

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

In the Matter of	)	
	)	
DIRECTV, LLC; AT&T Services, Inc.,	)	
	)	
Complainants,	)	
	)	
v.	)	MB Docket No. 19-168
	)	
Deerfield Media, Inc.; Deerfield Media (Port	)	CSR No. 8979-C
Arthur) Licensee, LLC; Deerfield Media	)	
(Cincinnati) Licensee, LLC; Deerfield Media	)	Account Nos.: MB-202041430002, MB-
(Mobile) Licensee, LLC; Deerfield Media	)	202041430003, MB-202041430004, MB-
(Rochester) Licensee, LLC; and Deerfield Media	)	202041430005, MB-202041430006, MB-
(San Antonio) Licensee, LLC; GoCom Media of	)	202041430007, MB-202041430008, MB-
Illinois, LLC; Howard Stirk Holdings, LLC; HSH	)	202041430009, MB-202041430010, MB-
Flint (WEYI) Licensee, LLC; and HSH Myrtle	)	202041430011, MB-202041430012, MB-
Beach (WWMB) Licensee, LLC; Mercury	)	202041430013, MB-202041430014, MB-
Broadcasting Company, Inc.; MPS Media of	)	202041430015, and MB-202041430016
Tennessee Licensee, LLC; MPS Media of	)	
Gainesville Licensee, LLC; MPS Media of	)	
Tallahassee Licensee, LLC; MPS Media of	)	
Scranton Licensee, LLC; Nashville License	)	
Holdings, LLC; KMTR Television, LLC; Second	)	
Generation of Iowa, LTD; Waitt Broadcasting, Inc.,	)	
	)	
Defendants.	)	

**FORFEITURE ORDER**

**Adopted: July 26, 2021**

**Released: July 28, 2021**

By the Commission:

**I. INTRODUCTION**

1. In this Forfeiture Order, we impose a per-station penalty of \$512,228 against each Defendant for willfully and repeatedly violating the Commission's good faith negotiation standards.<sup>1</sup> This Order follows a *Memorandum Opinion and Order and Notice of Apparent Liability (MO&O/NAL)*, adopted September 2, 2020,<sup>2</sup> in which the Commission found that Defendants<sup>3</sup> violated the Commission's

<sup>1</sup> As discussed in more detail below, we impose a reduced forfeiture on Mercury Broadcasting, Inc. (Mercury) due to its demonstrated inability to pay. See *infra* Part III.C.

<sup>2</sup> *DIRECTV, LLC and AT&T Services, Inc. v. Deerfield Media, Inc., et al.*, MB Docket No. 19-168, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695 (2020).

<sup>3</sup> Defendants are 15 licensees across eight broadcast station groups: Deerfield Media (Port Arthur) Licensee, LLC; Deerfield Media (Cincinnati) Licensee, LLC; Deerfield Media (Mobile) Licensee, LLC; Deerfield Media (Rochester) Licensee, LLC; Deerfield Media (San Antonio) Licensee, LLC; GoCom Media of Illinois, LLC; Mercury Broadcasting Company, Inc.; MPS Media of Tennessee Licensee, LLC; MPS Media of Gainesville

(continued....)

good faith standards by refusing to negotiate with DIRECTV, LLC and AT&T Services, Inc. (collectively, AT&T) for retransmission consent with respect to 18 broadcast television stations (Defendant Stations), unreasonably delaying retransmission consent negotiations regarding the Defendant Stations, and failing to respond to AT&T's proposals for the retransmission of the Defendant Stations.<sup>4</sup> Here, we affirm the *NAL* and its proposed forfeiture. After considering Defendants' response to the *NAL*, we find no reason to cancel, withdraw, or reduce the penalty proposed, except with respect to Mercury. In light of its demonstrated inability to pay, we grant Mercury's request to reduce the proposed forfeiture to \$30,000.

## II. BACKGROUND

### A. Relevant Law and Commission Rules

2. Section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act) requires broadcasters and multichannel video programming distributors (MVPDs) to negotiate for retransmission consent in good faith and directs the Commission to establish regulations to enforce that requirement.<sup>5</sup> In response to this directive, the Commission adopted a two-part test to ensure that "Negotiating Entities"—defined as a broadcast television station or MVPD—abide by their duty to negotiate in good faith.<sup>6</sup> Section 76.65(b)(1) lays out the first part of the test with a set of objective negotiating standards listing certain prohibited acts and practices that, if engaged in by a Negotiating Entity, constitute a *per se* breach of the duty to negotiate in good faith.<sup>7</sup> In this case, three of our *per se* standards are at issue:

- (i) Refusal by a Negotiating Entity to negotiate retransmission consent;
- (iii) Refusal by a Negotiating Entity to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations; [and]
- (v) Failure of a Negotiating Entity to respond to a retransmission consent proposal of the other party, including the reasons for the rejection of any such proposal.<sup>8</sup>

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Licensee, LLC; MPS Media of Tallahassee Licensee, LLC; MPS Media of Scranton Licensee, LLC; Nashville License Holdings, LLC; KMTR Television, LLC; Second Generation of Iowa, LTD; and Waitt Broadcasting, Inc. Several of the original defendants in this proceeding are not parties to this Forfeiture Order. *See infra* para. 42 (listing the liable licensees and stations implicated, among other information). The Media Bureau dismissed the underlying complaint with respect to Deerfield Media, Inc. because it was not the licensee of any of the Defendant Stations. Additionally, Howard Stirk Holdings, LLC and its named subsidiaries—HSH Flint (WEYI) Licensee, LLC and HSH Myrtle Beach (WWMB) Licensee, LLC (collectively, HSH)—have separately resolved this matter with the Commission. *Howard Stirk Holdings, LLC; HSH Flint (WEYI) Licensee, LLC; and HSH Myrtle Beach (WWMB) Licensee, LLC*, MB Docket No. 19-168, Order, 35 FCC Rcd 4517 (MB 2020).

<sup>4</sup> *MO&O/NAL*, 35 FCC Rcd at 10709, para. 35.

<sup>5</sup> 47 U.S.C. § 325(b)(3)(C).

<sup>6</sup> 47 CFR § 76.65(b)(1); *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity*, CS Docket No. 99-363, First Report and Order, 15 FCC Rcd 5445 (2000) (*Good Faith Order*), *recon. granted in part*, Order on Reconsideration, 16 FCC Rcd 15599 (2001) (imposing good faith obligations on broadcasters); *Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004: Reciprocal Bargaining Obligation*, MB Docket No. 05-89, Report and Order, 20 FCC Rcd 10339 (2005) (imposing reciprocal good faith bargaining obligations on MVPDs).

<sup>7</sup> 47 CFR § 76.65(b)(1); *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40-46. The second part of the good faith test considers the "totality of the circumstances," and is not at issue in this case. 47 CFR § 76.65(b)(4); *Good Faith Order*, 15 FCC Rcd at 5458, para. 32.

<sup>8</sup> 47 CFR § 76.65(b)(1)(i), (iii), (v).

3. The above *per se* standards require every broadcast television station and MVPD involved in retransmission consent negotiations to participate actively with the intent of reaching agreement; to do so in a timely manner, being mindful of the proximity of service disruptions; and to address proposals from counterparties, rather than reject them out of hand without explanation.<sup>9</sup> Every broadcast television station and MVPD has an individual obligation to abide by these *per se* standards as part of its duty to negotiate in good faith.

#### B. Factual Background

4. The Defendant licensees are each members of one of eight station groups (Defendant Station Groups) that operate the 18 Defendant Stations, among other broadcast stations that are not subject to this complaint.<sup>10</sup> The Defendant Stations serve a diverse array of communities across the United States, from Florida to Oregon, and collectively provide the four major commercial broadcast networks, as well as other network and independent programming, to millions of viewers.<sup>11</sup> Each of the Defendants has one or more agreements with Sinclair Broadcast Group (Sinclair), pursuant to which Sinclair “operates, programs [and/]or provides sales services” to the Defendant Stations.<sup>12</sup> While together these agreements give Sinclair a relationship with, and stake in the success of, each of the Defendant Stations, Sinclair itself is not a party to this proceeding.<sup>13</sup> DIRECTV and U-verse are AT&T-subsidary MVPDs serving over 23 million subscribers nationwide, including subscribers in each of the designated market areas (DMAs) to which the Defendant Stations are licensed.<sup>14</sup> AT&T’s DIRECTV and U-verse, and the Defendants’ Stations, are all “Negotiating Entities” for the purposes of the Commission’s good faith retransmission consent rules.<sup>15</sup> AT&T and the Defendants were parties to retransmission consent agreements that originally expired on [[HC]] REDACTED [[HC]].<sup>16</sup>

5. [[C]] REDACTED [[C]] several negotiators from AT&T reached out to the Defendants, seeking a representative from each station group with whom to negotiate.<sup>17</sup> Defendants responded that all the groups would be represented by the same individual, Duane Lammers of Max Retrans, [[C]] REDACTED [[C]]<sup>18</sup> In a series of calls and emails in early [[C]] REDACTED [[C]], Mr. Lammers stated

<sup>9</sup> *Good Faith Order*, 15 FCC Rcd at 5462-64, paras. 40, 42, 44.

<sup>10</sup> We note that this discussion closely tracks the one in the Commission’s *MO&O*, and like that discussion, it reflects undisputed statements by the parties and/or the communications between the parties that were placed into the record. *MO&O/NAL*, 35 FCC Rcd at 10699-703, paras. 9-20; *see also* Defendants’ Response to Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, MB Docket No. 19-168 (filed Oct. 15, 2020), at 15 (acknowledging that the factual record is “undisputed”), <https://ecfsapi.fcc.gov/file/10151526606254/PUBLIC%20-%20Response%20to%20NAL.pdf> (NAL Response).

<sup>11</sup> Verified Complaint of DIRECTV, LLC and AT&T Services, Inc. for the Station Groups’ Failure to Negotiate in Good Faith, MB Docket No. 19-168, at 2 (filed June 18, 2019) (Complaint); *see also* Defendants’ Answer to Good Faith Complaint, MB Docket No. 19-168, at 30-32 (filed Aug. 6, 2019) (Answer).

<sup>12</sup> Complaint at 11 (citing the website of a Defendant Station, WHAM Rochester, *About WHAM*, <https://13wham.com/station/contact>); *see also* Answer at 27. Sinclair describes itself as “[t]he largest and most diversified television broadcasting company in the country today.” Sinclair Broadcast Group, *Welcome to Sinclair Broadcast Group*, <http://sbg.net/> (last visited Jan. 7, 2021).

<sup>13</sup> Complaint at 11.

<sup>14</sup> *Id.* at 7.

<sup>15</sup> *Id.* at 2, 4; Answer at 11.

<sup>16</sup> Complaint at 12.

<sup>17</sup> *Id.* at 15; Answer at 33.

<sup>18</sup> Complaint at 14-15; Answer at 33.

that the Defendants were [[HC]] REDACTED [[HC]] along with the [[C]] REDACTED [[C]].<sup>19</sup> [[C]] REDACTED<sup>20</sup> REDACTED [[C]]<sup>21</sup> Like the Defendants, [[C]] REDACTED [[C]] but it is not a party to this proceeding. Over the first half of March 2019, various AT&T negotiators sent separate proposed renewal agreements to each of the Defendant Station Groups and to [[C]] REDACTED [[C]], each with different terms. [[HC]] REDACTED [[HC]] Vice President Linda Burakoff. AT&T's negotiators in addition to Ms. Burakoff, each of whom provided a Declaration in support of the Complaint, were Dallia Kim (with respect to [[C]] REDACTED [[C]]), Michael Pace ([[C]] REDACTED [[C]]), and Hongfeng (Julia) Dai ([[C]] REDACTED [[C]]).<sup>22</sup>

6. AT&T's negotiators followed up with Mr. Lammers on the status of each of these separate proposals, but Mr. Lammers had provided no response to any of them as the [[C]] REDACTED [[C]] expiration of the existing agreements approached.<sup>23</sup> On [[C]] REDACTED<sup>24</sup> REDACTED<sup>25</sup> REDACTED<sup>26</sup> REDACTED [[C]]<sup>27</sup>

7. On [[C]] REDACTED [[C]]<sup>28</sup> Mr. Lammers identified these edits to the [[HC]] REDACTED [[HC]]<sup>29</sup> But the attached draft agreement contained no reference to any station group other than [[C]] REDACTED [[C]], and no reference to any of the proposals made by AT&T with respect to any of the Defendant Stations.<sup>30</sup> Exhibit A, the "List of Stations" covered by the agreement, had been left blank by AT&T, and marked [[HC]] REDACTED [[HC]]<sup>31</sup> It was completed in the draft Mr. Lammers sent back, included only [[C]] REDACTED [[C]], and made no reference to the Defendant Stations.<sup>32</sup> Finally, Mr. Lammers [[HC]] REDACTED<sup>33</sup> REDACTED<sup>34</sup> REDACTED [[HC]]<sup>35</sup>

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<sup>19</sup> ATT000026-27; *see also, e.g.*, ATT000025, ATT000574. Stations other than the Defendant Stations and the [[C]] REDACTED [[C]] Stations were identified as being part of the negotiating group, but they are not at issue in this proceeding because they were not listed as a party in the initial complaint, and there is no information in the record to support finding violations against these stations.

<sup>20</sup> [[C]] REDACTED [[C]]

<sup>21</sup> ATT000574.

<sup>22</sup> ATT000048-216; ATT000584.

<sup>23</sup> Complaint at 16; Answer at 34.

<sup>24</sup> ATT000223.

<sup>25</sup> *Id.*; *see also* Complaint at 16; Answer at 34.

<sup>26</sup> *See, e.g.*, ATT000224; ATT000228.

<sup>27</sup> Complaint at 17, 20; Answer at 35-36; ATT000714-756.

<sup>28</sup> Complaint at 16; Answer at 10-11; ATT000231-250.

<sup>29</sup> ATT000231. Mr. Lammers' reference to [[HC]] REDACTED [[HC]] here and elsewhere, appears to have meant the [[C]] REDACTED [[C]] stations and all other stations being represented by Mr. Lammers with respect to AT&T, including the Defendant Stations.

<sup>30</sup> ATT000232-250.

<sup>31</sup> ATT000038; ATT000046.

<sup>32</sup> ATT000248.

<sup>33</sup> ATT000231.

<sup>34</sup> ATT000253-254.

<sup>35</sup> ATT000252.

8. In mid-April, AT&T sent new proposals, first for [[C]] REDACTED [[C]]<sup>36</sup> and a few days later for each of the Defendant Station Groups.<sup>37</sup> Each proposal the AT&T negotiators sent was [[HC]] REDACTED [[HC]]<sup>38</sup> On April 25, 2019, just [[HC]] REDACTED [[HC]] hours after receiving the last of AT&T's updated proposals regarding the Defendant Stations,<sup>39</sup> Mr. Lammers sent another round of edits to what had originally been AT&T's [[C]] REDACTED [[C]] proposal, along with a copy of the list of the stations he was representing.<sup>40</sup> Similar to the draft he sent earlier in [[C]] REDACTED [[C]], this was identified as being [[HC]] REDACTED [[HC]]<sup>41</sup> Like that earlier draft, the April 25, 2019, draft contained no reference to any station group other than [[C]] REDACTED [[C]], and no reference to any of the proposals made by AT&T with respect to any of the Defendant Stations.<sup>42</sup> Again, like that earlier draft, the Exhibit A "List of Stations" covered by the agreement was updated in the draft Mr. Lammers sent back, but included only [[C]] REDACTED [[C]] Stations and made no reference to the Defendant Stations.<sup>43</sup> And, once again, Mr. Lammers [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>44</sup> Subsequently, one of the other AT&T negotiators, Mr. Pace, followed up with Mr. Lammers seeking comments on the proposals AT&T had sent regarding carriage of the Defendant Stations, and Mr. Lammers responded that [[HC]] REDACTED [[HC]]<sup>45</sup>

9. On May 7, 2019, AT&T sent a [[HC]] REDACTED [[HC]] and emphasized to Mr. Lammers that [[HC]] REDACTED [[HC]]<sup>46</sup> [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>47</sup> [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>48</sup>

10. On May 10, 2019, Mr. Lammers sent a draft in response to [[C]] REDACTED <sup>49</sup> REDACTED <sup>50</sup> REDACTED [[C]] [[HC]] REDACTED <sup>51</sup> REDACTED <sup>52</sup> REDACTED [[HC]]<sup>53</sup> [[C]]

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<sup>36</sup> ATT000563 [[HC]] REDACTED [[HC]]

<sup>37</sup> Complaint at 16; Answer at 11; *see also* ATT000255-394; ATT000418-552.

<sup>38</sup> ATT000255-394; ATT000418-552; *see, e.g.*, ATT000327; ATT000514.

<sup>39</sup> ATT000418.

<sup>40</sup> Complaint at 17; Answer at 11; ATT000553-574.

<sup>41</sup> ATT000553.

<sup>42</sup> ATT000554-573.

<sup>43</sup> ATT000571.

<sup>44</sup> ATT000553.

<sup>45</sup> ATT000579-580.

<sup>46</sup> Answer at 11-12; ATT000582-583.

<sup>47</sup> ATT000584.

<sup>48</sup> *Id.*

<sup>49</sup> ATT000604-626.

<sup>50</sup> ATT000605-625.

<sup>51</sup> ATT000604.

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

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

REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>54</sup> [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>55</sup> [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>56</sup>

11. In late [[C]] REDACTED [[C]] and its outside counsel sent formal letters to Max Retrans, expressing [[C]] REDACTED [[C]]<sup>57</sup> [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]] [[C]] REDACTED<sup>58</sup> REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>59</sup> [[C]] REDACTED<sup>60</sup> REDACTED [[C]] [[HC]] REDACTED [[HC]] [[C]] REDACTED<sup>61</sup> REDACTED [[C]] The [[C]] REDACTED [[C]] Station agreements, as well as the bulk of the Defendant Station agreements, expired on May 30, 2019, with the remainder expiring on June 10, 2019.<sup>62</sup> All 20 of the Defendant Stations, as well as the [[C]] REDACTED [[C]] Stations, consequently went dark for DIRECTV and U-verse subscribers.

12. Between [[C]] REDACTED [[C]] and the expiration of the [[C]] REDACTED [[C]] Stations' agreements, the parties apparently exchanged at least one further round of proposed edits.<sup>63</sup> On [[C]] REDACTED<sup>64</sup> REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>65</sup>

13. On June 3, 2019, Mr. Lammers provided AT&T, for the first time, with proposals that by their terms applied to the Defendant Stations. [[HC]] REDACTED [[HC]]<sup>66</sup> Each proposal consisted solely of [[HC]] REDACTED [[HC]]<sup>67</sup> None of the proposed [[HC]] REDACTED [[HC]] were identical to either those in the [[C]] REDACTED [[C]] proposal sent by Mr. Lammers [[C]] REDACTED [[C]] days earlier, or the [[HC]] REDACTED [[HC]] draft sent by Mr. Lammers (the last [[HC]] REDACTED [[HC]] draft in the record).<sup>68</sup>

14. [[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>69</sup> [[C]] REDACTED [[C]]  
[[HC]] REDACTED [[HC]]<sup>70</sup>  
[[C]] REDACTED [[C]] [[HC]] REDACTED [[HC]]<sup>71</sup>

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

<sup>55</sup> ATT000649-677.

<sup>56</sup> *See, e.g.*, ATT000678; ATT000704.

<sup>57</sup> Complaint at 19; Answer at 13.

<sup>58</sup> ATT000726; *see also, e.g.*, ATT000720; ATT000747.

<sup>59</sup> ATT000720-723; ATT000725-727.

<sup>60</sup> ATT000720.

<sup>61</sup> ATT000728.

<sup>62</sup> Complaint at 20; Answer at 37.

<sup>63</sup> *See* ATT000725 [[HC]] REDACTED [[HC]] and ATT000770-782 (redlined against a [[HC]] REDACTED [[HC]] AT&T draft).

<sup>64</sup> ATT00759-782.

<sup>65</sup> *Id.*

<sup>66</sup> ATT000783-794; ATT000796-810.

<sup>67</sup> *Id.*; *see also* Complaint at 21; Answer at 37.

<sup>68</sup> ATT000783-794; ATT000796-810; ATT000762-763; ATT000607-608.

<sup>69</sup> ATT000795; ATT000811.

<sup>70</sup> ATT000841.

15. On June 18, 2019, AT&T filed the Complaint alleging that the Defendants failed to negotiate retransmission consent in good faith by: (1) refusing to negotiate regarding retransmission consent; (2) unreasonably delaying retransmission consent negotiations; (3) failing to respond to retransmission consent proposals, including with the reasons for the rejection of proposals; and (4) breaching confidentiality and/or relying upon a breach of confidentiality to establish its negotiating position, in violation of the totality of the circumstances test.<sup>72</sup> Shortly after the Complaint was filed, the parties reached an independent agreement for carriage of the [[C]] REDACTED [[C]] Stations, which were made available again to AT&T subscribers while the Defendant Stations remained dark.<sup>73</sup> The first agreement with respect to the Defendant Stations was apparently not signed until early October, roughly four months after subscribers lost access to the stations.<sup>74</sup>

16. The *Bureau Decision*, adopted on November 6, 2019, granted the Complaint.<sup>75</sup> The Bureau found that the Defendants had violated the *per se* good faith negotiation requirements by refusing to negotiate with AT&T, unreasonably delaying negotiations, and failing to respond to AT&T's proposals. The Bureau noted that any one of those violations on its own would be sufficient to support its finding, and held that negotiating jointly does not excuse any member of that joint negotiation from its individual obligation to comply with the good faith obligations of the statute and the Commission's rules. The Bureau declined to address AT&T's "totality of the circumstances" claim because it was based on contractual questions then pending before a federal court.<sup>76</sup> Finally, the Bureau noted that despite the signing of the [[C]] REDACTED [[C]] agreement months earlier, most of the Defendant Stations were still unavailable to subscribers at the time the *Bureau Decision* was adopted.<sup>77</sup> The Bureau, therefore, urged the parties to seek an agreement or agreements for carriage expeditiously.<sup>78</sup> It also noted that, as always, the Commission "reserve[d] the right to take enforcement action proposing a forfeiture for the violations of the Act and our rules detailed herein."<sup>79</sup>

17. On December 9, 2019, Defendants filed an Application for Review of the Bureau Decision, contesting the Bureau's findings of fact, interpretation of Commission precedent, and application of its good faith rules.<sup>80</sup> On September 2, 2020, the Commission unanimously adopted the

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<sup>71</sup> ATT000840.

<sup>72</sup> Complaint at 4-6.

<sup>73</sup> Reply in Support of DIRECTV, LLC and AT&T Services, Inc.'s Complaint for Defendants' Failure to Negotiate in Good Faith, MB Docket No. 19-168, at 11 (filed Aug. 23, 2019) (AT&T Complaint-Supporting Reply).

<sup>74</sup> Letter from Sean Lev, Kellogg, Hansen, Todd, Figel & Frederick, P.L.L.C., to Marlene Dortch, Secretary, FCC (Oct. 7, 2019) (on file in MB Docket No. 19-168).

<sup>75</sup> See generally *Bureau Decision*, 34 FCC Rcd 10367.

<sup>76</sup> *Id.* at 10383, para. 34.

<sup>77</sup> *Id.* at 10368-69, n.10.

<sup>78</sup> *Id.* at 10383-84, para. 35. According to news reports, shortly after the release of the *Bureau Decision* all of the Defendant Stations had reached carriage agreements with AT&T. Mike Farrell, *Nashville Station Signs Retrans Pact With AT&T* (Nov. 27, 2019), <https://www.multichannel.com/news/nashville-station-signs-retrans-pact-with-at-t>.

<sup>79</sup> *Bureau Decision*, 34 FCC Rcd at 10369, n.11. Following the *Bureau Decision*, one of the Defendant Station Groups, Howard Stirk Holdings, LLC (HSH) separately resolved this matter with the Commission by paying a civil penalty and admitting that its actions, through its agent, Mr. Lammers, violated the Act and the Commission's good faith negotiation rules. *Howard Stirk Holdings, LLC; HSH Flint (WEYI) Licensee, LLC; and HSH Myrtle Beach (WVMB) Licensee, LLC*, MB Docket No. 19-168, Order, DA 20-472 (MB May 1, 2020). The Commission did not consider the HSH Settlement in issuing the *MO&O/NAL*, nor do we consider it in reaching our decision today.

<sup>80</sup> Defendants' Application for Review, MB Docket No. 19-168 (filed Dec. 9, 2019).

*MO&O/NAL*.<sup>81</sup> After reviewing the record in full, the *MO&O* affirmed the Bureau's findings and conclusions and denied the application for review.<sup>82</sup> In the *NAL*, the Commission found that Defendants apparently willfully, repeatedly, and continuously violated section 325 of the Act and section 76.65 of the Commission's rules by refusing to negotiate for retransmission consent, unreasonably delaying such negotiations, and failing to respond to proposals for carriage.<sup>83</sup> The Commission proposed a \$512,228 per-station forfeiture against Defendants for their apparent violations.<sup>84</sup>

18. On October 15, 2020, Defendants filed a response to the *NAL* (NAL Response), arguing that the *NAL* should be canceled or reduced.<sup>85</sup> Defendants concede that the facts are "undisputed," but contend that the Commission erred as a matter of law in concluding that Defendants violated the Commission's good faith rules.<sup>86</sup> Defendants claim that, contrary to the Commission's stated conclusion, Mr. Lammers was negotiating on behalf of the Defendants when he sent AT&T the [[HC]] REDACTED [[HC]] drafts because the drafts embodied proposals for both [[C]] REDACTED [[C]] and the Defendant Stations.<sup>87</sup> Additionally, Defendants argue that Mr. Lammers was negotiating on behalf of the Defendants when he sent AT&T [[HC]] REDACTED [[HC]] for the Defendant Stations, and the Commission ignored this fact in reaching its decision.<sup>88</sup> Accordingly, Defendants contend that the forfeiture should be canceled or at least reduced to \$25,000 per Station, given the novelty of the forfeiture, the economic recession brought on by the global pandemic, Defendants' history of compliance, and Defendants' degree of culpability.<sup>89</sup> Defendants also claim that the Commission used the wrong methodology for calculating the forfeiture by considering the violations to be "continuing" rather than "repeated" violations and by assessing the forfeitures on a per-station basis rather than a per-licensee basis.<sup>90</sup>

19. In addition to Defendants' NAL Response, Mercury filed a supplemental response in which it requests that, in the event the Commission is not persuaded to cancel or reduce the proposed forfeiture based on the arguments raised in the NAL Response, the Commission consider reducing the proposed penalty with respect to its Station based on its history of compliance and inability to pay.<sup>91</sup> To demonstrate the financial hardship that it would incur if required to pay the full forfeiture amount, Mercury filed portions of its federal income tax returns for the last three years.<sup>92</sup>

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<sup>81</sup> See generally *MO&O/NAL*, 35 FCC Rcd 10695.

<sup>82</sup> *Id.* at 10709-15, paras. 35-49.

<sup>83</sup> *Id.* at 10715-17, paras. 50-55.

<sup>84</sup> *Id.* at 10717-20, paras. 56-59.

<sup>85</sup> See NAL Response.

<sup>86</sup> NAL Response at 15-22.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.* at 22-25.

<sup>89</sup> *Id.* at 25-27.

<sup>90</sup> *Id.* at 26-27.

<sup>91</sup> Mercury Broadcasting Company, Inc., Supplemental Request for Cancellation or Reduction of Forfeiture, MB Docket No. 19-168 (filed Oct. 15, 2020), [https://ecfsapi.fcc.gov/file/1015165231417/Mercury%20Supplemental%20Response%20to%20NAL%20-%20Public%20Version%20for%20ECFS%20Filing%20\(01472869xB3D1E\).pdf](https://ecfsapi.fcc.gov/file/1015165231417/Mercury%20Supplemental%20Response%20to%20NAL%20-%20Public%20Version%20for%20ECFS%20Filing%20(01472869xB3D1E).pdf) (Supplemental Response).

<sup>92</sup> Supplemental Response at 1-2.



### III. DISCUSSION

20. We find that Defendants willfully and repeatedly violated the Act and the Commission's rules by refusing to negotiate for retransmission consent with AT&T, unreasonably delaying such negotiations, and failing to respond to AT&T's retransmission consent proposals. In the *NAL*, the Commission proposed a forfeiture in accordance with section 503(b) of the Act,<sup>93</sup> section 1.80 of the Commission's rules,<sup>94</sup> and the Commission's *Forfeiture Policy Statement*.<sup>95</sup> When assessing forfeitures, section 503(b)(2)(E) requires that the Commission 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, and such other matters as justice may require."<sup>96</sup> We have fully considered Defendants' response to the *NAL*, which does not contest the underlying factual record and largely reiterates arguments raised earlier in this proceeding. With the exception of Mercury's inability to pay claim, we find none of the Defendants' arguments for canceling or reducing the proposed forfeiture amount persuasive. Accordingly, we affirm the conclusions of the *NAL* and adopt the \$512,228 per-station forfeiture penalty proposed in the *NAL* for 17 of the 18 Defendant Stations. In accordance with Commission precedent, we hold that a reduced forfeiture amount of \$30,000 is appropriate for KMTW, the station licensed to Mercury.

#### A. Defendants Willfully and Repeatedly Breached Their Duty to Negotiate Retransmission Consent in Good Faith

21. Defendants breached their individual duties to negotiate retransmission consent in good faith because their agent, Mr. Lammers, engaged in conduct prohibited by the Commission's *per se* standards. Mr. Lammers took negotiations for carriage of the Defendant Stations off the table until he could first secure a deal with AT&T for carriage of another broadcast station group.<sup>97</sup> Despite Mr. Lammers' representations in his correspondence with AT&T that he was jointly negotiating for both [[C]] REDACTED [[C]] and the Defendant Stations, the record shows that he intentionally refused to negotiate on behalf of the Defendant Stations and continuously ignored AT&T's carriage proposals for the Defendant Stations.<sup>98</sup> These were comprehensive proposals containing all the terms of the proposed retransmission agreements for each of the Defendant Station Groups, and Mr. Lammers continuously refused to engage in any negotiation regarding these proposals.<sup>99</sup> He persisted in this course of action even as the existing carriage contracts expired, extension deadlines lapsed, and stations went dark.<sup>100</sup>

22. We hold that this conduct clearly violated three of the *per se* negotiating standards codified in the Commission's rules.<sup>101</sup> Mr. Lammers openly and repeatedly refused to negotiate or

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<sup>93</sup> 47 U.S.C. § 503(b).

<sup>94</sup> 47 CFR § 1.80.

<sup>95</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, CI Docket No. 95-6, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

<sup>96</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>97</sup> *See supra* paras. 7-14.

<sup>98</sup> *See, e.g.*, ATT000604 ([[HC]] REDACTED [[HC]]); ATT000841 ([[HC]] REDACTED [[HC]]).

<sup>99</sup> *See supra* para. 5; *see also* *MO&O/NAL*, 35 FCC Rcd at 10700, para. 11; ATT000058-ATT000222 (comprehensive amendment proposals by AT&T for each of the Defendant Stations, containing terms addressing, among other matters, [[HC]] REDACTED [[HC]]).

<sup>100</sup> *See supra* para. 11.

<sup>101</sup> *See* 47 CFR § 76.65(b)(1)(i), (iii), (v).

respond to proposals for carriage of the Defendant Stations in violation of section 76.65(b)(1)(i).<sup>102</sup> This willful refusal to engage meaningfully with AT&T over a prolonged period, despite AT&T's repeated requests for them to do so, violated Defendants' fundamental obligation to "participate in retransmission consent negotiations with the intent of reaching agreement."<sup>103</sup> While Mr. Lammers claimed to be negotiating on behalf of Defendants when he sent draft carriage proposals, the record demonstrates that these [[HC]] REDACTED [[HC]] drafts applied only to [[C]] REDACTED [[C]].<sup>104</sup> Further, Mr. Lammers withheld the Defendant Stations from carriage negotiations until a deal could first be reached with [[C]] REDACTED [[C]] in violation of section 76.65(b)(1)(iii), which prohibits "acting in a manner that unreasonably delays retransmission consent negotiations[.]"<sup>105</sup> Negotiations with respect to the [[C]] REDACTED [[C]] stations did not excuse Defendants from their obligations to negotiate, or have their agent negotiate, for carriage of their stations in good faith within a reasonable time frame.<sup>106</sup> The delay caused by Mr. Lammers' approach to negotiations in this case extended even after extension agreements for the then-current carriage agreements had expired and the stations went dark.<sup>107</sup> Finally, Defendants failed in their individual obligation to respond, or to have their agent respond, to AT&T's carriage proposals, in violation of section 76.65(b)(1)(v), the *per se* good faith standard that requires responses to carriage proposals "including the reasons for the rejection of any such proposal[.]"<sup>108</sup> For approximately [[C]] REDACTED [[C]] months, Mr. Lammers responded only to proposals with respect to the [[C]] REDACTED [[C]] stations and disregarded all proposals concerning the Defendant Stations.<sup>109</sup>

23. We find that this willful conduct constituted an ongoing refusal to negotiate, unreasonable delay of negotiations, and failure to respond to retransmission consent proposals, in violation of section 325 of the Act and sections 76.65(b)(1)(i), (iii), and (v) of the Commission's rules.<sup>110</sup> Every Negotiating Entity, in a joint negotiation or otherwise, has an independent obligation to abide by the good faith negotiation standards, which includes participating actively in negotiations within a reasonable time frame and responding fully to all of the material terms of carriage proposals from counterparties. Defendants, through their agent, failed to do so.

24. Chiefly, Defendants argue that they should not be subject to a forfeiture because the Commission erred as a matter of law in finding that Mr. Lammers' approach to negotiations violated the *per se* standards.<sup>111</sup> Defendants contend that Mr. Lammers was jointly negotiating on behalf of both [[C]] REDACTED [[C]] and the Defendant Stations each time he sent draft carriage proposals, even when the terms themselves only applied to [[C]] REDACTED [[C]].<sup>112</sup> Defendants' position is that "the [[C]] REDACTED [[C]] agreement served dual roles—as a template for the Joint Parties' baseline terms and as a stand-alone agreement for [[C]] REDACTED [[C]]."<sup>113</sup> This is the same defense the Defendants have

<sup>102</sup> 47 CFR § 76.65(b)(1)(i); *see supra* paras. 7-9.

<sup>103</sup> *Good Faith Order*, 15 FCC Rcd at 5462, para. 40.

<sup>104</sup> *See MO&O/NAL*, 35 FCC Rcd at 10709-10, para. 36; *supra* paras. 7-10.

<sup>105</sup> 47 CFR § 76.65(b)(1)(iii); *see supra* paras. 10, 14.

<sup>106</sup> *Good Faith Order*, 15 FCC Rcd at 5463, para. 42.

<sup>107</sup> *See supra* paras. 6, 11.

<sup>108</sup> 47 CFR § 76.65(b)(1)(v).

<sup>109</sup> *See supra* paras. 6-10, 14.

<sup>110</sup> 47 U.S.C. § 325(b)(3)(C); 47 CFR § 76.65(b)(1)(i), (iii), (v).

<sup>111</sup> NAL Response at 15-22.

<sup>112</sup> *Id.* at 16-19.

<sup>113</sup> *Id.* at 18-19.

presented throughout this proceeding. The Commission expressly rejected this interpretation of the facts, finding it was not supported by the evidence in the record. The Commission found that, based on the record evidence, Mr. Lammers was not in fact engaged in, or seeking to engage in, a simultaneous negotiation with AT&T for carriage of [[C]] REDACTED [[C]] and the Defendant Stations, but instead was committed to negotiation only for carriage of the [[C]] REDACTED [[C]] stations.<sup>114</sup> Defendants' contention that "the Commission simply drew the wrong legal conclusion about whose proposals were embodied in Mr. Lammers's drafts" fundamentally misconstrues the Commission's *MO&O/NAL* and its application of our *per se* standards.<sup>115</sup> In assessing whether a Negotiating Entity has engaged in actions violative of the objective negotiation standards, the Commission need only consider the record to determine, as a fact-finding exercise, the presence or absence of an "action[] or practice[]" that appears on the list of objective standards.<sup>116</sup> As explained in the *MO&O/NAL*, the Commission found that Mr. Lammers did not, in fact, negotiate for Defendants because the [[HC]] REDACTED [[HC]] drafts applied only to [[C]] REDACTED [[C]], and were expressly unresponsive to the AT&T proposals.<sup>117</sup> Indeed, the fact that the carriage terms Mr. Lammers intended to apply to the Defendant Station Groups were different than the terms Mr. Lammers intended to apply to [[C]] REDACTED [[C]]—as demonstrated by the price discrepancies between the rates proposed for [[C]] REDACTED [[C]] in the [[HC]] REDACTED [[HC]] drafts and those proposed for the various Defendant Station Groups in Mr. Lammers' [[HC]] REDACTED [[HC]]—further underscores the lack of any good faith negotiation with respect to Defendants for a substantial period of time.<sup>118</sup>

25. We find that Defendants fundamentally misrepresent the basis of the *MO&O/NAL*.<sup>119</sup> They claim that the *MO&O/NAL* principally relied on one piece of evidence—that Mr. Lammers did not list the Defendant Stations in Exhibit A of his drafts—in finding that the [[HC]] REDACTED [[HC]] drafts contained carriage proposals solely for [[C]] REDACTED [[C]].<sup>120</sup> Defendants contend that "[this] fact cannot support the enormous weight that the Commission placed on it."<sup>121</sup> Defendants' argument, however, ignores the wide array of other evidence upon which the Commission relied in reaching its determination. Not only were the Defendant Stations not listed in Exhibit A or referenced elsewhere in the draft agreements, but Mr. Lammers explicitly and repeatedly refused to discuss the Defendant Stations until the agreement with [[C]] REDACTED [[C]] was signed.<sup>122</sup> In addition, he expressly refused to address any of AT&T's carriage proposals regarding the Defendant Stations.<sup>123</sup> These AT&T proposals, to which Mr. Lammers did not respond, contained all the material terms of the carriage agreement, including key financial and other material terms, which differed from those with respect to [[C]] REDACTED [[C]] and also among the various Defendant Stations. Further, he made no reference in the [[HC]] REDACTED [[HC]] drafts to common or universal terms applicable to the Defendant Stations, and he refused to send the [[HC]] REDACTED [[HC]] drafts to any AT&T negotiators other than those

<sup>114</sup> *MO&O/NAL*, 35 FCC Rcd at 10709-10, 10712, paras. 36, 42.

<sup>115</sup> NAL Response at iii (possessive form in original).

<sup>116</sup> 47 CFR 76.65(b)(1); *Good Faith Order*, 15 FCC Rcd at 5458, para. 31.

<sup>117</sup> *MO&O/NAL*, 35 FCC Rcd at 10700-01, para. 13.

<sup>118</sup> See *supra* para. 13.

<sup>119</sup> NAL Response at ii.

<sup>120</sup> *Id.* at ii, 16.

<sup>121</sup> *Id.* at 16.

<sup>122</sup> See *supra* paras. 7-10, 13-14.

<sup>123</sup> *Id.*

assigned to [[C]] REDACTED [[C]].<sup>124</sup> On top of all this, Mr. Lammers continued this approach while running out the clock not only on the existing retransmission agreements, but also their extensions.<sup>125</sup>

26. Defendants suggest that because they were not expressly required to identify common terms or communicate with specific AT&T negotiators, their failure to do so for many months cannot be seen as evidence of Defendants' *per se* violations.<sup>126</sup> Defendants argue that Mr. Lammers did not identify any common terms because he "made clear that the entire proposals were made [[HC]] REDACTED [[HC]]."<sup>127</sup> In fact, however, the text and his statements made explicit that however they were styled, those drafts were only "for" [[HC]] REDACTED [[HC]].<sup>128</sup> Although Defendants claim that Mr. Lammers had no obligation to respond separately to each of the negotiators that AT&T chose to assign to individual broadcasters, we find that his disregard in this respect is consistent with and reinforces the other evidence showing that Mr. Lammers was not actually negotiating for the Defendant Stations when he sent the [[HC]] REDACTED [[HC]] drafts. For example, when Mr. Lammers finally sent [[HC]] REDACTED [[HC]] proposals on behalf of Defendants to AT&T, he specifically identified the terms applicable to each of the Defendant Stations and [[HC]] REDACTED [[HC]].<sup>129</sup> This later treatment of the [[HC]] REDACTED [[HC]] further supports our determination that Mr. Lammers was not negotiating for the Defendant Stations when he sent AT&T the [[HC]] REDACTED [[HC]] drafts.

27. In addition, we reject Defendants' argument that Mr. Lammers' separate station list demonstrates that he was negotiating for the Defendant Stations when he sent the [[HC]] REDACTED [[HC]] drafts to AT&T. Defendants assert that Exhibit A should not solely determine which stations were embodied in the [[HC]] REDACTED [[HC]] drafts because negotiations do not need to be reflected in a single document, and Mr. Lammers had separately sent AT&T a list of the stations he was representing alongside the [[HC]] REDACTED [[HC]] drafts.<sup>130</sup> Defendants contend that this list "makes clear that the [[HC]] REDACTED [[HC]] drafts provided by Mr. Lammers reflected proposals for each of the Joint Parties, including Defendants."<sup>131</sup> Considering the array of other evidence presented,<sup>132</sup> we are not persuaded that this separate list of stations changes the scope of the draft agreement or Mr. Lammers' demonstrated intent to negotiate first for [[C]] REDACTED [[C]], and only then for the Defendant Stations. Moreover, the "list of stations" expressly identified stations Mr. Lammers was representing, not stations that were covered by the [[HC]] REDACTED [[HC]] drafts. Whether Mr. Lammers intended to eventually negotiate on behalf of all the stations on the list has no bearing on whether he actually negotiated for carriage of those stations during the period in question.

28. Defendants also claim that "the Commission fundamentally misunderstood the legal significance of the parties' 2016 negotiations, which followed the same approach that Mr. Lammers attempted to follow again in 2019[.]"<sup>133</sup> According to Defendants, the 2016 negotiations between AT&T and Mr. Lammers are relevant because they show that "AT&T could not reasonably have misunderstood that Mr. Lammers was attempting to negotiate jointly . . . because the parties had followed that exact

<sup>124</sup> See *supra* paras. 7-10.

<sup>125</sup> See *supra* paras. 6, 11.

<sup>126</sup> *Id.* at 17.

<sup>127</sup> NAL Response at 17 (emphasis in original).

<sup>128</sup> See, e.g., ATT000604 ([[HC]] REDACTED [[HC]]); ATT000841 ([[HC]] REDACTED [[HC]]).

<sup>129</sup> See *supra* para. 13.

<sup>130</sup> NAL Response at 16-17.

<sup>131</sup> *Id.*

<sup>132</sup> See *supra* para. 26.

<sup>133</sup> NAL Response at 17-18.

same process when they jointly negotiated these agreements in the first instance.”<sup>134</sup> The extent to which AT&T may have acquiesced to unlawful negotiation tactics that violated the Commission’s good faith negotiation standards during the 2016 negotiations has absolutely no legal bearing on AT&T’s ability to bring a complaint against Defendants for violations of the good faith standards during the 2019 negotiations. As the Commission explained when addressing this identical argument in the *MO&O/NAL*, none of the evidence offered with respect to the 2016 negotiation undermines the factual finding that in 2019 Mr. Lammers “manifestly failed to demonstrate any intention of seeking, much less reaching, agreement on carriage of Defendant Stations, evincing a refusal to negotiate on behalf of such stations during this period.”<sup>135</sup>

29. Finally, Defendants point to the opinion of the Eastern District of Missouri in *AT&T Services, Inc. v. Max Retrans LLC*, asserting that the judgment reached by the court precludes our determination that the [[HC]] REDACTED [[HC]] drafts applied only to [[C]] REDACTED [[C]].<sup>136</sup> In *AT&T Services, Inc. v. Max Retrans LLC*, AT&T brought a civil complaint against the Defendants, in which AT&T argued [[C]] REDACTED [[C]].<sup>137</sup> The court granted Defendants’ motion to dismiss, finding that Mr. Lammers did not violate the NDA because [[HC]] REDACTED [[HC]].<sup>138</sup> Defendants argue that “the district court’s determination that Max Retrans did not violate the NDA therefore rests entirely on the court’s conclusion that Mr. Lammers was simultaneously negotiating for each of the Joint Parties . . . when he provided [[HC]] REDACTED [[HC]] drafts to AT&T.”<sup>139</sup> We disagree. The contract interpretation issues raised in *AT&T Services*, a case to which the Commission was not a party, are separate and distinct from the issues raised in this proceeding, which involve the question of compliance with Commission rules that are within our exclusive jurisdiction. As the Commission emphasized, whether Defendants decided to engage in a “joint negotiation,” and the scope of the confidentiality restrictions governing their NDA under state law, are separate issues from whether they actually complied with their individual obligations to abide by the Commission’s *per se* good faith standards.<sup>140</sup> Accordingly, while the district court may have found there to be no violation of the NDA because of joint negotiations, here, the *manner* in which the joint negotiations were being conducted—*i.e.*, refusing to negotiate, unreasonably delaying negotiations, and failing to respond to counterparty proposals—violated Commission rules.

30. In the alternative, Defendants argue that, even if the proposals in the [[HC]] REDACTED [[HC]] drafts applied to [[C]] REDACTED [[C]] alone, the Commission still erred in concluding that Defendants breached their duties to negotiate in good faith because it “ignored” the [[HC]] REDACTED [[HC]] that Mr. Lammers proposed for each Defendant.<sup>141</sup> Defendants contend that these [[HC]] REDACTED [[HC]] demonstrate that they “*actually did* negotiate for Defendants[.]”<sup>142</sup> The fact that Defendants eventually agreed to negotiate, however, is not determinative here,<sup>143</sup> because the violations in

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<sup>134</sup> *Id.* at 18.

<sup>135</sup> *MO&O/NAL*, 35 FCC Rcd at 10712, para. 41.

<sup>136</sup> NAL Response at 19-21.

<sup>137</sup> See *MO&O/NAL*, 35 FCC Rcd at 10713-14, para. 44.

<sup>138</sup> *AT&T Services, Inc. and DIRECTV, LLC v. Max Retrans LLC*, Case No. 4:19-CV-01925-NCC, at 7, 9, Filed Under Seal (E.D. Mo. Jan. 16, 2020).

<sup>139</sup> NAL Response at 20.

<sup>140</sup> *MO&O/NAL*, 35 FCC Rcd at 10714-15, para. 48.

<sup>141</sup> NAL Response at 22-25.

<sup>142</sup> *Id.* at 24 (emphasis in original).

<sup>143</sup> *MO&O/NAL*, 35 FCC Rcd at 10719, para. 58 (acknowledging that “each of the Defendants began engaging in (continued....)

question—a refusal to negotiate, an unreasonable delay of negotiations, and a failure to respond to counterparty proposals—had already occurred. Indeed, the [[HC]] REDACTED [[HC]] furnished by Mr. Lammers were sent along with a statement that reflected Defendants’ intent to continue their already [[C]] REDACTED [[C]] failure to respond to AT&T’s proposals.<sup>144</sup> Section 76.65(b)(1)(v) requires Negotiating Entities to respond to each portion of a counterparty’s proposal and explain their reasons for rejecting any of those proposals.<sup>145</sup> Mr. Lammers continued to refuse to respond to any of AT&T’s proposed non-rate terms and continued to refuse to provide any reasons for rejecting them, in direct violation of this *per se* standard.<sup>146</sup>

31. After considering Defendants’ arguments for cancelling the proposed forfeiture, we find each to be unpersuasive. We therefore reaffirm the *NAL*’s conclusion that Defendants willfully and repeatedly breached their duty to negotiate retransmission consent in good faith in violation of section 325 of the Act and sections 76.65(b)(1)(i), (iii), and (v) of the Commission’s rules.<sup>147</sup>

#### **B. The Proposed Forfeiture Amount is Appropriate**

32. After considering the evidence in the record, the relevant statutory factors, the Commission’s *Forfeiture Policy Statement*,<sup>148</sup> and the arguments advanced by Defendants in their *NAL* Response, we find that a total forfeiture of \$512,228 per Defendant Station is appropriate. As explained in the *NAL*, the Commission applied a base forfeiture amount of \$7,500 to each Defendant Station for each day of the continuing violations, which, even with a conservative estimate of the length of the violations, resulted in a total forfeiture amount of [[HC]] REDACTED [[HC]] with respect to each of Defendants’ Stations. We adjust this amount down to \$512,228—the statutory maximum allowed under section 503(b)(2)(A) for a single act or failure to act at the time the *NAL* was adopted.<sup>149</sup> As discussed further below, we reject Defendants’ contention that the Commission’s proposed forfeiture is excessive and should be reduced to no more than \$25,000 per Station.<sup>150</sup> With the exception of Mercury’s inability to pay claim, which we address in section III.C below, we find none of Defendants’ arguments for canceling or reducing the forfeiture amount persuasive.

33. At the time the *NAL* was adopted, section 503(b)(2)(A) of the Act authorized us to assess a forfeiture against Defendants, which are all broadcast licensees, of up to \$51,222 per violation or day of a continuing violation, up to a statutory maximum of \$512,228 for a single act or failure to act.<sup>151</sup> In

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good faith negotiation with AT&T with the intent to reach agreement for carriage” at some point after the filing of the Complaint).

<sup>144</sup> ATT000841 (explaining that further responses to the AT&T proposals [[HC]] REDACTED [[HC]]).

<sup>145</sup> 47 CFR §76.65(b)(1)(v).

<sup>146</sup> See *supra* para. 14.

<sup>147</sup> *MO&O/NAL*, 35 FCC Rcd at 10709, para. 35; 47 U.S.C. § 325(b)(3)(C); 47 CFR § 76.65(b)(1)(i), (iii), (v). We also affirm all of the Commission’s findings in the *MO&O/NAL*, incorporate it by reference, and reject any argument that disputes the findings of the *MO&O/NAL*.

<sup>148</sup> See *Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01, para. 27.

<sup>149</sup> 47 U.S.C. § 503(b)(2)(A). Throughout this item, references to the statutory maximum are to the maximum as of the date of the *MO&O/NAL* (*but see infra* note 151).

<sup>150</sup> *NAL* Response at 25.

<sup>151</sup> 47 U.S.C. § 503(b)(2)(A). At the time the *NAL* was adopted on September 15, 2020, the statutory maximum was \$512,228 for a single act or failure to act. Subsequently, pursuant to 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), the statutory maximum increased to \$518,283 effective January 15, 2021. See *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 2020 (continued....)

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.<sup>152</sup> As required by the Act, the Commission will apply these statutory factors to determine a forfeiture based on the Commission's evaluation of each individual case on its own merits.<sup>153</sup> We may also adjust the base forfeiture upward or downward, taking into account the particular facts of each individual case.<sup>154</sup>

34. We affirm the Commission's conclusions in the *NAL* regarding the nature, circumstances, extent, and gravity of Defendants' violations. Given the scope and duration of violations in this case, the per-day forfeiture penalty for a continuing violation under section 503(b)(2)(A) is appropriate and not excessive. We reject Defendants' argument that the amount is disproportionately punitive given the novelty of the good faith rules' application here. While this is the first forfeiture issued for a violation of our good faith negotiation rules, this is not the first time we have held a party liable under these rules.<sup>155</sup> In addition, each of the Defendants was on notice that the Commission takes violations of the good faith rules extremely seriously. In 2016, Defendants each received LOIs making them aware of a wide-ranging investigation of possible violations of these same rules. That same year, the Commission reached a consent decree with Sinclair under which it agreed to pay approximately \$9.5 million to resolve an

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WL 7863038 (EB Dec. 29, 2020); *Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 86 FR 3830 (Jan. 15, 2021) (announcing an effective date of January 15, 2021). The 2015 Inflation Adjustment Act provides that "[a]ny increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predated such increase, which are assessed after the date the increase takes effect." Because forfeitures are "assessed" at the time of a forfeiture order, and not at the time of a notice of *apparent* liability or at the time a violation occurred, we have authority to apply the statutory maximum as of the date of this Forfeiture Order (\$518,283). Although we are exercising our discretion under section 503(b) in this proceeding to assess the forfeiture at the amount set forth in the *NAL*, licensees and other parties should be on notice that in future proceedings the Commission may exercise its authority to adjust penalty amounts to reflect the inflation-adjusted statutory maximum in effect at the time of a forfeiture order.

<sup>152</sup> 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(9), Note § II.

<sup>153</sup> 47 U.S.C. § 503(b).

<sup>154</sup> *Forfeiture Policy Statement*, 12 FCC Rcd at 17098-99, 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."), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); *see also* 47 CFR § 1.80(b)(9), Note § 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.

<sup>155</sup> *See Jorge L. Bauermeister*, Letter, 22 FCC Rcd 4933 (MB 2007) (finding that an MVPD had failed to negotiate in good faith under the totality of the circumstances standard and directing the parties to begin good faith negotiations).

investigation involving, among other things, “negotiat[ing] retransmission consent on behalf of, or coordinated negotiations with, a total of 36 Non-Sinclair Stations with which it had JSAs, LMAs, or SSAs, concurrently with its negotiation for retransmission consent of at least one Sinclair Station in the same local market.”<sup>156</sup> Each of the Defendants has a close relationship with Sinclair,<sup>157</sup> and the Commission’s publicly-announced “strong commitment to vigilantly enforce our retransmission consent rules”<sup>158</sup> was widely reported in the trade press at the time.<sup>159</sup> Defendants therefore did, in fact, have “relevant guidance about how the Commission would ultimately apply its rules” and “the amount of penalties that the Commission would consider reasonable for a violation.”<sup>160</sup> We find the forfeiture amount appropriate and proportional to the nature and consequences of Defendants’ actions. Through their agent, Defendants persistently refused to negotiate for carriage of their Stations, even months after the existing contracts and extension agreements expired and stations went dark.

35. We reject Defendants’ suggestion that in assessing the forfeiture amount we should not have considered their conduct a continuing violation but rather should have calculated the penalty by counting only the specifically identified instances where Mr. Lammers failed to negotiate.<sup>161</sup> We conclude that each Defendant Station’s violations of the Act and the Commission’s rules constituted a continuing violation under section 503(b)(2)(A) of the Act.<sup>162</sup> As explained in the *NAL*, in line with our precedent, we consider the conduct of Defendants’ agent in this case to have been a “single act or failure to act” that continued over an extended period of time.<sup>163</sup> Defendants not only fail to cite a single case to

<sup>156</sup> *Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd 8576, 8579, para. 4 (2016).

<sup>157</sup> *Supra* para. 4.

<sup>158</sup> *FCC, Sinclair Settles FCC Investigation Into Retransmission Negotiation Violations For \$9.5M*, (Jul. 29, 2016), <https://docs.fcc.gov/public/attachments/DOC-340557A1.pdf>.

<sup>159</sup> *See, e.g.*, Deborah D. McAdams, *Sinclair Agrees to Pay \$9.5 Million to FCC* (Jul. 29, 2016), TV Tech, <https://www.tvtechnology.com/news/sinclair-agrees-to-pay-95-million-to-fcc>; *Sinclair Agrees to \$9.49 Million Consent Decree With FCC* (Aug. 1, 2016), [https://communicationsdaily.com/article/view?search\\_id=447146&p=1&id=113355&BC=bc\\_607054f7bf197](https://communicationsdaily.com/article/view?search_id=447146&p=1&id=113355&BC=bc_607054f7bf197); *FCC Fines Sinclair USD 9.5 Mln Over Retransmission Dispute*, Telecompaper, (Aug. 1, 2016), <https://www.telecompaper.com/news/fcc-fines-sinclair-usd-95-mln-over-retransmission-dispute--1155664>.

<sup>160</sup> *NAL* Response at 25.

<sup>161</sup> *Id.* at 26.

<sup>162</sup> 47 U.S.C. § 312(f)(2) (providing that “[t]he term ‘repeated,’ when used with reference to the commission or omission of any act, means the commission or omission of such act more than once, or if such commission or omission is continuous, for more than one day.”); 47 U.S.C. § 503(b)(2)(A) (imposing monetary caps for violations, including repeated and continuing violations).

<sup>163</sup> *See, e.g.*, *Acerome Jean Charles, Boston, Massachusetts*, ET Docket Nos. 03-137, 13-84, and 19-226, Notice of Apparent Liability for Forfeiture, 34 FCC Rcd 12744, 12747, para. 15 (2019) (“[D]uring the 27-day period . . . Jean Charles was apparently committing a single, continuing violation of section 301 of the Act. We therefore propose a base forfeiture of \$10,000 for each day during this 27-day period, resulting in a proposed base forfeiture of \$270,000.”). We note that in another matter involving violations of the retransmission consent provisions of the Act and our rules, the Commission used a different method for calculating the forfeiture. *See TV Max, Inc. and Broadband Ventures Six, LLC d/b/a Wavevision, Thomas M. Balun, Eric Meltzer, and Richard Gomez, et al.*, MB Docket Nos. 12-113, 12-181, 12-222, and 12-266, Forfeiture Order, 29 FCC Rcd 8648 (2014). TV Max involved a cable operator that was found to have retransmitted the signals of six full-power commercial television broadcast stations for more than a year without the express written consent of the stations. *Id.* In that case, the Commission considered each day that the cable operator carried broadcast programming in violation of the retransmission consent requirements to be a separate repeated violation for which a forfeiture could be imposed. *See id.* at 8658, n.75 (“We consider each day that TV Max retransmitted each of the six Stations without consent to be a separate violation.”); *id.* at 8659, n.77 (explaining that calculation of a “straightforward application of the base forfeiture amount” in that case would be: “\$7,500 base forfeiture amount x 365 violations [within the one year statute of

(continued....)



support their suggestion that these violations should be considered a series of separate, repeated acts, but also fail to demonstrate that such an approach would result in a reduced forfeiture amount. We also consider a distinct violation to have been committed by each of the stations that refused, through their agent, to negotiate. We disagree with Defendants' assertion that we "should not have treated stations under common ownership separately for purposes of determining penalties."<sup>164</sup> As discussed above, the Negotiating Entities subject to the rules are individual stations, and licensees are required to ensure that each station is in compliance with Commission rules.<sup>165</sup> Just as importantly, the harm to viewers is multiplied with each station in each DMA that goes dark, regardless of the number of corporate parents involved in a carriage dispute, underscoring the importance of our focus on individual stations.

36. In arguing for a reduction of the forfeiture, Defendants are correct that the Commission has made no recent findings of their noncompliance with the Act and our rules, but we do not find that to warrant such a reduction. The Commission considered the Defendants' "history of overall compliance," along with the other downward adjustment factors, and found that neither it nor any other factor constituted a sufficient basis to justify a downward adjustment of the penalty.<sup>166</sup> Given the extent and circumstances of Defendants' violations, we find that no reduction of the proposed forfeiture, beyond that "reduction" imposed by the statutory maximum applicable at the time the *NAL* was adopted, is warranted in this case.<sup>167</sup>

37. In addition, we do not find that the record in this case supports a reduction of the forfeiture amount due to the Coronavirus pandemic.<sup>168</sup> In the *MO&O/NAL*, the Commission invited the Defendants to show that their financial circumstances justified a reduced penalty.<sup>169</sup> Aside from

(Continued from previous page) —————  
 limitations] x 6 unlawfully carried stations = \$16,425,000"). We find the nature of the violations at issue in the instant cases, however, to be distinguishable from the factual circumstances presented in *TV Max*. Specifically, we believe the conduct here (unlike *TV Max*) more closely resembles a situation involving a single dereliction (e.g., here, the refusal to negotiate in good faith) which persists until remedied (e.g., here, until the licensee finally begins to negotiate carriage of the station in good faith). In other words, here there existed a legal duty that the Defendants continued to violate. See, e.g., *Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 10 (2000) (treating unauthorized transfer of control as a continuing violation that does not end until the Commission grants a transfer of control application); *Petition for Reconsideration Concerning Liability of Benito Rish, Licensee of Radio Station WREM (AM), Monticello, ME*, Memorandum Opinion and Order, 10 FCC Rcd 2861, 2861, para. 5 (1995) (noting that "the legislative history of the 1989 amendment to section 503 of [the Act] shows that Congress ratified the Commission's longstanding approach to [a continuing] violation by characterizing an unauthorized transfer of control that results from a single event as an offense that is nonetheless continuing in nature.") (citing H.R. Conf. Rep. No. 101-386, 101st Cong., 1st Sess., 1989 U.S.C.C.A.N. 3018, 3038).

<sup>164</sup> NAL Response at 26.

<sup>165</sup> *Supra* para. II.A; see also *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).

<sup>166</sup> *MO&O/NAL*, 35 FCC Rcd at 10718-20, paras. 58-59 ("... we are unable to apply any upward adjustments because each penalty has already reached the statutory maximum"); see also *id.* at 10717, n.238 (explaining that the Commission has discretion to impose forfeitures on a case-by-case basis, citing to the general forfeiture authority).

<sup>167</sup> Defendants dedicate less than a full sentence to, and provide no support for, an argument that their choice to grant negotiation authority to an agent reduces their culpability for violations of our rules. NAL Response at 27. This argument is specious and baseless, and we reject it.

<sup>168</sup> *Id.* at 25-26.

<sup>169</sup> *MO&O/NAL*, 35 FCC Rcd at 10726, para. 82.

Mercury,<sup>170</sup> none of the Defendants made any effort to demonstrate that it is facing financial hardship of any kind, due to the pandemic or otherwise.

38. We also decline to cancel or reduce the forfeiture with respect to GOCOM Media of Illinois, LLC, licensee of WCCU. In a footnote, Defendants argue that WCCU “in particular should not be subject to forfeiture because . . . [a]s a satellite [station of WRSP], WCCU is not carried by AT&T in any event, as its programming is duplicative of that broadcast by WRSP.”<sup>171</sup> Mr. Lammers, however, repeatedly identified both WCCU and WRSP as part of the group of stations he was representing.<sup>172</sup> Both were separately listed in the Complaint without objection by Defendants,<sup>173</sup> and both were included among the “20 broadcast television stations” covered by the Bureau Decision, without objection in Defendants’ Application for Review.<sup>174</sup> As a member of the group of stations involved in these negotiations, WCCU is no less culpable than any of the other stations of failing to negotiate carriage, unreasonably delaying negotiations, and refusing to respond to proposals.<sup>175</sup>

39. Finally, Defendants argue that the amount of their forfeiture should not exceed the amount paid by HSH as part of its consent decree.<sup>176</sup> We note that, after the release of the Media Bureau’s decision, HSH promptly initiated settlement negotiations, admitted its violations of the Act and the Commission’s rules, paid a civil penalty, and agreed to implement a compliance plan as part of the consent decree settling the matter—a profoundly different course of conduct than that displayed by the Defendants.<sup>177</sup> Accordingly, the terms of the Commission’s settlement with HSH are entirely irrelevant to our assessment of Defendants’ liability and the appropriateness of the proposed penalty.<sup>178</sup>

### C. Mercury’s Inability to Pay

40. We are persuaded by Mercury’s claim that paying the full amount of the \$512,228 forfeiture would create a financial hardship. The Commission has previously determined that, in general, gross incomes or revenues are the best indicators of an entity’s ability to pay a forfeiture.<sup>179</sup> Based on the

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<sup>170</sup> *Infra* Section III.C.

<sup>171</sup> NAL Response at 26, n.129.

<sup>172</sup> *Supra* note 19.

<sup>173</sup> Complaint at 2; Answer at 31 (“Defendants admit that GoCom owns and operates the stations attributed to it in paragraph 2”).

<sup>174</sup> *Bureau Decision*, 34 FCC Rcd at 10368, para. 1. We note that the Bureau expressly excluded one entity named in the Complaint because it was “a secondary stream” of another listed Station (*id.* at n.4) and dismissed the underlying complaint with respect to Deerfield Media, Inc. because it was not the licensee of any of the Defendant stations (*id.* at n.4). Defendants had ample opportunity to raise concerns regarding WCCU but failed to timely do so.

<sup>175</sup> We note that Defendants failed to raise this new argument earlier in the proceeding. *See, e.g., Knology, Inc. v. Georgia Power Co.*, 18 FCC Rcd 24615, 24617, para. 5 n.16 (2003) (declining to address an argument raised by the defendant late in the proceeding); *AT&T Corp. v. Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130, 16133, para 6 n.18 (2001); *Consumer.Net v. AT&T Corp.*, Order, 15 FCC Rcd 281, 300, para. 40 n.93 (1999) (declining to consider an argument raised for the first time in the briefs).

<sup>176</sup> NAL Response at 26.

<sup>177</sup> *Howard Stirk Holdings, LLC; HSH Flint (WEYI) Licensee, LLC; and HSH Myrtle Beach (WWMB) Licensee, LLC*, MB Docket No. 19-168, Order, 35 FCC Rcd 4517, 4517, para. 1 (MB 2020).

<sup>178</sup> *See MO&O/NAL*, 35 FCC Rcd at 10696, n.1.

<sup>179</sup> *See, e.g., Coleman Enterprises, Inc., d/b/a Local Long Distance, Inc.*, Order of Forfeiture, 15 FCC Rcd 24385, 24389, para. 11 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Application of Zuma Beach FM Emergency & Community Broadcasters, Inc.*, 34 FCC (continued....)

financial documentation provided in Mercury's Supplemental NAL Response, we find that Mercury's average gross revenues over the past three fiscal years supports a reduction of the forfeiture to \$30,000, which does not exceed 8 percent of Mercury's average gross revenues.

41. We note that a party's ability to pay is only one factor in our forfeiture calculation analysis, and is not dispositive.<sup>180</sup> Indeed, the Commission has previously rejected inability to pay claims in cases of repeated intentional and malicious acts or otherwise egregious violations.<sup>181</sup> We therefore warn Mercury that we may impose significantly higher penalties—regardless of its financial circumstances—if the forfeiture imposed here does not serve as a sufficient deterrent or if future violations evidence a pattern of deliberate disregard for the Act or the Commission's rules.

#### IV. CONCLUSION

42. Based on the record before us and in light of the applicable statutory factors, we conclude that Defendants willfully and repeatedly violated section 325(b) of the Act and section 76.65 of the Commission's rules by failing to negotiate carriage, unreasonably delaying negotiations, and refusing to respond to proposals. We adopt the following forfeitures proposed in the *NAL*, ranging from \$512,228 to \$1,536,684, including a reduction of the forfeiture amount for Mercury to \$30,000.

Licensee	Stations Implicated	Total Liability	NAL Account Number
Deerfield Media (Port Arthur) Licensee, LLC	KBTW	\$512,228	MB-202041430002
Deerfield Media (Cincinnati) Licensee, LLC	WSTR	\$512,228	MB-202041430003
Deerfield Media (Mobile) Licensee, LLC	WPMI WJTC	\$1,024,456	MB-202041430004
Deerfield Media (Rochester) Licensee, LLC	WHAM	\$512,228	MB-202041430005
Deerfield Media (San Antonio) Licensee, LLC	KMYS	\$512,228	MB-202041430006
GoCom Media of Illinois, LLC	WBUI WCCU WRSP	\$1,536,684	MB-202041430007
Mercury Broadcasting Company, Inc.	KMTW	\$30,000	MB-202041430008
MPS Media of Tennessee Licensee, LLC	WFLI	\$512,228	MB-202041430009
MPS Media of Gainesville Licensee, LLC	WNBW	\$512,228	MB-202041430010
MPS Media of Tallahassee Licensee, LLC	WTLF	\$512,228	MB-202041430011
MPS Media of Scranton Licensee	WSWB	\$512,228	MB-202041430012
Nashville License Holdings, LLC	WNAB	\$512,228	MB-202041430013

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Rcd 5302, 5303-04, para. 5 (MB 2019); *Jean Yves Tullias*, Forfeiture Order, 32 FCC Rcd 7680, 7681, para. 4 (EB 2017) (following *Coleman Enterprises*).

<sup>180</sup> See 47 U.S.C. § 503(b)(2)(E).

<sup>181</sup> See, e.g., *Ocean Adrian Hinson, Surry County, North Carolina*, Forfeiture Order, 34 FCC Rcd 7619, 7621, paras. 8-9 (2019) (declining to reduce a forfeiture based on a documented inability to pay because the individual “provide[d] no evidence to refute that his conduct was egregious”).

KMTR Television, LLC	KMTR	\$512,228	MB-202041430014
Second Generation of Iowa, LTD	KFXA	\$512,228	MB-202041430015
Waitt Broadcasting, Inc.	KMEG	\$512,228	MB-202041430016

## V. ORDERING CLAUSES

43. Accordingly, **IT IS ORDERED** that, pursuant to section 503(b) of the Act<sup>182</sup> and section 1.80 of the Commission's rules,<sup>183</sup> Deerfield Media (Port Arthur) Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>184</sup> and section 76.65 of the Commission's rules.<sup>185</sup>

44. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>186</sup> and section 1.80 of the Commission's rules,<sup>187</sup> Deerfield Media (Cincinnati) Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>188</sup> and section 76.65 of the Commission's rules.<sup>189</sup>

45. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>190</sup> and section 1.80 of the Commission's rules,<sup>191</sup> Deerfield Media (Mobile) Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of one million, twenty-four thousand, four hundred fifty-six dollars (\$1,024,456) for willful and repeated violations of section 325 of the Act<sup>192</sup> and section 76.65 of the Commission's rules.<sup>193</sup>

46. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>194</sup> and section 1.80 of the Commission's rules,<sup>195</sup> Deerfield Media (Rochester) Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>196</sup> and section 76.65 of the

<sup>182</sup> 47 U.S.C. § 503(b).

<sup>183</sup> 47 CFR § 1.80.

<sup>184</sup> 47 U.S.C. § 325.

<sup>185</sup> 47 CFR § 76.65.

<sup>186</sup> 47 U.S.C. § 503(b).

<sup>187</sup> 47 CFR § 1.80.

<sup>188</sup> 47 U.S.C. § 325.

<sup>189</sup> 47 CFR § 76.65.

<sup>190</sup> 47 U.S.C. § 503(b).

<sup>191</sup> 47 CFR § 1.80.

<sup>192</sup> 47 U.S.C. § 325.

<sup>193</sup> 47 CFR § 76.65.

<sup>194</sup> 47 U.S.C. § 503(b).

<sup>195</sup> 47 CFR § 1.80.

<sup>196</sup> 47 U.S.C. § 325.

Commission's rules.<sup>197</sup>

47. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>198</sup> and section 1.80 of the Commission's rules,<sup>199</sup> Deerfield Media (San Antonio) Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>200</sup> and section 76.65 of the Commission's rules.<sup>201</sup>

48. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>202</sup> and section 1.80 of the Commission's rules,<sup>203</sup> GoCom Media of Illinois, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of one million, five hundred thirty-six thousand, six hundred eighty-four dollars (\$1,536,684) for willful and repeated violations of section 325 of the Act<sup>204</sup> and section 76.65 of the Commission's rules.<sup>205</sup>

49. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>206</sup> and section 1.80 of the Commission's rules,<sup>207</sup> Mercury Broadcasting Company, Inc. is **LIABLE FOR A MONETARY FORFEITURE** in the amount of thirty thousand dollars (\$30,000) for willful and repeated violations of section 325 of the Act<sup>208</sup> and section 76.65 of the Commission's rules.<sup>209</sup>

50. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>210</sup> and section 1.80 of the Commission's rules,<sup>211</sup> MPS Media of Tennessee Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>212</sup> and section 76.65 of the Commission's rules.<sup>213</sup>

51. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>214</sup> and section

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<sup>197</sup> 47 CFR § 76.65.

<sup>198</sup> 47 U.S.C. § 503(b).

<sup>199</sup> 47 CFR § 1.80.

<sup>200</sup> 47 U.S.C. § 325.

<sup>201</sup> 47 CFR § 76.65.

<sup>202</sup> 47 U.S.C. § 503(b).

<sup>203</sup> 47 CFR § 1.80.

<sup>204</sup> 47 U.S.C. § 325.

<sup>205</sup> 47 CFR § 76.65.

<sup>206</sup> 47 U.S.C. § 503(b).

<sup>207</sup> 47 CFR § 1.80.

<sup>208</sup> 47 U.S.C. § 325.

<sup>209</sup> 47 CFR § 76.65.

<sup>210</sup> 47 U.S.C. § 503(b).

<sup>211</sup> 47 CFR § 1.80.

<sup>212</sup> 47 U.S.C. § 325.

<sup>213</sup> 47 CFR § 76.65.

<sup>214</sup> 47 U.S.C. § 503(b).

1.80 of the Commission's rules,<sup>215</sup> MPS Media of Gainesville Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>216</sup> and section 76.65 of the Commission's rules.<sup>217</sup>

52. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>218</sup> and section 1.80 of the Commission's rules,<sup>219</sup> MPS Media of Tallahassee Licensee, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>220</sup> and section 76.65 of the Commission's rules.<sup>221</sup>

53. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>222</sup> and section 1.80 of the Commission's rules,<sup>223</sup> MPS Media of Scranton Licensee is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>224</sup> and section 76.65 of the Commission's rules.<sup>225</sup>

54. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>226</sup> and section 1.80 of the Commission's rules,<sup>227</sup> Nashville License Holdings, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>228</sup> and section 76.65 of the Commission's rules.<sup>229</sup>

55. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>230</sup> and section 1.80 of the Commission's rules,<sup>231</sup> KMTR Television, LLC is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>232</sup> and section 76.65 of the

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<sup>215</sup> 47 CFR § 1.80.

<sup>216</sup> 47 U.S.C. § 325.

<sup>217</sup> 47 CFR § 76.65.

<sup>218</sup> 47 U.S.C. § 503(b).

<sup>219</sup> 47 CFR § 1.80.

<sup>220</sup> 47 U.S.C. § 325.

<sup>221</sup> 47 CFR § 76.65.

<sup>222</sup> 47 U.S.C. § 503(b).

<sup>223</sup> 47 CFR § 1.80.

<sup>224</sup> 47 U.S.C. § 325.

<sup>225</sup> 47 CFR § 76.65.

<sup>226</sup> 47 U.S.C. § 503(b).

<sup>227</sup> 47 CFR § 1.80.

<sup>228</sup> 47 U.S.C. § 325.

<sup>229</sup> 47 CFR § 76.65.

<sup>230</sup> 47 U.S.C. § 503(b).

<sup>231</sup> 47 CFR § 1.80.

<sup>232</sup> 47 U.S.C. § 325.

Commission's rules.<sup>233</sup>

56. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>234</sup> and section 1.80 of the Commission's rules,<sup>235</sup> Second Generation of Iowa, LTD is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>236</sup> and section 76.65 of the Commission's rules.<sup>237</sup>

57. **IT IS FURTHER ORDERED** that, pursuant to section 503(b) of the Act<sup>238</sup> and section 1.80 of the Commission's rules,<sup>239</sup> Waitt Broadcasting, Inc. is **LIABLE FOR A MONETARY FORFEITURE** in the amount of five hundred twelve thousand, two hundred twenty-eight dollars (\$512,228) for willful and repeated violations of section 325 of the Act<sup>240</sup> and section 76.65 of the Commission's rules.<sup>241</sup>

58. Payment of the forfeiture shall be made in the manner provided for in section 1.80 of the Commission's rules within thirty (30) calendar days after the release of this Forfeiture Order.<sup>242</sup> If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>243</sup> Each of Deerfield Media (Port Arthur) Licensee, LLC; Deerfield Media (Cincinnati) Licensee, LLC; Deerfield Media (Mobile) Licensee, LLC; Deerfield Media (Rochester) Licensee, LLC; Deerfield Media (San Antonio) Licensee, LLC; GoCom Media of Illinois, LLC; Mercury Broadcasting Company, Inc.; MPS Media of Tennessee Licensee, LLC; MPS Media of Gainesville Licensee, LLC; MPS Media of Tallahassee Licensee, LLC; MPS Media of Scranton Licensee, LLC; Nashville License Holdings, LLC; KMTR Television, LLC; Second Generation of Iowa, LTD; and Waitt 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),<sup>244</sup> 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:<sup>245</sup>

- 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

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<sup>233</sup> 47 CFR § 76.65.

<sup>234</sup> 47 U.S.C. § 503(b).

<sup>235</sup> 47 CFR § 1.80.

<sup>236</sup> 47 U.S.C. § 325.

<sup>237</sup> 47 CFR § 76.65.

<sup>238</sup> 47 U.S.C. § 503(b).

<sup>239</sup> 47 CFR § 1.80.

<sup>240</sup> 47 U.S.C. § 325.

<sup>241</sup> 47 CFR § 76.65.

<sup>242</sup> *Id.* § 1.80.

<sup>243</sup> 47 U.S.C. § 504(a).

<sup>244</sup> Payments made using the Commission's Fee Filer system do not require the submission of FCC Form 159.

<sup>245</sup> 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.

Federal Communications Commission at 202-418-2843 or e-mailed to [RROGWireFaxes@fcc.gov](mailto: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 from paragraph 42, above, 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).<sup>246</sup> For additional detail and wire transfer instructions, go to <https://www.fcc.gov/licensing-databases/fees/wire-transfer>.

- Payment by credit card must be made by using the Commission’s Fee Filer website at <https://apps.fcc.gov/FeeFiler/login.cfm>. To pay by credit card, log-in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select “Pay bills” on the Fee Filer Menu, and select the bill number associated with the NAL Account from paragraph 42 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 from paragraph 42 above – 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.

59. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer - Financial Operations, Federal Communications Commission, 45 L Street NE, Washington, DC 20554.<sup>247</sup> 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](mailto:ARINQUIRIES@fcc.gov).

60. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by certified mail, return receipt requested, to the addresses of record of: Deerfield Media (Port Arthur) Licensee, LLC; Deerfield Media (Cincinnati) Licensee, LLC; Deerfield Media (Mobile) Licensee, LLC; Deerfield Media (Rochester) Licensee, LLC; Deerfield Media (San Antonio) Licensee, LLC; GoCom Media of Illinois, LLC; Mercury Broadcasting Company, Inc.; MPS Media of Tennessee Licensee, LLC; MPS Media of Gainesville Licensee, LLC; MPS Media of Tallahassee Licensee, LLC; MPS Media of Scranton Licensee, LLC; Nashville License Holdings, LLC; KMTR Television, LLC; Second Generation of Iowa, LTD; and Waitt Broadcasting, Inc., respectively.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>246</sup> Instructions for completing the form may be obtained at <https://transition.fcc.gov/Forms/Form159/159.pdf>.

<sup>247</sup> 47 CFR § 1.1914.