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

In the Matter of	)	
	)	
Comcast Cable Communications, LLC,	)	MB Docket No. 22-443
	)	File No. CSR-9005-C
Complainant,	)	NAL/Acct. No. MB-202441430001
	)	
v.	)	
	)	
Mission Broadcasting, Inc.	)	
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER AND NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: January 12, 2024 **Released: January 12, 2024**

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission has before it a complaint by Comcast Cable Communications, LLC (Comcast) against Mission Broadcasting, Inc. (Mission)[1] alleging violations of the requirement to negotiate retransmission consent in good faith pursuant to section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act), and the Commission's implementing rules.[2] Among other allegations, Comcast asserts that Mission, licensee of New York, NY television station WPIX, breached its statutory duty to negotiate in good faith. Comcast claims that Mission did so by conditioning retransmission consent on Comcast's acceptance of contract proposals that were presumptively inconsistent with competitive marketplace considerations because they would foreclose the filing of future complaints with the Commission.[3] For the reasons set forth below, we find that, upon consideration of the totality of the circumstances, Comcast has satisfied its burden of proof with respect to Mission's failure to negotiate in good faith. We, therefore, grant the Complaint, in part, and propose a forfeiture of $150,000 against Mission, licensee of WPIX.

[1] Verified Complaint of Comcast Cable Communications, LLC, Against Nexstar Media Group, Inc. and Mission Broadcasting, Inc. for Failure to Negotiate Retransmission Consent in Good Faith, MB Docket No. 22-443 (filed Dec. 12, 2022), https://www.fcc.gov/ecfs/document/1212102136916/1 (Complaint). Comcast's informal complaint alleges additional good faith negotiation violations against both Mission and Nexstar Media Group, Inc (Nexstar). In this Order we address only a subset of the allegations against Mission, the licensee of WPIX, and do not address any of the allegations against Nexstar, which represented WPIX and Mission in the negotiations with Comcast. The remaining allegations are under review by the Commission pending the outcome of ongoing investigations.

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

[3] Complaint at 25, para. 56; Reply in Support of Verified Complaint of Comcast Cable Communications, LLC Against Nexstar Media Group, Inc. and Mission Broadcasting, Inc. for Failure to Negotiate Retransmission Consent in Good Faith, MB Docket No. 22-443, at 5-9 (filed Jan. 27, 2023), https://www.fcc.gov/ecfs/document/10127083345523/1 (Reply).

II. BACKGROUND

A. Relevant Law and Commission Rules

2. Section 325(b)(3)(C) of the Act imposes on television broadcast stations and multichannel video programming distributors (MVPDs) a duty to negotiate retransmission consent in good faith.[4] Specifically, section 325(b)(3)(C)(ii) directs the Commission to establish rules that "prohibit a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith."[5] Section 325 also provides that "enter[ing] into retransmission consent agreements containing different terms and conditions . . . with different [MVPDs]," is not a violation of the duty to negotiate in good faith "if such different terms and conditions are based on competitive marketplace considerations."[6] In the 2000 *Good Faith Order*, the Commission adopted rules that implemented the statutory good faith negotiation provision and established complaint procedures for alleged violations of the rules.[7] The *Good Faith Order* adopted a two-part test for good faith.[8] The first part of the test sets forth an objective list of negotiation standards.[9] Each of the standards applies to "Negotiating Entit[ies]," which the rules define as "a broadcast television station or [MVPD]."[10] A Negotiating Entity that engages in any of the acts or practices set forth in the list is deemed to have committed a *per se* breach of its statutory duty to negotiate retransmission consent in good faith.[11]

3. The second part of the good faith test considers whether a Negotiating Entity has failed to negotiate in good faith based on the "totality of the circumstances."[12] Under this standard, a broadcast station or MVPD may present facts to the Commission that, viewed in their totality, amount to a failure to negotiate in good faith.[13] When adopting this standard, the Commission explained that specific retransmission consent proposals could be "sufficiently outrageous. . . as to breach [the] good faith negotiation obligation."[14] The Commission stated further that, while it was "difficult to develop a . . . list of proposals that indicate an automatic absence of competitive marketplace considerations . . . it is implicit in section 325(b)(3)(C) that any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement."[15] Consistent with this reasoning, the Commission identified several examples of "bargaining proposals [that] presumptively are not consistent with

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[4] 47 U.S.C. § 325(b)(3)(C).

[5] 47 U.S.C. § 325(b)(3)(C)(ii).

[6] 47 U.S.C. § 325(b)(3)(C)(ii).

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

[8] *Good Faith Order*, 15 FCC Rcd at 5457, para. 30.

[9] 47 CFR §§ 76.65(b)(1)(i)–(ix) (listing *per se* standards for good faith negotiation). Although the requirement to negotiate in good faith originally was imposed only on television broadcast stations, a reciprocal obligation later was imposed on MVPDs. *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005).

[10] 47 CFR § 76.65(b)(1).

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

[12] 47 CFR § 76.65(b)(2).

[13] *Id*.

[14] *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

[15] *Id*. at 5470, para. 58.

competitive marketplace considerations and the good faith negotiation requirement," including "proposals for contract terms that would foreclose the filing of complaints with the Commission."[16]

4. A broadcast station or MVPD that believes itself aggrieved under the good faith rules may file a complaint pursuant to section 76.7 of the Commission's rules.[17] The burden of proof in good faith complaint proceedings is on the complainant.[18]

B. Factual Summary[19]

5. Comcast is an MVPD and a Negotiating Entity as defined in section 76.65 of the Commission's rules. Mission is the licensee of 29 full power television broadcast stations, including WPIX.[20] WPIX is a television broadcast station, and a Negotiating Entity as defined in section 76.65. Nexstar, the other party named in Comcast's complaint, owns or "partners" with 200 full power broadcast stations nationwide.[21] Nexstar represented WPIX in the Comcast retransmission consent negotiations.[22] Except where otherwise noted in this item, references to actions taken and statements made by WPIX were performed by Nexstar on behalf of the station.

6. On October 28, 2022, WPIX sent Comcast an initial proposal for renewal of retransmission consent for WPIX.[23] Representatives for Comcast and WPIX exchanged several proposals throughout November by phone, letter, and email.[24] As of December 3, 2022, after the expiration of its agreement with Mission, Comcast discontinued carriage of WPIX.[25] On December 7 and 9, 2022, WPIX made the proposals at issue in this proceeding.[26] These proposals would have, in relevant part, prevented either party from seeking Commission action related to certain carriage negotiations.[27] On December 12, 2022, Comcast filed the instant Complaint. On December 17, 2022, Comcast and WPIX successfully

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[16] *Id*.

[17] 47 CFR §§ 76.65(c), 76.7.

[18] 47 CFR § 76.65(d).

[19] All parties filing in this proceeding have requested confidentiality for certain information. We have not ruled on these requests. This summary is based on undisputed statements by the parties, and where possible relies on information placed in the portion of the record for which confidentiality has not been requested. Where necessary, information for which confidentiality was requested has been identified, redacted, and marked with the double-bracketed letter "C" ([[C]]) throughout this Memorandum Opinion and Order.

[20] Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023).

[21] Nexstar Media Group, Inc., *Company History*, https://www.nexstar.tv/history/ (last visited Jan. 8, 2024).

[22] *See* Mission Broadcasting, Inc.'s Answer to Good Faith Negotiation Complaint of Comcast Communications, LLC, MB Docket No. 22-443, at 6 (filed Jan. 17, 2023), https://www.fcc.gov/ecfs/document/1011762908612/1 (Mission Answer), citing a November 11, 2022 Mission email to Comcast [[C]] REDACTED [[C]]

[23] Complaint at 11, para. 23; Answer of Nexstar Media Groups, Inc., MB Docket No. 22-43, at 6 (filed Jan. 17, 2023), https://www.fcc.gov/ecfs/document/10117301437727/1 (Nexstar Answer).

[24] Nexstar Answer at 6.

[25] Complaint at ii (explaining that Comcast's existing retransmission consent agreement with Mission, covering the carriage of WPIX, expired on [[C]] REDACTED [[C]]). *See also* Mission Answer at 9.

[26] Complaint at 13; Nexstar Answer at 9; Reply at 5-8.

[27] Complaint at iii, 3, and paras. 6, 23, 51; Reply at 6-7. Specifically, the proposals read as follows (emphasis added):

December 7, 2022 - [[C]] REDACTED [[C]]

December 9, 2022 - [[C]] REDACTED [[C]]

executed a retransmission consent agreement that did not contain the disputed terms, and Comcast restored WPIX to its systems.[28]

7. Both Mission and Nexstar filed timely answers to the Complaint on January 17, 2023. Comcast filed a timely Reply on January 27, 2023. The Commission subsequently sought additional information from Mission, including confirmation of certain information provided by Comcast.[29] Mission, the owner and licensee of WPIX, responded that it had no information regarding the negotiation for carriage of WPIX, and was not a party to the ultimate agreement for carriage of the station.[30] It did not dispute any of the factual claims in the record.

III. DISCUSSION

8. Based on the evidence developed in the record and through the Bureau's investigation, we find that Comcast has met its burden in proving that, based on the totality of circumstances, Mission breached its duty to negotiate retransmission consent in good faith. Specifically, we find that Mission violated the good faith negotiation requirements when WPIX proposed terms for renewal of the parties' agreement that would foreclose the filing of complaints with the Commission. As noted above, the *Good Faith Order* states that "proposals for contract terms that would foreclose the filing of complaints with the Commission" are presumptively inconsistent with the good faith negotiation requirement.[31]

9. Nexstar does not dispute that it made the proposals identified by Comcast when negotiating as the representative of WPIX, or that those proposals would have foreclosed the filing of certain complaints with the Commission.[32] Rather, it argues that "releasing FCC-related claims or withdrawing FCC complaints is not novel,"[33] and "parties typically agree to withdraw good faith negotiation complaints once retransmission consent agreements have been reached."[34] We find these arguments unpersuasive. As noted, the *Good Faith Order* plainly states that "proposals for contract terms that would foreclose the filing of complaints with the Commission" are presumptively at odds with the good faith negotiation requirement, and the Commission cited no exception or qualifying language that would support interpreting this phrase more narrowly.[35] Whether parties sometimes determine that withdrawing existing complaints is in their mutual best interest after a carriage agreement is reached is not relevant to the question of whether they engage in good faith during the negotiation process. Nexstar also suggests that proposals failing to comport with the requirements of good faith are not violative if they are "not included in the final agreement,"[36] and that a good faith complaint should not be considered by

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[28] Nexstar Answer at 10 – 11.

[29] Letter from Maria Mullarkey, Chief, Policy Division, Media Bureau, Federal Communications Commission, to Dennis P. Thatcher, President, Mission Broadcasting, Inc. (June 21, 2023).

[30] Letter from Dennis P. Thatcher, President, Mission Broadcasting, Inc., to Maria Mullarkey, Chief, Policy Division, Media Bureau, Federal Communications Commission (July 21, 2023).

[31] *Supra* para. 3, citing *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

[32] Nexstar Answer at 20-25. Nexstar does dispute an alternative version of the allegation, but offers no evidence or substantive argument in support of even this strawman argument. Nexstar Answer at 24 (("Comcast claims without basis that Nexstar's settlement proposal would [[C]] REDACTED [[C]]… [t]he settlement proposal did nothing of the sort") (emphasis added). On the contrary, Comcast claims only that the settlement proposal would have foreclosed the filing of complaints with respect to the WPIX agreement, and Nexstar does not dispute this factual statement. We therefore reject this argument.

[33] Nexstar Answer at 22.

[34] Nexstar Answer at 22.

[35] *Good Faith Order*, 15 FCC Rcd at 5470, para. 58.

[36] Nexstar Answer at 24.

the Commission unless an objection was first raised with the other party in the negotiation.[37] On the contrary, a party may reasonably decide that, in order to prevent significant disruption to viewers, it must seek to reach agreement even with a counterparty it feels is not negotiating in good faith. Our rules permit the filing of complaints even after an agreement is signed precisely because the process can be corrupted without being totally derailed. We therefore reject both of these arguments as inconsistent with our rules and the Commission's obligations and authority to ensure parties negotiate retransmission consent in good faith.[38]

10. Mission itself argues that it is not responsible for actions taken by Nexstar on behalf of WPIX, even though it identified Nexstar as the approved delegated negotiator for retransmission of the signal of its licensed station, WPIX.[39] Not only does this argument contravene basic principles of agency law,[40] it also ignores Commission precedent that licensees are ultimately responsible for the acts of their licensed stations.[41] We therefore reject this argument, and grant the complaint against Mission with respect to this claim.

IV. NOTICE OF APPARENT LIABILITY FOR FORFEITURE

A. Discussion

11. Based on our review of the evidence in the record, described in section I.B. above, we find that Mission apparently willfully and repeatedly violated section 325 of the Act and section 76.65 of the Commission's rules when WPIX proposed contract terms that are presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirements.[42] Accordingly, and as explained herein, the Bureau proposes a forfeiture of $150,000 (one hundred fifty thousand dollars).

12. As explained in section I.A. above, section 325 of the Act "prohibit[s] a television broadcast station that provides retransmission consent from . . . failing to negotiate in good faith."[43] Section 76.65 of our rules gives the Commission latitude to consider whether a Negotiating Entity has failed to negotiate in good faith based on the "totality of the circumstances."[44] As our implementing Order explained, proposals that are "sufficiently outrageous," such as "terms that would foreclose the filing of complaints with the Commission," are "presumptively" not consistent with the good faith negotiation requirement under the totality of the circumstances test.[45]

13. The facts applicable to this Notice of Apparent Liability are discussed in more detail

[37] Nexstar Answer at 22 ("To the extent that Comcast understood that the language in the proposed settlement [[C]] REDACTED [[C]]").

[38] 47 CFR § 76.65.

[39] *See* Comcast Reply at 9 & n.31; Mission Answer at 16.

[40] American Law Institute, Restatement of Agency § 1.01 (3d ed. 2006).

[41] *See, e.g.*, 47 CFR § 73.1212 (licensee responsible for compliance with rules during programming provided by a third party); *Cosmopolitan Broadcasting Corp. v. FCC*, 581 F.2d 917, 927 (D.C. Cir. 1978) (licensee liable for violations committed by time brokers); *DirectTV, LLC; AT&T Services, Inc. v. Deerfield Media, Inc.*, MB Docket No. 19-168, Forfeiture Order, 36 FCC Rcd 12078, 12094, para. 35 (2021) (finding that licensees are required to ensure that each station complies with rules); *Complaints Against Various Licensees Regarding Their Broadcast of the Fox Television Program "Married By America" on April 7, 2003*, Forfeiture Order, 23 FCC Rcd 3222, 3237-38, 3240-41, para. 41, Attach. A (2008) (finding the licensees of stations that broadcast indecent material liable for a forfeiture penalty of the base amount on a per-station basis)).

[42] Sections I and II of this item, *supra*, are incorporated into and made a part of this Notice of Apparent Liability for Forfeiture.

[43] 47 U.S.C. § 325(b)(3)(C)(ii).

[44] 47 U.S.C. § 76.65(b)(2).

[45] *Good Faith Order*, 15 FCC Rcd at 5458, 5470, paras. 32, 58.

above. WPIX repeatedly offered contract proposals that would have foreclosed the filing of certain complaints with the Commission. Considering the totality of the circumstances, Mission's willful course of conduct constituted an ongoing violation of the good faith negotiation requirements. Accordingly, we find that Mission failed to negotiate in good faith with Comcast for retransmission of its signals in apparent violation of section 325 of the Act and section 76.65 of the Commission's rules.

B. Proposed Forfeiture

14. Section 503(b)(1)(B) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with any of the provisions of [the Act] or of any rule, regulation, or order issued by the Commission."[46] Section 312(f)(1) of the Act defines "willful" as the "conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[47] This definition of willful applies to section 503(b) of the Act.[48]

15. Section 503(b)(2)(A) of the Act authorizes the Commission to assess a forfeiture of up to $59,316 per violation or day of a continuing violation, up to a statutory maximum of $593,170 for a single act or failure to act.[49] In exercising our forfeiture authority, we consider the nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, substantial economic gain, and such other matters as justice may require.[50] As required by the Act, the Commission applies these statutory factors to determine an appropriate forfeiture amount based on its evaluation of the merits of each case.[51] Additionally, the Commission has established base forfeitures to reflect "the degree of harm or potential for harm that may

[46] 47 U.S.C. § 503(b)(1)(B).

[47] 47 U.S.C. § 312(f)(1).

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

[49] 47 U.S.C. § 503(b)(2)(A). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A) of the Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) required agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. 47 CFR § 1.80(b)(1). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (4). The Enforcement Bureau of the FCC released the order making the 2023 annual adjustment on December 23, 2022. *See Amendment of Section 1.80(b) of the Commission's Rules, of Civil Monetary Penalties to Reflect Inflation*, Order, 37 FCC Rcd 15060 (EB 2022) (setting January 15, 2023, as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase." *See* 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended § 6.

[50] 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(11), Note § II.

[51] 47 U.S.C. § 503(b).

arise from the violation."[52] The Commission, moreover, is authorized to adjust the base forfeiture amount upward or downward, taking into account the particular facts in each case.[53]

16. The Commission's *Forfeiture Policy Statement* establishes a base forfeiture of $7,500 for "violation of the cable broadcast carriage rules."[54] Mission's apparently violative conduct occurred when WPIX, its licensed station, offered contract provisions that were presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirements.[55] Because they are substantively identical with respect to the violation at issue, we consider WPIX's two sequential offers of violative proposals to have constituted a "single act" that continued over an extended period of time.[56] The record indicates that WPIX offered the violative proposals on December 7 and December 9, 2022 and the parties successfully executed a retransmission consent agreement for WPIX on December 17, 2022.[57] We multiply the $7,500 per day base forfeiture amount set forth in section 1.80 of the Commission's rules by the number of days that the apparent violations continued (10). This calculation (10 x $7,500) yields a base forfeiture of $75,000, which we then adjust, as discussed below, based on our assessment of the statutory factors.

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

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

Upward Adjustment Criteria

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

Downward Adjustment Criteria

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

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

[55] Complaint at 24-25, para. 55; Nexstar Answer at 22; Reply at 5-8.

[56] *See, e.g.*, *Acerome Jean Charles, Boston, Massachusetts*, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744, 12747, para. 15 (2019) ("[D]uring the 27-day period . . . Jean Charles was apparently committing a single, continuing violation of section 301 of the Act. We therefore propose a base forfeiture of $10,000 for each day during this 27-day period, resulting in a proposed base forfeiture of $270,000."). *See also DirectTV, LLC; AT&T Services, Inc. v. Deerfield Media, Inc.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695 (2020) (distinguishing *TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, et al.*, MB Docket Nos. 12-113, 12-181, 12-222, and 12-266, Forfeiture Order, 29 FCC Rcd 8648 (2014)). We note that if we treated the proposals as two distinct continuing violations, with the first expiring when the second proposal was made, Mission's apparent liability would not change.

[57] Nexstar Answer at 10-11. Nexstar's public response indicates that "[f]ive days after Comcast filed the Complaint," the parties "successfully executed a retransmission consent agreement." *Id*.

17. In implementing section 503(b) of the Act, the FCC has established base forfeitures for some common violations to reflect "the degree of harm or potential for harm that may arise from the violation."[58] In exercising the Commission's maximum forfeiture authority, the Commission has the discretion to adjust the forfeiture amount based on the particular facts and circumstances of the violations.[59] In addition, the FCC has established upward and downward adjustment factors it considers in determining forfeitures.[60] For example, the Commission has previously established that it may consider a prior violation of any of its regulations, even if the prior violation does not relate to the type of violation at issue in the current matter.[61] After reviewing the facts and circumstances of this case, we find that, in light of Mission's prior violation of Commission rules[62] and its financial relationship with Nexstar,[63] the public interest would be served by upwardly adjusting the base forfeiture to $150,000 to ensure that Mission's ability to pay[64] does not render the proposed forfeiture "merely an affordable cost of doing business" and that the forfeiture acts as a "meaningful sanction and deterrent against future

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

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

[60] *Forfeiture Policy Statement*, 12 FCC Rcd at 17099.

[61] 47 CFR § 1.80 (listing "[p]rior violations of any FCC requirements" as one upward adjustment factor for section 503 forfeitures). *See, e.g.*, *Cumulus Radio, et al*, Forfeiture Order, 36 FCC Rcd 738, 743, para. 18 (2022) (the Commission upwardly adjusted the base forfeiture amount by $129,000 based on the licensee's past violations of Commission's rules).

[62] *See, e.g.*, *Mission Broadcasting, Inc. Licensee of Station KTVE El Dorado, Arkansas*, Notice of Apparent Liability for Forfeiture, 29 FCC Rcd 100 (Video Div. 2014) (issuing a $1,000 forfeiture against Mission for willfully and repeatedly violating section 73.3526 of the Commission's rules, which requires licensees to publicize the existence and location of the station's Children's Television Programming Reports); *Mission Broadcasting, Inc. Licensee of Station KJTL(TV) Wichita Falls, Texas*, Notice of Apparent Liability for Forfeiture, 22 FCC Rcd 10695 (Video Div. 2007) (issuing a $4,000 monetary forfeiture against Mission for willfully and repeatedly violating sections 73.3526(e)(11)(i) and 73.3526(e)(11)(ii) of the Commission's rules, which requires licensees to place in the Station's public inspection file all required TV issues/program lists and records concerning its compliance with the children's programming commercial limits).

[63] While Mission is not a subsidiary of Nexstar, it operates as a Variable Interest Entity (VIE) of the larger company, meaning that Nexstar is considered to have a controlling interest in Mission for financial reporting purposes with the U.S. Securities and Exchange Commission. *See* Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 28 (filed Feb. 28, 2023), https://www.sec.gov/ix?doc=/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm.

[64] Nexstar's 2022 net revenues were significantly in excess of five billion dollars, and have been trending consistently upwards. Nexstar Media, Inc., Form 10-K 2022 (Feb. 28, 2023) https://www.sec.gov/ix?doc=/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm. We note that as a VIE, Mission's revenues and assets are consolidated with Nexstar's financial accounting and annual reporting. Hence, Mission and Nexstar are effectively treated as a single entity for financial purposes in the Nexstar 10-K.

misconduct."[65] We also consider whether there is any basis to downwardly adjust the proposed forfeiture.[66] We find none.

V. CONCLUSION

18. For the reasons discussed above , we find that Mission willfully, repeatedly and continuously violated section 325(b) of the Act and section 76.65(b)(4) of the Commission's rules when WPIX offered proposals for contract terms that were presumptively inconsistent with competitive marketplace considerations and the good faith negotiation requirement. Given this violation, we find that Mission is also apparently liable for the forfeiture of $150,000. [67]

VI. ORDERING CLAUSES

19. **ACCORDINGLY, IT IS ORDERED**, pursuant to Section 503(b) of the Communications Act of 1934, as amended,[68] and sections 0.283 and 1.80 of the Commission's rules,[69] that Mission Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE** in the amount of One Hundred Fifty Thousand Dollars ($150,000) for willfully and repeatedly violating the Commission's rules.

20. **IT IS FURTHER ORDERED** that the complaint filed by Comcast on December 12, 2022 against Mission Broadcasting, Inc., pursuant to section 325(b)(3)(C) of the Act, 47 U.S.C. § 325(b)(3)(C), and sections 76.7 and 76.65 of the Commission's rules, 47 CFR §§ 76.7 and 76.65, is **GRANTED IN PART.**

21. **IT IS FURTHER ORDERED**, pursuant to Section 1.80 of the Commission's rules,[70] that within thirty days (30) calendar days of the release of this Notice of Apparent Liability for Forfeiture, Mission Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture consistent with paragraphs 24-25 below.

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

[66] *Supra* note 53.

[67] *Supra* note 1. As noted above, the remaining issues raised in the Complaint are pending review by the Commission.

[68] 47 U.S.C. § 503(b).

[69] 47 CFR §§ 0.283, 1.80.

[70] 47 CFR § 1.80.

22. Mission Broadcasting, Inc. shall send electronic notification of payment to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and Lyle Elder at Lyle.Elder@fcc.gov on the date said payment is made. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using the Commission's Fee Filer (the Commission's online payment system),[71] or by wire transfer. The Commission no longer accepts forfeiture payments by check or money order. Below are instructions that payors should follow based on the form of payment selected:[72]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[73] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Pay bills" on the Fee Filer Menu, and select the bill number associated with the NAL Account from the case caption, above – the bill number is the NAL Account number with the first two digits excluded – and then choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using the Commission's Fee Filer website at https://apps.fcc.gov/FeeFiler/login.cfm. Select "Pay bills" on the Fee Filer Menu and then select the bill number associated to the NAL Account– the bill number is the NAL Account number with the first two digits excluded – and choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

23. Any request for making full payment over time under an installment plan should be sent to: Jae Song, Chief Financial Officer - Financial Operations, Federal Communications Commission, 45 L Street, NE, Room 3-103, Washington, DC 20002.[74] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

24. The written statement seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(f)(3) of the Commission's rules.[75] The written statement must be mailed to the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20002, ATTN: Media Bureau – Policy Division, and must include the relevant NAL/Account Number(s)

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

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

[73] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

[74] 47 CFR § 1.1914.

[75] *Id*. §§ 1.16, 1.80(f)(3).

referenced in the caption. The statement must also be e-mailed to the Chief, Media Bureau, Policy Division at Maria.Mullarkey@fcc.gov, and Virgie Ingram at Virgie.Ingram@fcc.gov.[76]

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

26. **IT IS FURTHER ORDERED** that a copy of this Notice of Apparent Liability for Forfeiture shall be sent by certified mail, return receipt requested, to counsel for Mission Broadcasting, Inc., Wiley Rein, LLP, 2050 M Street, NW, Washington, D.C. 20036, ATTN: Gregory L. Masters and Eve Reed.

FEDERAL COMMUNICATIONS COMMISSION

Holly Saurer
Chief, Media Bureau

[76] 47 CFR § 1.1914.