction for a formal hearing.<sup>64</sup>

19. In filing their Amendment to the Application on September 21, 2023, the Applicants state that they have elected to retain "must carry" status for the WADL for the next three-year election period, forgoing any legal right to seek retransmission consent revenues during that time. The Applicants argue that any retransmission consent-based objections of ATVA and NCTA have therefore been mooted.<sup>65</sup> ATVA responds that this filing does not change the fact that Nexstar is the real party in interest and its acquisition would cause a National Ownership Cap violation; that the concerns of a price increase are not confined to a three-year period; and that some MVPD agreements with Nexstar may nonetheless treat WADL as an "after-acquired" station, thereby forcing MVPDs and their Detroit customers to pay for the station immediately.<sup>66</sup> NCTA responds that the Applicants' must-carry election is a short-term "band-aid" that does not hide the fact that they have not deleted the critical provision in the sharing agreement that delegates negotiation authority to Nexstar, and that Applicants have not eliminated the possibility that they will later argue that after-acquired clauses in Nexstar's retransmission consent agreements would control and bring carriage of WADL under those rates.<sup>67</sup>

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<sup>57</sup> *Id.* at 3-4.

<sup>58</sup> *Id.* at 4-5.

<sup>59</sup> Opposition of the National Association of Broadcasters to Informal Objection of NCTA (filed Jul. 7, 2023) at 3-13 (NAB Opposition).

<sup>60</sup> Reply Comments of the American Television Alliance (filed Jul. 27, 2023) (ATVA Reply).

<sup>61</sup> *Id.* at 2.

<sup>62</sup> *Id.* at 2-3.

<sup>63</sup> *Id.* at 3-4.

<sup>64</sup> Reply Comments of NCTA—The Internet & Television Association (filed Aug. 1, 2023) at 1-4 (NCTA Reply) (citing *Applications of SGCI Holdings III LLC; TEGNA, Inc.; and CMG Media Corp.*, MB Docket No. 22-162, Hearing Designation Order, 38 FCC Rcd 1282 (MB 2023)).

<sup>65</sup> Applicants Sep. 21, 2021 *Ex Parte* Letter at 1-2.

<sup>66</sup> Letter from Michael Nilsson, Counsel to ATVA, to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 (dated Oct. 10, 2023) (ATVA Oct. 10, 2023 *Ex Parte* Letter).

<sup>67</sup> Letter from Rick Chessen, NCTA to David Brown and Christopher Robbins, Video Division, FCC Media Bureau, LMS File No. 0000214896 at 2 (dated Oct. 18, 2023).



20. Adell and its supporters have filed multiple *ex parte* letters to express concerns about delay in processing the Application and the importance of the sale to shareholders of Adell, as well as to reiterate arguments made in prior pleadings.<sup>68</sup>

## II. DISCUSSION

21. Section 310(d) of the Act provides that no station license shall be transferred or assigned unless the Commission, on application, determines that the public interest, convenience, and necessity will be served thereby.<sup>69</sup> In making this assessment, the Commission must first determine whether the proposed transaction would comply with the specific provisions of the Act, other applicable statutes, and the Commission's rules.<sup>70</sup> If the transaction would not violate a statute or rule, the Commission considers whether it could result in public interest harms by substantially frustrating or impairing the objectives or implementation of the Act or related statutes.<sup>71</sup> If the Commission is unable to find that the proposed transaction serves the public interest, or if the record presents a substantial and material question of fact as to whether the transaction serves the public interest, section 309(e) of the Act requires that the applications be designated for hearing.<sup>72</sup> The Commission may also impose conditions that address the potential harms of a transaction.<sup>73</sup>

22. We have reviewed the Application, pleadings, and information submitted by the Applicants, along with the arguments raised by the comments and informal objections, and we find that, on its face, the transaction does not violate any individual provision of the Act, other applicable statutes, and the Commission's rules. However, given the interwoven relationship between Mission and Nexstar, and the Commission's recent adoption of an Notice of Apparent Liability for Forfeiture that includes a divestiture in a similar situation involving these same parties, based on our review of the parties' agreements and the other relevant evidence in the record here, we find it necessary to impose several significant conditions on the approval of this transaction in order to protect the public interest and ensure that the operation of the agreements will continue to comply with the Act and the Commission's rules. Notably, we do not review the Application in a vacuum. As demonstrated by the actions of Nexstar and Mission following Mission's acquisition of WPIX, our concerns here go to how WADL could be operated after Mission's acquisition and the likelihood that Mission would abdicate control. Consistent with the Commission's recent action, we find that these conditions are essential in order to protect against the potential for a similar unauthorized *de facto* transfer of control and a potential violation of the

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<sup>68</sup> See Letter from Kevin Adell, Owner/Operator WADL-TV, to Commissioners, FCC, LMS File No. 0000214896 (filed Nov. 20, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Dec. 11, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Dec. 18, 2023); Letter from Coe W. Ramsey, Counsel to Adell Broadcasting, to Marlene H. Dortch, Secretary, FCC, LMS File No. 214896 (dated Jan. 20, 2023); see also Letter from Michael Nilsson, Counsel to ATVA, to Marlene Dortch, Secretary, FCC, LMS File No. 204896 (dated Jan. 22, 2024).

<sup>69</sup> Section 310(d) of the Act requires that the Commission consider an application as if the proposed assignee/transferee were applying for the license directly. 47 U.S.C. § 310(d); see also *SBC Commc'ns Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, 20 FCC Rcd 18290, 18300, para. 16 (2005) (*SBC-AT&T Order*).

<sup>70</sup> See, e.g., *SBC-AT&T Order*, 20 FCC Rcd at 18300, para. 16.

<sup>71</sup> *Id.*

<sup>72</sup> 47 U.S.C. § 309(e); see also *General Motors Corporation and Hughes Electronics Corporation, Transferors, and the News Corporation Limited, Transferee*, Memorandum Opinion and Order, 19 FCC Rcd 473, 483, para. 15, n.49 (2004); *Application of EchoStar Communications Corporation, General Motors Corporation, and Hughes Electronics Corporation and EchoStar Communications Corporation*, Hearing Designation Order, 17 FCC Rcd 20559, 20574, para. 25 (2002) (*EchoStar-DIRECTV HDO*).

<sup>73</sup> 47 U.S.C. § 303(r).

National Ownership Cap in the present case. The prospective conditions we adopt today seek to guard against future infractions of the Commission's Rules and future harms to the public interest, including those potentially arising from the initial financing and acquisition of the Station. The conditions are tailored to the specific facts of the proposed, as-yet unfinanced transaction and the posture of the pending Application. Thus, the measures we adopt today would not be appropriate, or have the same impact, if imposed following a station acquisition.

23. Our decision today to grant the Application with conditions comports with long-standing Commission precedent. For example, in *Sinclair/Albritton*, the Bureau imposed conditions on the transaction in part based on the "extensive and longstanding past relationship" between the parties, which warranted assurances as to their competitive independence.<sup>74</sup> We reject Mission's argument that any conditions or concern about prospective violations can be dismissed out-of-hand as being unduly speculative.<sup>75</sup> As the Commission explained in taking similar prophylactic measures in *Sinclair/Glencairn*: "While we grant the [...] applications, we believe it appropriate to condition the grants upon certain changes being made to the agreements to ensure that violations of our rules do not occur in the future."<sup>76</sup> Moreover, Section 303(r) of the Act authorizes the Commission to prescribe restrictions or conditions not inconsistent with law that may be necessary to carry out the provisions of the Act.<sup>77</sup>

24. We find that the proposed assignment and operation of WADL shares a number of characteristics with the operation of WPIX that the Commission recently found to be problematic, and which we find to be problematic in this case. For example, in the *WPIX NAL* the Commission focused on the joint financing shared by Nexstar and Mission that had enabled Mission to acquire WPIX.<sup>78</sup> In that case, Mission purchased WPIX with Nexstar's assistance in the form of a line of financing shared by the two companies that Nexstar secured both by guaranteeing to repay the loan as well as providing collateral assets.<sup>79</sup> Based on the information provided in the Application, it appears that a similar financing coordination between Mission and Nexstar is involved in the acquisition of WADL. In addition, in the *WPIX NAL*, the Commission found it significant that Mission had abdicated control of the decisions regarding the station's retransmission consent rights to Nexstar, as well as forfeited those revenues to Nexstar.<sup>80</sup> This too is similar to the present situation where Mission has indicated its intention to delegate the ability to negotiate retransmission consent for the Station to Nexstar, along with the ability to collect

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<sup>74</sup> *Applications for Consent to Transfer of Control from License Subsidiaries of Allbritton Communications Co. to Sinclair Television Group, Inc.*, Memorandum Opinion and Order, 29 FCC Rcd 9156, 9168-69, para. 43 (MB 2014) (*Sinclair/Allbritton*).

<sup>75</sup> Mission Response at 3, 11-16.

<sup>76</sup> *Edwin L. Edwards, Sr., et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22255-56, para. 3721 (2001) (emphasis added) (*Sinclair/Glencairn*). In *Sinclair/Glencairn*, the Commission concluded that a set of applications should be conditionally approved rather than designated for hearing provided that the applicants abide by certain conditions and amend certain agreements. See also *Shareholders of Ackerley Group, Inc., et al.*, Memorandum Opinion and Order, 17 FCC Rcd 10828, 10841, para. 33 (2002) (*Ackerley*) (concluding that because Ackerley was in violation of the local broadcast television multiple ownership rule, and grant of the KION(TV) transfer application would result in a further violation of that ownership rule, the Commission would "condition grant of the KION(TV) application upon removal of any contractual right or other arrangement that would result in the broker being entitled to advertising revenues not resulting solely from the 15% of programming provided under the TBA").

<sup>77</sup> 47 U.S.C. § 303(r).

<sup>78</sup> *WPIX NAL* at 28-29, paras. 60-67.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.* at 24-25, paras. 47, 50-51.

the Station's retransmission consent revenues.<sup>81</sup> And while the Station, under Adell's present control, has elected must-carry status for the current carriage election cycle, we find that this does not obviate the ability for Nexstar to control the retransmission consent decisions and revenue of the Station going forward, absent a condition to prevent such behavior.

25. Of further concern is the fact that Nexstar remains at, or even just above, the 39% National Ownership Cap.<sup>82</sup> Accordingly, just as was the case with WPIX in New York, holding an attributable interest in WADL in Detroit, whether through the exercise of *de facto* control or potentially through an Equity Debt Plus (EDP) interest,<sup>83</sup> would result in Nexstar exceeding the National Ownership Cap.

26. We acknowledge that individually many of the agreements or relationships proposed in connection with the acquisition or operation of WADL are not, on their face, prohibited by our rules, and in many instances are similar to arrangements that, in other contexts, have been filed in connection with transfer applications that were ultimately approved. However, such agreements, behaviors, and relationships can become problematic in combination, particularly given the other entanglements between Mission and Nexstar, as the Commission just tentatively determined in the *WPIX NAL*. As the Bureau has noted previously when considering a combination of agreements that outsourced the operations of a broadcast station, “[d]etermining the full economic effects of these complex arrangements requires careful analysis, including review of the agreements and financial documents, to determine whether the arrangements together give the dominant station a level of operational and financial influence over the subordinate station such that we should treat the two as co-owned.”<sup>84</sup> The Commission has just done

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<sup>81</sup> See Application Attach., Form of Station Services Agreement at 3. Although, as noted above, Nexstar would be obligated to remit retransmission consent revenue to Mission, other elements of the arrangement, including the undefined “performance bonus” through which Mission can compensate Nexstar, call into question the likelihood and extent to which Mission or WADL would retain or benefit from any such revenue.

<sup>82</sup> See *supra* note 32 and accompanying text.

<sup>83</sup> The Commission's EDP rule addresses certain otherwise non-attributable interests that could allow the holder to exert significant influence over a licensee, and which are thus considered attributable. 47 CFR § 73.3555, Notes 2(a) & (i). Under the EDP rule, an entity that: (1) is a major program supplier (i.e., it provides programming constituting over 15% of the broadcast station's total weekly broadcast programming hours), and (2) holds an interest that exceeds 33% of the total assets of the licensee, aggregating both debt and equity holdings, will be deemed to hold an attributable interest in the station. The Commission adopted the EDP rule in part to address concerns raised that certain non-attributable investments, while permissible under the rules, might permit a degree of influence warranting their attribution. *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559, 12578-82, paras. 35-46 (1999). The rule was also adopted to address the concern that individually permissible cooperative arrangements between broadcasters were being combined to result in a degree of influence that the rules had intended to prohibit. *Promoting Diversification of Ownership in Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5932, para. 20 (2008) (stating that the “EDP rule is designed to resolve concerns that multiple non-attributable interests could be combined to allow the holders to exert significant influence over licensees such that these interests should be counted in applying the multiple ownership rules”).

<sup>84</sup> *Sinclair/Albritton* at 9157, para. 3 (noting that transactions presented to the Commission for review increasingly feature complex combinations of sharing arrangements and financial ties such as options and loan guarantees linking stations that are asserted to be separately owned). Further, under Commission precedent, *de facto* control is determined by looking at the totality of the circumstances. See *Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975); *SNR Wireless License Co., LLC, v. FCC*, 868 F.3d 1021, 1033-34 (D.C. Cir. 2017) (affirming Commission's “pragmatic application” of *de facto* control precedent, which transcends formulas and examines the facts and special circumstances presented in each case); *Northstar Wireless, LLC*, 35 FCC Rcd 13317, 13336, paras. 59-60 (2020) (Commission's “analysis involved not only a review of the contractual provisions on which the Applicants relied, but also an independent consideration of other contractual provisions and aspects of the relationships between the parties that were not clear from the face of the agreements”).

precisely that in the *WPIX NAL*, carefully considering the combination of agreements and entanglements between Mission and Nexstar, and tentatively concluding that the parties violated the Commission's rules and the Act in several ways in connection with the operation of that station.<sup>85</sup> As the proposed assignment of WADL presents us with many similar agreements and relationships, we similarly find those agreements and relationships problematic, and find that the record compels us to follow this guidance; we therefore adopt conditions to protect against the possibility of a future violation. Moreover, because the concerns arise from the collective totality of the combination of agreements, we adopt conditions that, taken together, seek to address the collective effect of those agreements.

27. Therefore, as detailed further below, we find that based on the record before us as well as the recent behavior of Mission and Nexstar in New York and the Commission's tentative finding that the parties apparently engaged in an unauthorized transfer of control that resulted in a breach of the Commission's structural ownership rules, it is necessary to impose conditions to ensure that a similar unauthorized *de facto* transfer of control and potential violation of the National Ownership Cap does not occur in this case.<sup>86</sup> We find such conditions to be specific to the transaction because they pertain to the proposed assignee in this case, Mission, and the involvement by its much larger business partner, Nexstar, in the financing of the Station acquisition; in the potential programming and future operation of the Station; and in the creation, collection, and retention of revenue generated by the Station, both from commercial advertising time sold on the Station and from licensing the distribution rights for the Station. Accordingly, we find the conditions discussed below to be tailored specifically to the potential harms identified in this case and to the parties involved. We further find that it is appropriate to use conditions in this case to ensure the efficacy of our rules and the Act and to protect the public interest.<sup>87</sup>

28. Finally, in concluding that the public interest will be served by a grant of the Application with the conditions discussed below, we find that the record does not present a substantial and material question of fact as to whether the transaction as conditioned serves the public interest as articulated in section 309(e).<sup>88</sup> Accordingly, we find that a hearing in this matter is not warranted. We emphasize, however, that without the conditions we are imposing, we would be unable to make that determination and would designate the application for hearing.<sup>89</sup>

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<sup>85</sup> *WPIX NAL* at 11, para. 21.

<sup>86</sup> See 47 U.S.C. § 303(r).

<sup>87</sup> The Commission's public interest authority enables it to impose and enforce transaction-related conditions, where appropriate, to ensure that the public interest is served by the transaction. See, e.g., *Altice N.V. & Cequel Corp. d/b/a Suddenlink Communications to Transfer Control of Authorizations from Suddenlink Communications to Altice N.V.*, Memorandum Opinion and Order, 30 FCC Rcd 14352, 14356, para. 12 (MB 2015) (*Altice/Suddenlink*); *Applications of AT&T, Inc. and DIRECTV for Consent to Assign or Transfer Control of Licenses and Authorizations*, Memorandum Opinion and Order, 30 FCC Rcd 9131, 9141, para. 21 (2015); and *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, Memorandum Opinion and Order, 13 FCC Rcd 18025, 18032, para. 10 (1998). Further, the Commission's "extensive regulatory and enforcement experience enables it, under this public interest authority, to impose and enforce conditions to ensure that the transaction will yield overall public interest benefits." *Altice/Suddenlink* at 14356, para. 12.

<sup>88</sup> Under Section 309(d) of the Act, "[i]f a substantial and material question of fact is presented or if the Commission for any reason is unable to find that grant of the application would be consistent [with the public interest, convenience, and necessity]," it must formally designate the application for a hearing in accordance with Section 309(e) of the Act. 47 U.S.C. §§ 309(d) and (e) (emphasis added). Courts have stated that, in reviewing the record, the Commission must designate an application for hearing if "the totality of the evidence arouses a sufficient doubt" as to whether grant of the application would serve the public interest. *Serafyn v. FCC*, 149 F.3d 1213, 1216 (D.C. Cir. 1998) (quoting *Citizens for Jazz on WRVR Inc. v. FCC*, 775 F.2d 392, 395 (D.C. Cir. 1985)).

<sup>89</sup> See 47 U.S.C. § 309(e). In this respect, we do not view these conditions as severable from one another and we intend for them to operate together to address the concerns we describe herein.

29. *Condition 1: Financing of Acquisition and Station Operation.* We find it necessary to impose conditions on Nexstar’s financing the purchase, and ongoing operation, of the Station to ensure that Nexstar does not exert control over Mission, or otherwise violate the Commission’s rules. The long-standing and intertwined financial relationship between Nexstar and Mission, most notably the undefined scope of all financial guarantees and covenants between the two, warrants a condition set forth below that prohibits Mission from relying on Nexstar’s assistance with financing. With regard to the initial financing of the transaction, the record before us is problematically open-ended—the minimal, two-sentence description of financing arrangements in the Transaction Description is indefinite at best with regard to the degree of Nexstar’s contribution towards the \$75 million purchase price, and even more unclear as to the specifics of the underlying financial relationship.<sup>90</sup> In the *WPIX NAL*, the Commission tentatively found that Mission’s reliance on a joint line of credit, cross-guaranteed and collateralized by Nexstar, led to an impermissible attributable interest in the station being acquired, a breach of the National Ownership Cap, and an undue influence over the smaller entity, Mission.<sup>91</sup> The *WPIX NAL* further questioned whether Mission’s financial dependence on Nexstar, including its reliance on sharing agreements similar to those in place here, led the Commission to find that Nexstar is the apparent real party in interest.<sup>92</sup> We have similar concerns here about the nature and extent of Mission’s financial dependence on Nexstar, and the potential for misuse and influence resulting from that dependence. We therefore find that a condition barring Nexstar’s involvement in Mission’s financing is necessary and appropriate to guard against similar harms that could arise from the acquisition of WADL. We impose this condition of financial separation not only for the initial acquisition of the Station, but also on an ongoing basis to ensure that there is no improper control over the Station’s future operations.

30. In imposing this condition, we give no weight to Mission’s argument that a Bureau finding concerning the Nexstar-Mission relationship in 2008, over a decade and a half ago, necessarily inoculates Nexstar’s participation in the financing of this proposed Station acquisition, including via any loan guarantee underlying the proposed transaction.<sup>93</sup> As an initial matter, in the *Nexstar-Mission Arkansas 2008 Order*, the Video Division did not specifically address the loan guarantee between Mission and Nexstar in the context of control, but rather considered and rejected the notion that such a guarantee was attributable under the Commission’s rules.<sup>94</sup> Further, we are mindful that a prior approval of a similar arrangement does not eliminate the concerns with improper financial guarantees here. In particular, that earlier case makes no reference to which collateral or other security interest, if any, was provided by Nexstar to secure the loan. In light of the Commission’s analysis in the *WPIX NAL*, the

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<sup>90</sup> See *supra* para. 2.

<sup>91</sup> *WPIX NAL* at 27-30, paras. 56-68.

<sup>92</sup> *Id.* at 12, para. 24.

<sup>93</sup> Mission Response at 8 (citing *Applications for Assignment of License KFTA-TV, Fort Smith, Arkansas and KNWA-TV, Rogers, Arkansas*, Letter Order, 23 FCC Rcd 3528 (MB 2008) (*Nexstar-Mission Arkansas 2008 Order*)). Mission notes that in this 2008 decision the Bureau reaffirmed that “loan guarantees do not confer an interest upon the guarantor requiring attribution.”

<sup>94</sup> In determining abdication of financial control, the Commission looks to determine whether a party other than the licensee has exerted actual control over the station, and not simply whether a third-party holds the ability to potentially influence the licensee’s actions. Thus, the standard, and the Commission’s calculation, is different from whether a party is simply attributable, which is a measure of the *potential* degree of influence, rather than a finding of actual control. Attribution of an ownership interest to an individual or entity represents the Commission’s best judgment concerning when an interest is sufficient to confer on the owner a potential degree of influence over a licensee that should be cognizable for purposes of applying the Commission’s broadcast ownership rules. See, e.g., *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 et al.*, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835, 7836, para. 1 n.1 (MB 2014).

potential for a security interest contributing to an impermissible attributable interest in a station that exceeds the National Ownership Cap further justifies the imposition of this condition.

31. Accordingly, we impose the following condition: Any financing utilized by Mission in connection with either the acquisition of WADL or Mission's operation of the Station, including with regard to day-to-day operations, capital improvements, programming acquisition, or technical upgrades to the Station, may not involve Nexstar, its affiliates, its VIEs, or any related person or entity in any manner, including through the provision of such financing directly or indirectly, the guarantee of any loan or debt instrument sought or held by Mission, or the provision of collateral to secure a loan or debt instrument sought or held by Mission. For purposes of clarity, this includes the existing Credit Agreement, dated as of January 17, 2017, by and among Mission Broadcasting, Inc., as the borrower and Bank of America, N.A., as the administrative agent and the collateral agent and other financial institutions from time to time party thereto.

32. *Condition 2: Sale of Commercial Time.* Consistent with the draft terms of the proposed Agreement for Sale of Time on WADL, we adopt a condition requiring that Mission receive and retain no less than 70% of the Station's advertising revenue, as detailed below. In the *WPIX NAL*, the Commission was concerned that Mission retained little to no financial interest in the day-to-day success or failure of the station in that case.<sup>95</sup> In conjunction with the restrictions we impose today to prevent Nexstar's domination of Mission's financial operations, this condition on the sale of advertising time is essential to ensure that Mission retains an economic interest in the performance of the Station and the provision of service to address the needs and interests of the local community.<sup>96</sup>

33. Accordingly we impose the following condition: In the event that Mission enters into an agreement with Nexstar, its affiliates, its VIEs, or any related persons or entities, either oral or written, that allows Nexstar, its affiliates, its VIEs, or any related person or entity to purchase, sell, and/or resell commercial advertising time on WADL or otherwise allows Nexstar, its affiliates, its VIEs or any related person or entity to sell commercial advertising time on the Station, Mission must receive and retain no less than 70% of the revenues generated by the sale of such commercial advertising time on WADL consistent with the draft agreement for the sale of commercial time submitted as part of the WADL assignment Application.

34. *Condition 3: Performance Bonus.* Similarly, to prevent the circumvention of the restrictions on Nexstar's potential domination of Mission's financial operation of the Station, we prohibit the use of a "Performance Bonus" or any other open-ended, discretionary payout from Mission to Nexstar. The draft of the proposed Services Agreement submitted with the Application allows Mission to pay to Nexstar a "Performance Bonus" in Mission's "sole and absolute discretion" on top of the \$155,500-per-month fee payable to Nexstar for the provision of various station services. The existence of such an undefined workaround to the proposed 70/30 split of advertising revenue in the Agreement for the Sale of Time and the absolute dollar figures elsewhere in the services agreements presents an unacceptable risk of an end run around our safeguards. This is particularly so where there is no governing

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<sup>95</sup> *WPIX NAL* at 20-23, paras. 40-45.

<sup>96</sup> Previously, the Commission has found that a licensee's retention of the economic incentive to control programming aired over its station is a key element of retaining control of its license. See *Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (finding no economic incentive to control programming where broker programmed 15% of weekly broadcast hours and retained 100% of revenue under JSA); see also *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 et al.*, MB Docket Nos. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, 9850, para 105 (2017) (noting that with respect to agreements for the joint sale of advertising time (JSAs) by stations in the same market "[t]he record shows . . . that television JSAs generally rely on percentage fee arrangements in which the brokered station retains a substantial portion of the advertising revenue, which makes it substantially less likely that the brokered station's programming decisions would be significantly influenced by the brokering station.").

quantification or metric connected with such a Performance Bonus, other than the minimal guidance that such a bonus be determined in “good faith.”

35. We find wholly unpersuasive Nexstar’s defense of the “Performance Bonus” on the bases that (1) performance bonuses for the advertising seller are not uncommon in joint advertising sales agreements, and (2) Mission has complete discretion with regard to how much Mission would pay for the services that Nexstar provides.<sup>97</sup> In no scenario would a *services* agreement be the appropriate vessel for a discretionary bonus solely intended to reflect *advertising* sales, and the frequency of similar bonuses in contracts for the sale of advertising time does not support its inclusion in an extrinsic document. Indeed, the parties did not include the Performance Bonus in the Agreement for the Sale of Advertising Time but instead included it in the proposed Services Agreement. Moreover, as indicated above, unfettered discretion to devise a bonus devoid of any merit-based algorithm or guidelines would eviscerate any consistency with the 70/30 split of advertising revenue previously recognized by the Bureau as a useful indicator of broadcaster independence, and would allow Mission an impermissible backchannel to remit additional funds to Nexstar.

36. Although Mission operates as a VIE of the larger Nexstar enterprise, and Nexstar clearly states that it is entitled to all of Mission’s available cash after satisfaction of its operating costs and debt,<sup>98</sup> the Commission’s long-standing precedent expects that an independent, non-commonly owned licensee will retain control of its own station.<sup>99</sup> This includes financial control of the Station and a vested economic interest in the success or failure of the Station and, relatedly, in its provision of programming and service to the community. If Mission were to simply serve as an empty vehicle for Nexstar effectively to drain revenues from the Station, for instance through what is described on paper as a “Performance Bonus,” Mission would hardly be satisfying its fundamental role as an independent, non-commonly owned licensee. Accordingly, the conditions we impose today requiring that Mission receive 70% of the revenue derived from the sale of advertising time on the station and eliminating the amorphous “Performance Bonus,” serve to ensure that Mission retains a financial interest in the operation of the Station and, ultimately, control of its own station.

37. We therefore impose the following condition: In the event that Mission enters into an agreement with Nexstar, its affiliates, its VIEs, or any related person or entity: (a) pursuant to which Nexstar, its affiliates, its VIEs, or any related person or entity would provide certain services to Mission in connection with the operation of WADL such as execution of promotional policies; continuity and traffic support; master control; provision of payables support; financial services including preparation of monthly accounting services; transmission facilities maintenance; and contract negotiation; (b) for the purchase, sale, and/or resale of commercial advertising time on the Station; or (c) for the lease of

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<sup>97</sup> Mission Opposition at 6.

<sup>98</sup> Nexstar 10-K at 23 (“In return for the services we provide, we receive substantially all of the consolidated VIEs’ available cash, after satisfaction of their operating costs and any debt obligations.”).

<sup>99</sup> 47 CFR § 73.3540; 47 U.S.C. § 310(d) (stating no “station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control... to any person except upon application to the Commission and a Commission finding that the public interest, convenience, and necessity will be served thereby”); *see also Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002) (stating the licensee must retain ultimate authority over the policies governing the programming, personnel, and finances at its station). Further, the Commission has held that a licensee’s retention of the economic incentive to control programming aired over its station is a key element of retaining control. *See e.g., Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (finding no economic incentive to control programming where broker programmed 15% of weekly broadcast hours and retained 100% of revenue under JSA); *Applications for Consent to Transfer Control from Shareholders of Belo Corp. to Gannett Co., Inc.*, Memorandum Opinion and Order, 28 FCC Rcd 16867, 16878, para. 28 (MB 2013) (noting that whether a licensee has the economic incentive to control its own programming is a key element of the Commission’s *de facto* transfer of control analysis).

programming time or the provision of programming through affiliation, production, or procurement, such an agreement, whether written or oral, may not contain any undefined “performance bonus” to be paid by Mission to Nexstar, its affiliates, its VIEs, or any related person or entity. Further, any agreement for the provision of station services in connection with the operation of WADL as described in (a) in the preceding sentence must be limited to a fixed fee of no greater than \$155,500 per month (plus 3% annual increase) as contemplated in the draft station services agreement submitted as part of the WADL assignment Application.

38. *Condition 4: Option.* The Commission tentatively concluded in the *WPIX NAL* that Nexstar had apparent *de facto* control of WPIX’s finances in part because Mission lacked any upside in the success of that station, with no long-term profitmaking potential pursuant to the programming agreement, Option, or unwritten and undisclosed retransmission consent practices in that case.<sup>100</sup> Consistent with that preliminary determination, we also impose as a condition on the grant of this Application a bar on Nexstar acquiring any option that would allow it the right to purchase the Station at a later date. This limitation is designed to ensure that Mission retains some economic incentive to improve the ownership and operation of the Station.

39. In reaching this decision, we find the exercise price of the Option Agreement, together with Mission’s inability to sell the Station to a third party without Nexstar’s consent, is particularly problematic with regard to creating any incentive for Mission to improve the value of the Station. As described above, in exchange for guaranteeing the loan used to acquire WADL, Mission intends to grant Nexstar the right to acquire the Station in the future. In order to so acquire the Station from Mission, Nexstar would assume Mission’s outstanding liabilities tied to the ownership and operation of the Station and also pay Mission the greater of either (1) seven times the cash flow generated by the Station in the preceding 12 months, less Mission’s outstanding indebtedness, or (2) Mission’s outstanding indebtedness.<sup>101</sup> These terms, however, appear to fall far short of allowing Mission any ability to make a profit on the future sale of the Station, just as was the case in the *WPIX NAL*.

40. As an initial matter, although the debt that must be satisfied before Mission sees a profit is entitled “Existing Station Indebtedness” in the Option Agreement, there apparently is nothing necessarily Station-specific about it. Rather, such indebtedness appears to contemplate Mission’s collective outstanding debt at that future date, not simply the debt of WADL. Because the 2017 Credit Agreement referenced in the definition of Existing Station Indebtedness is seven years old and still available for Mission’s future operations and potential acquisitions, it is possible that this line of credit would contain more than the debt for WADL. Accordingly, while the first prong of the Option price has a traditional cash flow multiple figure, the full amount of that prong is not a realistic valuation but rather appears designed to create the appearance of a market rate, because in order for Mission to see a profit from the sale of WADL Nexstar would apparently have to pay the entire outstanding balance (principal plus interest) of the 2017 Credit Agreement. The total of this prong may even be negative, if the seven-time-cash-flow amount is anywhere near the current multiple of that cash flow. For example, if the 2017 Credit Agreement reflects just the financing for the initial acquisition of WADL, and that acquisition price is all or a large portion of the \$75 million purchase price, it would exceed the seven-times cash flow for the Station by a significant degree.

41. In addition, consistent with the argument raised by ATVA, we question whether the second prong of the Option price would lead to an effective payout of zero.<sup>102</sup> Because Nexstar and Mission are co-guarantors of Mission’s bank financing, the “price” of paying off that financing would, in

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<sup>100</sup> *WPIX NAL* at 20-21, para. 40.

<sup>101</sup> *See supra* para. 6.

<sup>102</sup> ATVA Informal Objection at 8 (asserting that the purchase price provision means that Nexstar can effectively purchase the Station for no additional funds, because the price is for amounts that it has already guaranteed, namely Mission’s senior secured credit facility).



practice, simply mean that instead of Nexstar and Mission being jointly subject to the repayment obligations, Mission would be removed as a debtor. Thus, Nexstar would not pay out any cash to Mission or be subject to additional loan obligations, but rather would just be subject to repayment of the loan it already guarantees.

42. We are unpersuaded by Mission’s contention that the Option Agreement contains customary terms the Commission has reviewed and approved in numerous option agreements between Nexstar and Mission and, therefore, is not problematic in the present transaction.<sup>103</sup> Apart from the fact that the applications cited by Mission were (1) all filed more than 15 years ago, (2) for a fraction of the purchase price at issue here, and (3) unopposed (with one exception), any prior approval by the Bureau is heavily qualified by the fact that Nexstar was never disclosed as co-guarantor of the underlying debt in those cases.<sup>104</sup> Instead, the debt was defined in the Option Agreement under the term “Existing Station Indebtedness” as the principal and interest arising from and due to lenders under a Credit Agreement dated 1999, 2003 or 2005 among Mission Broadcasting, Inc.; Bank of America, N.A.; and certain other parties thereto, without identifying Nexstar as such a party. Virtually identical language is used here,<sup>105</sup> but in the different context of the express disclosure of Nexstar’s guarantee to repay Mission’s bank financing.<sup>106</sup> Moreover, based on the facts disclosed in the investigation of WPIX, more is now known about Nexstar’s involvement in Mission’s financing.

43. The fact that the Bureau implicitly approved those prior option agreements—but without any indication on the records before the Commission at that time that Nexstar may have been a party to those credit agreements—does not prevent the existence of the current Option (or any option) from removing Mission’s economic incentives. Moreover, the combination of facts and circumstances in this case, combined with the record developed in the WPIX case, warrant a renewed and careful look at the various agreements and relationships between these two parties and ultimately require the prophylactic measures we adopt today.

44. Accordingly, we impose the following condition: Mission may not enter into an option agreement, either written or oral, that would allow Nexstar, its affiliates, its VIEs, or any related person or entity, to acquire WADL at a future date. Further, Mission may not enter into an agreement, either written or oral, that gives Nexstar, its affiliates, or its VIEs the right of first refusal to acquire the Station if Mission chooses to sell WADL in the future.

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<sup>103</sup> Mission Opposition at 7-8 (citing File No. BALCT-20041012ABR (WTVO(DT), Rockford, IL, Facility Id. No. 72945); File No. BALCT-20070705AAR (KTVE(DT), El Dorado, AR, Facility Id. No. 35692); File No. BALCT-20030519AEP (KAMC(DT), Lubbock, TX, Facility Id. No. 40820); File No. BALCT-20030519AET (KHMT(DT), Hardin, MT, Facility Id. No. 47670); BALCT-20030519AEQ (KOLR(DT), Springfield, MO, Facility Id. No. 28496); File No. BALCT-20030522AFE (WAVV-TV (formerly WBAK-TV), Terre Haute, IN, Facility Id. No. 65247); File No. BALCT-20031222ACA (WUTR(TV), Utica, NY, Facility Id. No. 57837); and File No. BALCDT-20121109ADH (WVNY(DT), Burlington, VT, Facility Id. No. 11259)).

<sup>104</sup> In the *Nexstar-Mission Arkansas 2008 Order*, the Bureau declined a petitioner’s request to condition the grant on striking the option agreement, finding that the agreement’s impact on the Nexstar and Mission relationship was “speculative.” *Nexstar-Mission Arkansas 2008 Order*, 23 FCC Rcd at 3536. Here, however, additional evidence regarding the entanglements between, and actions by, Nexstar and Mission places the option agreement in a larger context and removes the need to speculate about its significance. Accordingly, because the record before the Bureau in the prior case did not reveal any cross-financing arrangements between Nexstar and Mission—if any existed—the Bureau’s approval of the option in that decision is not determinative here.

<sup>105</sup> The Option defines “Existing Station Indebtedness” to mean the principal of and interest on all Indebtedness “existing or arising, due . . . to lenders under . . . the Credit Agreement dated as of January 17, 2017, among Mission Broadcasting, Inc., Bank of America, N.A., and certain other parties thereto . . .” Option Agreement, Appendix at 26.

<sup>106</sup> Transaction Description at 1 (“Nexstar guarantees repayment of Mission’s bank financing. Mission may utilize its bank financing to pay for some or all of the purchase price for WADL.”).

45. *Condition 5: Retransmission Consent Agreement Negotiation.* In the *WPIX NAL*, the Commission noted that “Mission’s unwritten delegation to Nexstar of the power to serve as the exclusive decisionmaker with regard to retransmission consent authority . . . as indicative of the usurpation by Nexstar of the financial and business affairs of WPIX.”<sup>107</sup> To avoid similar usurpation here, we also impose conditions as set forth below, barring Mission from delegating or outsourcing authority to Nexstar to conduct retransmission consent negotiations for WADL or to otherwise control the Station’s retransmission rights or revenue.

46. Although the Applicants have indicated that the Station has elected must-carry status for the current carriage election cycle (which runs through December 31, 2026), the conditions we adopt today will protect against negative implications of after-acquired clauses and whether, going forward, Nexstar might treat the Station as one of its own for future retransmission consent negotiations. In particular, these conditions are necessary to preserve Mission’s agency with regard to the Station’s finances and decision-making.<sup>108</sup>

47. When added to Nexstar’s contractual involvement and options with Mission’s finances, operations, and programming, the inclusion in the services agreement of Mission’s delegation to Nexstar of the power to serve as the exclusive decisionmaker with regard to the Station’s retransmission consent rights raises questions as to whether Mission intends to or would otherwise effectively abdicate a key element of the Station’s financial and business affairs. As the Commission recognized in the *WPIX NAL*, retransmission consent negotiation confers authority to set the fee rate and conditions of carriage; resolve or not resolve often critical issues, such as rejecting an MVPD offer and, at impasse, imposing a blackout; designation as a primary channel or multicast; determination of the length of the retransmission consent contract; and right to renewal.<sup>109</sup>

48. In crafting the condition to prevent inappropriate influence or disclosure of information from Mission to Nexstar in the course of retransmission negotiations, we are mindful of effective guardrails that the Commission has previously endorsed in approving a consent decree to remedy similar harms.<sup>110</sup> Previously, the Commission has adopted conditions prohibiting the intentional, or even unintentional, sharing of information between parties in connection with retransmission consent negotiations.<sup>111</sup> While the basis for imposing such prophylactic measures is different here, the need to implement comprehensive and workable protections is similarly compelling.

49. Mission makes two arguments regarding why such delegation should not be a concern, neither of which resolve the potential real-party-in-interest concerns. First, Mission contends that such delegation is permissible because Nexstar owns no television stations in the Detroit DMA, and the Commission’s rules only bar joint negotiation by non-commonly owned stations where such stations are located in the same market.<sup>112</sup> We agree that the Commission’s rule regarding the negotiation of retransmission consent does not by its terms prohibit negotiation on behalf of a non-commonly owned station. However, the fact that the Commission’s rules do not prohibit negotiation by another broadcaster in an out-of-market situation does not confer insulation from real-party-in-interest questions. This is particularly important where delegation of these rights would be to the largest broadcaster in the country

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<sup>107</sup> *WPIX NAL* at 24, para. 47.

<sup>108</sup> *Id.* at 24, para. 49.

<sup>109</sup> *Id.* at 24, para. 47.

<sup>110</sup> See *Sinclair Broadcast Group*, File No. EB-IHD-16-00021748, Order, 35 FCC Rcd 5877 (2020) (adopting a consent decree); *Sinclair Broadcast Group*, File No. EB-IHD-16-00021748, Consent Decree, 35 FCC Rcd 5881, 5890-92, para. 20 (2020).

<sup>111</sup> *Id.*

<sup>112</sup> See Transaction Description at 1 n.1 (citing 47 CFR § 76.65(b)(1)(viii)).

who would otherwise be barred from acquiring a station in the Detroit market and may have plans to bundle its programming to secure a superior retransmission consent rate at some time in the future. Moreover, the conditions we impose today, in the shadow of the unwritten and apparently complete delegation of retransmission consent rights in New York, are necessary to ensure that Nexstar will not treat the station as its own, claiming it as an after-acquired Nexstar station subject to Nexstar's rate schedule and terms, with all revenue payable to Nexstar. This is not a situation involving a station engaging Nexstar to negotiate retransmission consent agreements on its behalf as might exist in a typical agency relationship. Rather, as shown by Mission's own emails and statements cited in the *WPIX NAL*, in delegating this authority to Nexstar Mission was essentially cut out from the process entirely.<sup>113</sup> Thus, the condition we adopt here, which does not interfere in the retransmission consent marketplace as Mission contends, will ensure that Mission does not effectively cede its retransmission rights and station revenue to Nexstar and that it retains the ability to potentially profit from this important aspect of station operation.

50. Second, Mission asserts that its Must-Carry Amendment, under which Adell committed to retaining must-carry status for WADL for the January 1, 2024 – December 31, 2026 period, has mooted the Objectors' speculative concern of "harm" in the form of increased retransmission consent fees for the Station, because MVPDs will not be required to pay any such fees for the next three years.<sup>114</sup> We agree with ATVA that simply confining Nexstar to a three-year waiting period before Nexstar could conceivably control the retransmission consent rights for the Station does not eliminate the concerns at issue here. Further, as the Objectors point out, MVPD agreements with Nexstar may nonetheless treat WADL as an "after-acquired" station upon consummation,<sup>115</sup> and the short-term election of must-carry status would not moot a real-party-in-interest issue where Nexstar may assert retransmission consent negotiation authority for the Station.

51. Accordingly, we impose the following condition: With regard to the carriage of WADL by any MVPD, including but not limited to the negotiation of retransmission consent for the Station or collection of any revenues resulting from retransmission distribution, Mission may not delegate, outsource, surrender, or grant rights over any aspect of retransmission consent negotiations for WADL to Nexstar, its affiliates, its agents, its VIEs, or any related entities or persons. In addition, in negotiating future retransmission consent rights for the Station, Mission may not bundle the carriage rights for WADL, or allow the carriage rights for WADL to be bundled with, the carriage rights for any station owned, operated, or controlled by Nexstar, its affiliates, or its VIEs, whether in the Detroit market, or any other market, nor with any programming channel owned by Nexstar, its affiliates, or its VIEs, including The CW Network and NewsNation. Further, Mission may not coordinate with or otherwise share information regarding the retransmission of WADL with Nexstar, its affiliates, its agents, its VIEs, or any related entity or person. Specifically: (a) no Mission employee or agent may provide, directly or indirectly, a copy of any retransmission consent agreement involving the carriage of WADL, or any non-public information related to such an agreement, to any Nexstar employee or agent who is involved in any way in retransmission consent negotiations on behalf of Nexstar; and (b) Mission shall establish information controls that (1) prevent any Mission employee or agent from, intentionally or unintentionally, sharing physical or electronic copies of any retransmission consent agreement involving WADL, or any document containing non-public information related to such an agreement, with any Nexstar employee or agent, particularly those involved in any way in retransmission consent negotiations on behalf of Nexstar, and (2) prevent any Nexstar employee or agent who is involved in any way in retransmission consent negotiations on behalf of Nexstar from, intentionally or unintentionally, accessing physical or electronic copies of any retransmission consent agreement involving WADL, or any document

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<sup>113</sup> *WPIX NAL* at 25, para. 51.

<sup>114</sup> Mission Sep. 21, 2023 *Ex Parte* Letter at 1.

<sup>115</sup> ATVA Oct. 10, 2023 *Ex Parte* Letter at 1-2; NCTA Oct. 18, 2023 *Ex Parte* Letter at 2.

containing non-public information related to such an agreement. For purposes of clarity, the foregoing provisions limiting access to WADL retransmission consent agreements or non-public information related to such agreements shall not preclude access by Nexstar employees or agents who are not in any way involved in retransmission consent negotiations on behalf of Nexstar (who may include accounting personnel and auditors).

52. *Condition 6: Nexstar Programming on WADL.* We further condition our approval of the Application by limiting Nexstar's provision of programming on WADL to no more than 15% of the total programming time aired on the Station, including through any affiliation with The CW Network, NewsNation, or any other programming source that is majority-owned or controlled by Nexstar or its affiliates. Although the Applicants submit that initially Nexstar will not provide programming to the Station, as stated above, the agreements do recognize that upon Mission's request, Nexstar would assist in procuring or producing programming for the Station.

53. We find that such a condition would limit Nexstar's involvement in Mission's programming decisions for the Station and ensure that Mission retains a significant interest in the Station's performance. Based on the limited information in the record before us, and informed by the apparent EDP attribution issue that the Commission identified in the *WPIX NAL* case, imposing a 15% programming limit also ensures that Nexstar does not qualify as a major program supplier to the Station, and thereby precludes any concerns about EDP attribution in violation of the National Ownership Cap.<sup>116</sup> This condition is especially important in light of the Commission's tentative finding in the *WPIX NAL* that Nexstar became attributable in WPIX pursuant to its provision of collateral security interest under the shared "Revolver" facility, which triggered the Commission's EDP rule.<sup>117</sup> The condition we adopt today limiting the provision of programming to WADL obviates any potential concern for a similar breach of the EDP rule, and by extension, of the National Ownership Cap.

54. Accordingly, we impose the following condition: No more than 15% of the programming time aired on WADL may consist of programming provided by, procured from, or owned by Nexstar, its affiliates, or its VIEs. Accordingly, Mission may not lease time to, procure from, outsource to, or otherwise air programming owned, provided, produced, or procured by Nexstar, its affiliates, or its VIEs for more than 15% of WADL's programming time, including, but not limited to, by affiliation with The CW Network, NewsNation, or any other programming source majority-owned or controlled by Nexstar or its affiliates. For purposes of clarity, if WADL airs more than one channel of programming, this limitation shall apply to each channel or multicast stream of programming offered by the station, such that no more than 15% of the programming time on any one channel or multicast stream may consist of programming provided by, procured from, or owned by Nexstar, its affiliates, or its variable interest entities.

55. Accordingly, if you do not accept the conditions as set forth herein, we will proceed pursuant to Section 1.110 of the Rules by vacating the grant and setting the Application for hearing consistent with section 309(e) of the Communications Act.<sup>118</sup>

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<sup>116</sup> Under the EDP rule, an entity that holds an interest greater than 33% of the total assets of the licensee (aggregating both debt and equity holdings) and is also a major program supplier to the station will be deemed to hold an attributable interest in the licensee. 47 CFR § 73.3555, Note 2(i). The EDP rule also contains a second prong by which an entity can trigger the attribution rules, namely, if the party holding a 33% or greater EDP interest in a licensee also holds an attributable interest in another broadcast licensee in the same market. Because Nexstar is not the licensee of another station in the market, that prong is not relevant to this proceeding.

<sup>117</sup> *WPIX NAL* at 28-30, paras. 62-67 (recognizing that both parties (Mission and Nexstar) had borrowing rights from a jointly secured pool of money under which each party was assigned an individual cross-collateralized credit limit, and that Nexstar had provided collateral as security for the loan).

<sup>118</sup> 47 CFR § 1.110 ("Where the Commission without a hearing grants any application . . . with any privileges, terms, or conditions other than those requested . . . the action of the Commission shall be considered as a grant of such

(continued....)

### III. ORDERING CLAUSES

56. Accordingly, **IT IS ORDERED** that the informal objection filed by American Television Alliance **IS DENIED**.

57. **IT IS FURTHER ORDERED** that the informal objection filed by NCTA—The Internet & Television Association **IS DENIED IN PART** and **IS GRANTED IN PART**.

58. **IT IS FURTHER ORDERED** that the Application seeking consent to assign the television broadcast license of WADL(TV), Mount Clemens, Michigan from Adell Broadcasting Corporation to Mission Broadcasting, Inc., LMS File No. 0000214896, pursuant to section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d), **IS GRANTED**, subject to the conditions set forth in paragraphs 31, 33, 37, 44, 51, and 54, above.

59. These actions are taken pursuant to section 0.61 and 0.283 of the Commission's rules, 47 CFR §§ 0.61, 0.283, and sections 4(i) and (j), 303(r), and 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), 310(d).

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer  
Chief, Media Bureau

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application unless the applicant shall, within 30 days from the date on which such grant is made or from its effective date if a later date is specified, file with the Commission a written request rejecting the grant as made. Upon receipt of such request, the Commission will vacate its original action upon the application and set the application for hearing in the same manner as other applications are set for hearing.”); see also Applications of KKR Assocs., L.P. (Transferor) & Sci Television, Inc. (Transferee) for Transfer of Control of Storer Communications, Inc., Decision, 2 FCC Red 7104, 7107, para. 20. (1987).