

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

In the Matter of )
)
DIRECTV, LLC; AT&T Services, Inc., ) MB Docket No. 19-168
)
Complainants, ) CRS No. 8979-C
)
v. ) Account Nos.: MB-202041430002, MB-
) 202041430003, MB-202041430004, MB-
Deerfield Media, Inc.; Deerfield Media (Port ) 202041430005, MB-202041430006, MB-
Arthur) Licensee, LLC; Deerfield Media ) 202041430007, MB-202041430009, MB-
(Cincinnati) Licensee, LLC; Deerfield Media ) 202041430010, MB-202041430011, MB-
(Mobile) Licensee, LLC; Deerfield Media ) 202041430012, MB-202041430013, MB-
(Rochester) Licensee, LLC; and Deerfield Media ) 202041430014, MB-202041430015, and MB-
(San Antonio) Licensee, LLC; GoCom Media of ) 202041430016
Illinois, LLC; Howard Stirk Holdings, LLC; HSH )
Flint (WEYI) Licensee, LLC; and HSH Myrtle )
Beach (WWMB) Licensee, 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; Waitt Broadcasting, Inc., )
)
Defendants. )

MEMORANDUM OPINION AND ORDER AND ORDER ON RECONSIDERATION

Adopted: March 14, 2022

Released: March 14, 2022

By the Commission:

I. INTRODUCTION

1. By this Memorandum Opinion and Order and Order on Reconsideration (Order), we dismiss and, on alternative and independent grounds, deny the petition for reconsideration (Petition) filed by broadcast TV station licensees Deerfield Media, Inc., et al. (collectively, Defendants)<sup>1</sup> seeking

<sup>1</sup>Defendants' Petition for Reconsideration, MB Docket No. 19-168 (filed Aug. 27, 2021), https://ecfsapi.fcc.gov/file/1082713187958/PUBLIC%20-%202021-08-27%20-%20FINAL%20Petition%20for%20Reconsideration.pdf (Petition). The remaining Defendants are 14 licensees across seven 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 (GoCom); 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 (Second Generation); and Waitt Broadcasting, Inc. Several of the original defendants in this proceeding are not parties to the Petition or this Order. The Media Bureau dismissed the underlying complaint with respect to

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reconsideration of a *Forfeiture Order* issued by the Commission that imposed a \$512,228 penalty per-station against each Defendant for willfully and repeatedly violating the Commission's good faith negotiation requirements.<sup>2</sup> For the reasons explained below, we dismiss the Petition on procedural grounds and, as an independent and alternative basis for this decision, deny it on the merits. We also dismiss a second petition for reconsideration of the *Forfeiture Order* filed separately by Second Generation (Supplemental Petition), finding that its request for reconsideration of the forfeiture amount based on an inability to pay is untimely and consideration of this claim is not in the public interest. We also deny Second Generation's request for a waiver to allow for consideration of its untimely inability-to-pay claim.

## II. BACKGROUND

2. The *Forfeiture Order* recites in detail the facts underlying this proceeding.<sup>3</sup> To briefly summarize, this Petition arises out of a 2019 good faith complaint filed by DIRECTV, LLC and AT&T Services, Inc. (collectively, AT&T) against the Defendants for violating their good faith negotiation obligations during retransmission consent negotiations.<sup>4</sup> The current Defendant licensees are each members of one of seven station groups (Defendant Station Groups) that operate 17 broadcast television stations (Defendant Stations), among other broadcast stations that are not subject to this proceeding.<sup>5</sup> This case was first adjudicated by the Media Bureau (the Bureau), which held that Defendants breached their individual duties to negotiate in good faith and ordered the parties to resume negotiations, while noting that the Commission "reserve[d] the right to take enforcement action proposing a forfeiture for the violations of the Act and our rules."<sup>6</sup> Defendants filed an Application for Review of the *Bureau Decision* with the Commission.<sup>7</sup> Upon review, the Commission affirmed the Bureau's findings and issued a notice of apparent liability for forfeiture against the Defendant Licensees (*MO&O/NAL*).<sup>8</sup> Defendants opposed the Commission's findings and the proposed forfeiture amount of \$512,228 per-station.<sup>9</sup>

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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—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). Most recently, Mercury Broadcasting Company, LLC (Mercury) paid the forfeiture imposed against it following the release of the *Forfeiture Order* and is therefore no longer a party to this proceeding.

<sup>2</sup> *DIRECTV, LLC and AT&T Services, Inc. v. Deerfield Media, Inc., et al.*, Forfeiture Order, FCC 21-89, at 9, para. 20 (July 28, 2021) (*Forfeiture Order*). The Commission imposed a reduced forfeiture on Mercury Broadcasting, Inc. due to its timely demonstrated inability to pay. *Id.* at part III.C.

<sup>3</sup> *Id.* at 3-8, paras. 4-19.

<sup>4</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 (filed June 18, 2019) (Complaint).

<sup>5</sup> Defendants' Answer to Good Faith Complaint, MB Docket No. 19-168, at 30-32 (filed Aug. 6, 2019) (Answer).

<sup>6</sup> *DIRECTV, LLC and AT&T Services, Inc. v. Deerfield Media, Inc., et al.*, MB Docket No. 19-168, Memorandum Opinion and Order, 34 FCC Rcd 10367, 10369, n.11 & 10383-84, para. 35 (MB 2019) (*Bureau Decision*). Shortly after the release of the *Bureau Decision*, AT&T completed carriage agreements with all of the Defendant Stations. *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, 10703, para. 20 & n.102 (2020) (*MO&O/NAL*).

<sup>7</sup> Defendants' Application for Review, MB Docket No. 19-168 (filed Dec. 9, 2019) (AFR).

<sup>8</sup> See generally *MO&O/NAL*, 35 FCC Rcd 10695.

<sup>9</sup> Defendants' Response to Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, MB Docket No. 19-168 (filed Oct. 15, 2020) (NAL Response).

3. In the *Forfeiture Order*, we determined that Defendants willfully and repeatedly breached their individual duties to negotiate retransmission consent in good faith, in violation of section 325(b)(3)(C) of the Communications Act of 1934, as amended (the Act), by allowing their joint agent to engage in conduct that violated three of the *per se* good faith negotiation standards under section 76.65(b)(1) of the Commission’s rules.<sup>10</sup> Based on the evidence in the record, we found that Defendants’ agent repeatedly refused to negotiate for carriage of the Defendant Stations or respond to AT&T’s carriage proposals, even as the existing carriage contracts expired, extension deadlines lapsed, and stations went dark.<sup>11</sup> We held that this conduct clearly violated Defendants’ obligations under the *per se* standards to: (1) “participate in retransmission consent negotiations with the intent of reaching agreement,” (2) refrain from acting in a manner that unreasonably delays retransmission consent negotiations, and (3) respond to retransmission consent proposals from the other party, including giving the reasons for the rejection of any such proposal.<sup>12</sup> The *Forfeiture Order* affirmed the forfeiture proposed in the *MO&O/NAL* for all Defendant Stations except the one licensed to Mercury.<sup>13</sup> In light of its timely demonstrated inability to pay, we reduced Mercury’s forfeiture amount to \$30,000.<sup>14</sup>

4. We considered and found unavailing Defendants’ other arguments for a reduced forfeiture amount, including their claim that because this was the first forfeiture issued for a violation of the good faith standard, they “had no relevant guidance about how the Commission would ultimately apply its rules or the amount of penalties that the Commission would consider reasonable for a violation.”<sup>15</sup> In rejecting this argument, we noted that this is not the first time a party has been found liable under this good faith rule, and that “each of the Defendants was on notice that the Commission takes violations of the good faith rules extremely seriously.”<sup>16</sup> In 2016, Defendants each received letters of inquiry (LOIs) concerning an investigation of possible violations of the good faith requirements. Later that same year Sinclair—a station group with which each Defendant has a close relationship<sup>17</sup>—signed a consent decree (CD) with the Commission under which it agreed to pay approximately \$9.5 million to resolve an investigation involving, among other things, suspected violations of the same good faith rule broken by Defendants.<sup>18</sup>

5. Defendants now file this Petition asking the Commission to reconsider its decision and vacate the *Forfeiture Order*.<sup>19</sup> Defendants assert that the *Forfeiture Order* violated their Fifth Amendment due process rights because: (1) they lacked fair notice that their conduct with respect to AT&T was in violation of the good faith requirements,<sup>20</sup> and (2) they lacked fair notice of the magnitude of the penalty imposed against them.<sup>21</sup> In addition, one of the Defendant Station Groups, Second Generation of Iowa, LTD., (Second Generation) has separately filed a supplemental petition for reconsideration (Supplemental Petition) seeking, in the alternative, a reduction in its forfeiture based on

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<sup>10</sup> 47 U.S.C. § 325(b)(3)(C); 47 § CFR 76.65(b)(1); *Forfeiture Order* at 9-10, paras. 20-23.

<sup>11</sup> *Forfeiture Order* at 9-10, para. 22.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 14, para. 32.

<sup>14</sup> *Id.* at 18-19, para. 40. Mercury has paid its forfeiture, accepting responsibility for these violations, and is no longer a party to this proceeding.

<sup>15</sup> *Id.* at part III.B & 15-16, para. 34; NAL Response at 25.

<sup>16</sup> *Forfeiture Order* at 15-16, para. 34.

<sup>17</sup> *Id.* at 3, para. 4.

<sup>18</sup> *Id.* at 15-16, para. 34; *Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd 8576 (2016).

<sup>19</sup> Petition at ii.

<sup>20</sup> *Id.* at 4-11.

<sup>21</sup> *Id.* at 11-14.

an alleged inability to pay.<sup>22</sup>

### III. DISCUSSION

6. We dismiss and, on alternative and independent grounds, deny the Petition. In addition, we dismiss the Supplemental Petition and deny its request, in the alternative, for a waiver. Defendants have not demonstrated sufficient grounds for reconsideration of the Commission's *Forfeiture Order* under our rules, and Defendants' substantive due process arguments do not persuade us that we should amend our prior decision. We likewise dismiss the Supplemental Petition under section 1.106 of the Commission's rules and deny its waiver request, as Second Generation has failed to demonstrate that we should excuse its delay in filing an inability-to-pay claim in order to now reconsider the forfeiture imposed in it.

#### A. Dismissal of the Petition

7. We find that dismissal of the Petition is warranted under section 1.106 of the Commission's rules because Defendants failed to raise their constitutional due process arguments earlier in this proceeding though they could have done so.<sup>23</sup> We also note that, contrary to Defendants' misreading of our rules, the Commission's decision in the *Forfeiture Order* does not constitute an "argument[] unknown to petitioner" that creates a right of response.<sup>24</sup> Further, Defendants fail to identify any other public interest that would require the consideration of this Petition. We therefore dismiss the Petition in full.

8. Section 1.106(c) provides that a petition for reconsideration will be granted only if the petition raises facts or arguments that could not have been raised sooner, or if the Commission determines that consideration "is required in the public interest."<sup>25</sup> We disagree with Defendants' contention that their constitutional due process claim is an "argument[] unknown . . . until after [the] last opportunity to present [it] to the Commission" and that they "could not through the exercise of ordinary diligence have learned of the [] argument[] in question prior to such opportunity."<sup>26</sup> Defendants had ample opportunity to raise a constitutional due process claim in response to the *NAL*, in which the Commission fully explained the facts supporting the violation and the basis for the proposed forfeiture. But, Defendants did not make any constitutional due process claims in this proceeding prior to this Petition, and Defendants do not argue that they were foreclosed in any way from making such arguments at the time.<sup>27</sup> Defendants contend that they "previously asserted" their "fair notice" argument in their *NAL* Response when they stated that: "Defendants had no relevant guidance about how the Commission would ultimately apply its rules or the amount of penalties that the Commission would consider reasonable for a violation. Certainly it had no reason to believe that the Commission would calculate penalties in a manner that would reach the statutory maximum."<sup>28</sup> In making these statements, the Defendants never developed any argument, cited any authority, or claimed that there was a constitutional violation. A passing reference to a claim of "no relevant guidance," like the one Defendants made in their *NAL* Response, is not equivalent to

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<sup>22</sup> Second Generation of Iowa, Ltd.'s Supplemental Petition for Reconsideration, MB Docket No. 19-168 (filed Aug. 27, 2021).

<sup>23</sup> 47 CFR § 1.106(c)(1).

<sup>24</sup> Petition at 1, n.3 (citing 47 CFR § 1.106(b)(2)(ii)).

<sup>25</sup> 47 CFR § 1.106(c).

<sup>26</sup> Petition at 1, n.3 (citing 47 CFR § 1.106(b)(2)(ii)).

<sup>27</sup> Petition at 1, n.3.

<sup>28</sup> *Id.*; *NAL* Response at 25.

actually making a constitutional due process argument.<sup>29</sup> As the D.C. Circuit has held, the mere mention of a legal concept is insufficient to properly raise an argument for consideration.<sup>30</sup>

9. In any event, the Commission in the *Forfeiture Order* responded to this passing reference by explaining why there was adequate notice.<sup>31</sup> But, the Commission's rejection in the *Forfeiture Order* of Defendants' passing reference to notice concerns does not amount to changed circumstances or "facts or arguments unknown to petitioner[s]" at the time of their earlier filings.<sup>32</sup> Defendants claim that given "the Commission's reliance on [a] new argument" in the *Forfeiture Order*, the Petition is warranted under section 405(a) of the Act and section 1.106(c) of our rules.<sup>33</sup> According to Defendants, when we addressed Defendants' passing reference to fair notice by reminding the Defendants of the Sinclair CD and LOIs, this response constituted a new argument previously unknown to the Defendants—"a newly asserted basis for providing Defendants fair notice"—that we relied on in our decision.<sup>34</sup> Defendants contend that, because we "only indirectly addresse[d]" Defendants' unformed notice claims in the *Forfeiture Order*, we must now also consider Defendants' newly formed due process arguments.<sup>35</sup> However, our discussion of the Sinclair CD and LOIs does not constitute an "argument[]" unknown to

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<sup>29</sup> See e.g., AFR at 22-23 (arguing that the Bureau imposed new requirements for retransmission consent negotiations that exceeded the Commission's standards, but failing to raise a Fifth Amendment due process argument); *id.* at v (arguing that "the Bureau is now threatening to go even farther by imposing outsized forfeitures on Defendants" but failing to raise any constitutional argument regarding the magnitude of a potential forfeiture amount).

<sup>30</sup> *Amendment of Part 95 of the Commission's Rules to Provide Regulatory Flexibility in the 218-219 MHz Service*, WT Docket No. 98-169, Third Order on Reconsideration of the Report and Order and Memorandum Opinion and Order, 17 FCC Rcd 8520, 8527, para. 19 (2002) (citing *Time Warner Entertainment Co. v. FCC*, 144 F.3d 75, 79 (D.C. Cir. 1998) ("even where an issue has been 'raised' before the Commission, if it is done in an incomplete way . . . the Commission has not been afforded a fair opportunity [to pass on the issue]")); *Bartholdi Cable Co. v. FCC*, 114 F.3d 274, 279-80 (D.C. Cir. 1997) ("The Commission need not sift pleadings and documents to identify arguments that are not stated with clarity") (quotations omitted). Defendants' passing reference to notice in their NAL Response also fails to meet the requirement, in the judicial context, that legal arguments be developed to be considered properly raised. See *Carducci v. Regan*, 714 F.2d 171, 177 (D.C. Cir. 1982) ("We will not resolve [an] issue on the basis of briefing and argument of counsel which literally consisted of no more than an assertion of violation of due process rights, with no discussion of case law supporting that proposition or of the statutory text and legislative history relevant to the central question."); see also *Washington Association for Television and Children v. FCC*, 712 F.2d 677, 681 (D.C. Cir. 1983) (finding appellant "never explicitly" made its argument); *Alianza Federal de Mercedes v. FCC*, 539 F.2d 732, 739 (D.C. Cir. 1976) (stating that the "gist" of appellant's argument was there, but "nothing was made of it").

<sup>31</sup> *Forfeiture Order* at 13-14, para. 34.

<sup>32</sup> 47 CFR §§ 1.106(c)(1), 1.106(b)(2). With respect to changed circumstances under section 1.106(b)(2)(i), the Commission has held: "Legal determinations and factual conclusions previously reached by the Commission in the same proceeding are not changed circumstances satisfying the requirements for appeal. This is true even where the petitioner has embellished or expanded upon its original arguments by presenting additional supporting evidence in an attempt to reinforce its original contentions." *Federal-State Joint Board on Universal Service*, Second Order on Reconsideration and Order, 35 FCC Rcd 2641 (2020) (citing *Shaw Communications, Inc.*, Order on Reconsideration, 27 FCC Rcd 6995, 6996, para. 4 (MB 2012) ("[T]he Commission's rejection of a previously raised argument" does not satisfy the requirements of section 1.106(b)(2)(i), "since of necessity the Commission's order in any case will have been released after the aggrieved party was last able to present its arguments in pleadings."); *M&M Communications, Inc.*, Memorandum Opinion and Order, 2 FCC Rcd 5100, 5100, para. 6 (CCB 1987) ("The Commission's disposition in a Review Order, of arguments raised in an Application for Review, does not constitute 'changed circumstances' pursuant to section 1.106(b)(2).").

<sup>33</sup> Petition at 1, n.3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

petitioner,” that creates a right of response.<sup>36</sup> Section 1.106(b)(2)(ii) does not in any way contemplate a right of response warranting a petition for reconsideration. Indeed, the rule in question unambiguously contemplates that the new “argument” the petition “relies on” would be one *made by a petitioner itself* (as opposed to a decision reached by the Commission to which it would have an opportunity to respond).<sup>37</sup> Indeed, to hold otherwise would mean the Commission “must entertain petitions for reconsideration of *all* its orders, casting it into a Möbius loop of orders and petitions for reconsideration that could never reach finality.”<sup>38</sup> The Defendants were well aware of the facts and arguments that underlie their due process claims at the time of their last opportunity to present these claims to the Commission.<sup>39</sup> Defendants knew the amount of the forfeiture when the Commission issued the underlying *NAL*. Had Defendants chosen to do so, they could have raised their due process arguments as part of a timely response to it, rather than as a request for reconsideration of the *Forfeiture Order*. Accordingly, there is no basis under our procedural rules that would warrant a petition for reconsideration.

10. Further, we find that dismissal is appropriate under section 1.106(c)(2) because Defendants have failed to demonstrate, or indeed even attempt to demonstrate, that the public interest requires consideration of the new arguments raised in the Petition.<sup>40</sup> Indeed, aside from raising due process arguments that could have been raised earlier in the proceeding, the Petition merely rehashes theories and interpretations of fact that have been fully considered and rejected in this proceeding.<sup>41</sup> For example, the core of Defendants’ notice argument—“the Commission failed to fairly notify Defendants that pursuing sequenced joint negotiations using one agreement as a template would constitute a *per se* violation of the agency’s good faith negotiation requirement”<sup>42</sup>—ignores the fact that the Commission has repeatedly found that Defendants were *not* engaging in “sequenced joint negotiations using one agreement as a template,” but were in fact refusing to negotiate with respect to the Defendant Station Groups despite actively negotiating for carriage of an unrelated group of stations, and were not at any time using a “template.”<sup>43</sup> While Defendants now couch their arguments as Fifth Amendment claims, they are essentially unchanged from the AFR and the *NAL* Response.<sup>44</sup> Because the Petition relies on facts and arguments that were fully considered and rejected by the Commission in this proceeding, we find that the public interest does not compel reconsideration.<sup>45</sup>

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<sup>36</sup> *Id.*

<sup>37</sup> 47 CFR §§ 1.106(c)(1), 1.106(b)(2)(ii). We also observe the requirement of the rule that the new argument in question could not “through the exercise of ordinary diligence” have been known to the petitioner at the time of its prior filings. 47 CFR § 1.106(b)(2)(ii). That is not the case here as Defendants had ample opportunity to raise their constitutional due process arguments in response to the *NAL*.

<sup>38</sup> *Shaw Communications*, 27 FCC Rcd at 6996, para. 4.

<sup>39</sup> 47 CFR §§ 1.106(c)(1), 1.106(b)(2)(ii).

<sup>40</sup> 47 CFR § 1.106(c)(2); Petition at n.3.

<sup>41</sup> *Id.*

<sup>42</sup> Petition at 2.

<sup>43</sup> *MO&O/NAL*, 35 FCC Rcd at 10709-12, paras. 35-36, 41-42; *Forfeiture Order* at 9, 11-12, paras. 20, 25-27.

<sup>44</sup> We note that a petition for reconsideration is not intended to be an opportunity for a party to relitigate factual findings already upheld by the Commission, and Defendants’ attempt to do so here warrants dismissal, at least in part, on such grounds alone under section 1.106(b). See 47 CFR § 1.106(b).

<sup>45</sup> See *Shaw Communications*, Letter Order, 27 FCC Rcd 6995, 6995, para. 5 (MB 2012) (dismissing petition for reconsideration and finding that the public interest did not compel reconsideration where petition relied on facts and arguments that were fully considered and rejected by the Commission previously in the proceeding). We also dismiss Defendants’ request that we reconsider the forfeiture amount with respect to GoCom. We fully considered and rejected this request in the *Forfeiture Order*. See *Forfeiture Order* at 18, para. 38; *infra* para. 28.

11. Accordingly, we dismiss the Petition because it fails to meet the requirements of section 1.106 of the Commission's rules.<sup>46</sup>

### **B. Denial of the Petition**

12. As an independent and alternative basis for our decision, we also deny the Petition, in full, on the merits. As detailed below, the Petition offers no facts or arguments that would warrant altering the Commission's findings or reducing the amount of its forfeiture.

#### **1. Defendants had Fair Notice that their Conduct was Prohibited**

13. We are not persuaded that the Defendants lacked notice of their legal obligation to negotiate retransmission consent in good faith and that refusing to negotiate, unreasonably delaying negotiations, and failing to respond to proposals for carriage each independently constituted *per se* violations of the good faith requirement. Since its adoption over 20 years ago, the good faith rule has required every broadcast television station and multichannel video programming distributor (MVPD) to participate actively in negotiations with the intent of reaching agreement. Defendants failed to make this basic gesture of good faith. We therefore affirm our conclusion that Defendants willfully and repeatedly violated section 325(b) of the Act and section 76.65 of the Commission's rules.

14. We disagree with Defendants' argument that the *Forfeiture Order* violated their due process rights because they did not have fair notice that their conduct during the retransmission consent negotiations with AT&T was prohibited.<sup>47</sup> Specifically, Defendants claim that we broke from precedent and adopted a new interpretation of the good faith rule that undermines otherwise permissible joint negotiation.<sup>48</sup> Defendants also assert that, in the absence of guidance to the contrary, the stations reasonably and in good faith believed that their conduct was permissible.<sup>49</sup>

15. Generally, a regulated party must be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.<sup>50</sup> The requirements of section 76.65(b)(1) are not novel and have been well settled via rulemaking and administrative action for over 20 years.<sup>51</sup> The rule is clear: it lists specific acts or practices that violate the duty to negotiate retransmission consent agreements in good faith.<sup>52</sup> The rule itself is supplemented by an explanation of the rule's purpose in its

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<sup>46</sup> 47 CFR §§ 1.106(b)-(c).

<sup>47</sup> Petition at 4-11.

<sup>48</sup> *Id.* at 4-5.

<sup>49</sup> *Id.* at 5-11.

<sup>50</sup> *Star Wireless, LLC v. FCC*, 522 F.3d 469, 473 (D.C. Cir. 2008) ("In assessing forfeitures against regulated entities, the Commission is required to provide adequate notice of the substance of the rule. . . . The court must consider whether by reviewing the regulation and other public statements issued by the agency, a regulated party acting in good faith would be able to identify, with ascertainable certainty, the standards with which the agency expects parties to conform.") (internal quotations and citations omitted); *General Electric Co. v. EPA*, 53 F.3d 1324, 1328-29 (D.C. Cir. 1995) (discussing whether GE had adequate notice of EPA's rules interpretation, and finding "[i]n such cases, we must ask whether the regulated party received, or should have received, notice of the agency's interpretation in the most obvious way of all: by reading the regulations"); *United States v. Lachman*, 387 F.3d 42, 58 (1st Cir. 2004) ("These ['ascertainable certainty'] cases, however, do not stand for the proposition that any ambiguity in a regulation bars punishment."); *Suburban Air Freight, Inc. v. TSA*, 716 F.3d 679, 684 (D.C. Cir. 2013) (fair warning cases are a "very limited set of cases").

<sup>51</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) (adopting 47 CFR § 76.65(b)(1)).

<sup>52</sup> 47 CFR § 76.65(b)(1).

implementing order.<sup>53</sup> As the *Good Faith Order* explains, the rule is intended to act as a list of *per se* negotiating standards that “gives immediate guidance to the parties to retransmission consent negotiations that certain conduct will not be tolerated.”<sup>54</sup> If a *per se* standard is violated during retransmission negotiations, it “constitute[s] a violation of the good faith standard in all possible instances.”<sup>55</sup> In this case, upon reviewing the record evidence, we found that Defendants’ conduct violated three of the *per se* standards during their retransmission negotiations with AT&T and therefore violated their duty to negotiate in good faith under section 325(b)(3)(C).<sup>56</sup>

16. Contrary to Defendants’ assertion, the Commission did not adopt a new interpretation of its long-standing good faith rule; it simply applied the straightforward language of that rule to the facts in this record.<sup>57</sup> The Commission’s finding was based on its factual determination that Defendants had engaged in acts and practices prohibited by the well-established *per se* good faith standards.<sup>58</sup> As observed above,<sup>59</sup> the foundation of Defendants’ notice argument is that they were engaged in “staggered joint negotiations based on a template agreement” and that the *Forfeiture Order* conjures up a novel interpretation of the good faith rule to declare this practice a *per se* violation.<sup>60</sup> On the contrary, throughout this proceeding the Commission has carefully considered the conduct of these specific parties, as presented in the undisputed factual record. “Staggered joint negotiations based on a template agreement” is not what happened in this case, and it is not the conduct the Commission identified as constituting three distinct *per se* violations.<sup>61</sup> The Defendants cannot legitimately complain that they failed to receive notice about a finding that the Commission never made, nor can they relitigate basic factual questions that have been settled, at this point, for over two years, based on review of a full and complete record.

17. We also disagree with Defendant’s claim that the *Forfeiture Order* “effectively nullif[ies] joint negotiation” by requiring that “joint negotiation must always include, from the outset, individual responses to individual proposals.”<sup>62</sup> While negotiating parties are allowed to jointly negotiate, all parties are still required to abide by the duty to negotiate in good faith.<sup>63</sup> Fundamentally, this includes refraining

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<sup>53</sup> *Good Faith Order*, 15 FCC Rcd at 5457, 5462-64, paras. 30-31, 40-46.

<sup>54</sup> *Id.* at 5457, para. 30.

<sup>55</sup> *Id.* at 5457, para. 31.

<sup>56</sup> *Forfeiture Order* at 9-10, paras. 22-23.

<sup>57</sup> *General Electric*, 53 F.3d at 1328-29 (discussing whether GE had adequate notice of EPA’s rules interpretation, and finding “[i]n such cases, we must ask whether the regulated party received, or should have received, notice of the agency’s interpretation in the most obvious way of all: by reading the regulations”).

<sup>58</sup> *MO&O/NAL*, 35 FCC Rcd at 10697-98 (“In the event a complaint alleges that one of these actions or practices that occurred, the questions before the Bureau or the Commission are factual. . . . the Bureau or 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.”) (citing *Good Faith Order*, 15 FCC Rcd at 5457, para. 31).

<sup>59</sup> *Supra* para. 10.

<sup>60</sup> Petition at 5.

<sup>61</sup> The Commission found that Defendants “were not using the [unrelated station group] agreement as simply the vehicle to negotiate baseline terms for their own agreements.” *MO&O/NAL*, 35 FCC Rcd at 10712, para. 42 (internal quotations omitted). To the contrary, the Commission found that “[d]espite Mr. Lammers’ representations in his correspondence with AT&T that he was jointly negotiating for both [an unrelated station group] 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.” *Forfeiture Order* at 9, para. 21.

<sup>62</sup> Petition at 4 (emphasis in original omitted).

<sup>63</sup> *Forfeiture Order* at 10, para. 23.



from engaging in any of the prohibited acts and practices that the Commission's rule deems *per se* violations of the good faith standard. Based upon the uncontested record, the *Forfeiture Order* affirmed the Commission's earlier finding that Defendants "[took] negotiation for carriage of the Defendant Stations off the table and refus[ed] to discuss any terms specifically relating to them until virtually all of them had gone dark" an approach that the Commission found "does not meet the requirements of our rules."<sup>64</sup>

18. We therefore find unavailing Defendants' argument that they reasonably and in good faith believed that their conduct was permissible.<sup>65</sup> Contrary to Defendants' suggestion, the Commission is not required to elaborate on every factual scenario possible or imaginable in order to provide notice of a violation of the Commission's good faith rule prior to enforcing it.<sup>66</sup> The good faith rule expressly applies to *all* negotiations for retransmission consent between broadcasters and MVPDs and articulates clearly identifiable actions or practices that violate the established standard.<sup>67</sup> As the D.C. Circuit has said, "[t]he fair notice doctrine, which is couched in terms of due process, provides redress only if an agency's interpretation is 'so far from a reasonable person's understanding of the regulations that they could not have fairly informed the regulated party of the agency's perspective.'"<sup>68</sup> The cases cited by Defendants are inapposite,<sup>69</sup> involving conflicting or changing interpretations of the statute or regulation at issue<sup>70</sup> or an agency's new interpretation of ambiguous regulations.<sup>71</sup> Here, the *per se* standards are clear.

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<sup>64</sup> *MO&O/NAL*, 35 FCC Rcd at 10709-10, para. 36.

<sup>65</sup> Petition at 5-7.

<sup>66</sup> *Id.* at 7 (stating that "in the twenty years since the Commission adopted its *per se* good faith negotiation rules and up until this proceeding, there has been no Commission decision addressing sequenced joint negotiation at all, much less finding it to be in bad faith").

<sup>67</sup> 47 CFR § 76.65(b)(1).

<sup>68</sup> *Mississippi Commission on Environmental Quality v. EPA*, 790 F.3d 138, 186 (D.C. Cir. 2015) (quoting *United States v. Chrysler Corp.*, 158 F.3d 1350, 1354 (D.C. Cir. 1998)); see also *United States v. Thomas*, 864 F.2d 188, 195 (D.C. Cir. 1988) (holding that "statutes cannot, in reason, define proscribed behavior exhaustively or with consummate precision").

<sup>69</sup> See *Suburban Air Freight*, 716 F.3d at 684 (explaining that there is only a "very limited set of cases in which we have upheld an agency interpretation but nevertheless vacated an enforcement action on notice grounds"); *Lachman*, 387 F.3d at 57 ("Defendants cite a line of cases from the District of Columbia Circuit for the proposition that when a regulation lacks 'ascertainable certainty,' the regulated party's reasonable interpretation of the regulation will be accepted if otherwise a drastic penalty would result. See *Trinity Broad. Of Fla., Inc. v. FCC*, 211 F.3d 618 (D.C. Cir. 2000); *United States v. Chrysler Corp.*, 158 F.3d 1350 (D.C. Cir. 1998); *Gen. Elec. Co. v. EPA*, 53 F.3d 1324 (D.C. Cir. 1995); *Rollins Envtl. Servs. (NJ) Inc. v. EPA*, 937 F.2d 649 (D.C. Cir. 1991); *Gates & Fox Co. v. Occupational Safety & Health Rev. Commission*, 790 F.2d 154 (D.C. Cir. 1986). . . . These cases, however, do not stand for the proposition that any ambiguity in a regulation bars punishment. Rather, they are addressed only to situations in which: (1) the agency had given conflicting public interpretations of the regulation, or, (2) the regulation is so vague that the ambiguity can only be resolved by deferring to the agency's own interpretation of the regulation . . . and the agency has failed to provide a sufficient, publicly accessible statement of that interpretation before the conduct in question.").

<sup>70</sup> *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 254-57, (2012) (finding no fair notice where under a prior policy and precedent, a fleeting expletive or brief shot of nudity was not considered a violation, but under a newer interpretation, such content would be considered a violation); *General Electric*, 53 F.3d at 1330, 1332 (finding regulated party could not determine with ascertainable certainty the standards with which it is expected to conform where different divisions of the EPA disagreed about the meaning of the regulation at issue); *Satellite Broadcasting Co. v. FCC*, 824 F.2d 1, 2 (D.C. Cir. 1987) (holding fair notice not given where the specific regulation was silent and other regulations offered "baffling and inconsistent" advice).

<sup>71</sup> *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155-57 (2012) (determining regulated party lacked fair notice where the agency's new interpretation of its ambiguous regulations threatened "to impose potentially massive

(continued....)

19. Finally, we reiterate that the *Forfeiture Order* was not inconsistent with the relevant precedent. Defendants argue that the *Forfeiture Order* imposed a new policy, but fail to demonstrate that the Commission has previously interpreted the *per se* standards differently.<sup>72</sup> In fact, as the *MO&O/NAL* notes, the *Bureau Decision* used past good faith cases to “contrast[] [Defendants’] behavior with acceptable examples to demonstrate how far it had strayed from good faith.”<sup>73</sup> Per our statutory directive, the Commission reviews the *process* of negotiations, not their substantive terms.<sup>74</sup> Thus, the *Forfeiture Order* is not focused on which terms Defendants may have agreed or disagreed with in negotiations; it simply enforces the requirement that Defendants must actively participate in those negotiations.<sup>75</sup> This is consistent with the wide range of cases Defendants themselves cite, which concern “proposals that the parties may raise” and “intentions” they may express “in their negotiations.”<sup>76</sup> Defendants made no proposals and expressed no intentions during the period at issue, instead flatly refusing to participate in negotiations. Defendants claim that the Commission’s past good faith decisions “collectively evince the Commission’s reluctance to find bad faith on the part of a negotiating party.”<sup>77</sup> To the contrary, they simply demonstrate that Defendant Stations are among the very few negotiating entities that have failed, or refused, to comply with the straightforward requirements of the good faith rule.<sup>78</sup> The refusal to assign

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liability on [the regulated party] for conduct that occurred well before that interpretation was announced”); *SNR Wireless LicenseCo, LLC v. FCC*, 868 F.3d 1021, 1044, 1046 (D.C. Cir. 2017) (finding in part that, given ambiguity in Commission’s rules and decisions regarding de facto control, petitioners lacked fair notice that they would not have a chance to cure their violation of the control rules).

<sup>72</sup> See *Suburban Air Freight*, 716 F.3d at 684 (rejecting “fair notice” argument against penalty, where “Suburban makes no argument that TSA previously interpreted those provisions differently, let alone that the company relied on any such interpretation.”); *Otis Elevator Co. v. Secretary of Labor*, 762 F.3d 116, 125 (D.C. Cir. 2014) (rejecting “fair notice” argument where “Otis Elevator has not identified any pattern of contrary practice by the Secretary or contrary interpretations by the Commission”); Petition at 4-5.

<sup>73</sup> *MO&O/NAL*, 35 FCC Rcd at 10713, para. 43.

<sup>74</sup> *Good Faith Order*, 15 FCC Rcd at 5455, para. 24 (“We believe that, by imposing the good faith obligation, Congress intended that the Commission develop and enforce a process that ensures that broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere of honesty, purpose, and clarity of process.”); *HolstonConnect, LLC v. Nexstar Media Group, Inc.*, 34 FCC Rcd 7833, 7835 (MB 2019) (“At the outset, we reiterate our longstanding precedent that absent other factors, disagreement over the rates, terms, and conditions of retransmission consent—even fundamental disagreement—is not indicative of lack of good faith. As we have also repeatedly stated, nothing in the Act or our implementing rules requires that parties negotiating retransmission consent actually reach agreement.”).

<sup>75</sup> See *Forfeiture Order* at 9, para. 21.

<sup>76</sup> Petition at 9 (citing *Implementation of Satellite Home Viewer Improvement Act of 1999*, 15 FCC Rcd 5445, 5469, para. 56 (2000); *First National Maintenance Corp. v. NLRB*, 452 U.S. 666, 678 n.17 (1981); and *NLRB v. Insurance Agents’ International Union, AFL-CIO*, 361 U.S. 477, 488 (1960)).

<sup>77</sup> Petition at 7, n.8.

<sup>78</sup> In their Petition, Defendants again assert that they negotiated in good faith because their approach was identical to their successful 2016 negotiations with AT&T, which resulted in carriage agreements for all stations involved “without any indication that Defendants had engaged in unlawful conduct.” *Id.* at 10. As we noted in the *Forfeiture Order*, “[t]he extent to which AT&T may have acquiesced to unlawful negotiations has absolutely no legal bearing on AT&T’s ability to bring a complaint against Defendants for violations of the [*per se*] good faith standards during the 2019 negotiations. . . . [Further,] none of the evidence offered with respect to the 2016 negotiation undermines the [Commission’s] 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.” *Forfeiture Order* at 12-13, para. 28 (internal quotations omitted).

liability when the Commission has found no rule violation cannot possibly constrain the assignment of liability when the facts of record establish that the rule is violated.<sup>79</sup>

20. Accordingly, we find that the Commission's rules and precedent "provide a person of ordinary intelligence" with fair notice of the conduct that is required to abide by its good faith obligations.<sup>80</sup> As a result, we see no basis to reconsider our prior determination that Defendants are liable for their violations of the good faith requirements.

## 2. Defendants had Fair Notice of Potential Forfeitures

21. We are not persuaded that Defendants lacked notice of the potential magnitude of sanctions for violation of the good faith standard and rule. We find the cases cited by Defendants inapposite, and we affirm the forfeitures equaling \$512,228 per station for these violations. In addition, we decline to reduce the forfeiture with respect to GoCom's WCCU station because despite its now-claimed status as a "satellite" station, it is equally liable as a member of the joint negotiating group.

22. Regulated entities are on notice that if they violate the Act or a Commission rule, they could be sanctioned up to the maximum allowable under section 503(b), depending on the nature and circumstances of the violation.<sup>81</sup> The Commission issued the forfeiture in this case in accordance with section 503(b) of the Act, section 1.80 of the Commission's rules, and the Commission's *Forfeiture Policy Statement*.<sup>82</sup> When the *NAL* was issued, section 503(b)(2)(A) of the Act authorized the Commission to assess a forfeiture against broadcast licensees of up to \$51,222 per violation or day of a continuing violation, and up to a statutory maximum of \$512,228 for a single act or failure to act.<sup>83</sup> In this case, we determined that Defendants' conduct constituted a continuing violation based on a "single act or failure to act" that continued over an extended period of time.<sup>84</sup> In assessing the forfeiture amount for these violations, we followed the guidelines established for "violation of the cable broadcast carriage rules."<sup>85</sup> We multiplied the base forfeiture by the number of days of the continuing violation, which

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<sup>79</sup> See *MO&O/NAL*, 35 FCC Rcd at 10711, para. 41 ("Absent intervention by the Bureau, taking carriage of the Defendant Stations off the table while negotiating an unrelated carriage deal may well have been an effective negotiating strategy, albeit at the cost of further extending the months-long blackouts affecting millions of American viewers. We find, however, that it was a strategy completely reliant upon willful, repeated, and extended violation of our rules.").

<sup>80</sup> *Fox*, 567 U.S. at 253 (2012).

<sup>81</sup> 47 U.S.C. § 503(b) (providing that any person who "willfully or repeatedly failed to comply with any of the provisions of [the Act] or of any rule, regulation or order issued by the Commission" shall be liable for a forfeiture penalty). See *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 574 (1996) ("Elementary notions of fairness enshrined in our constitutional jurisprudence dictate that a person receive fair notice not only of the conduct that will subject him to punishment, but also of the severity of the penalty that a State may impose); *Karem v. Trump*, 960 F.3d 656, 664 (D.C. Cir. 2020) (holding that the Due Process Clause of the Fifth Amendment requires that there be fair notice of the severity of a civil penalty imposed by the government).

<sup>82</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80; *The 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 (1997) (*Forfeiture Policy Statement*).

<sup>83</sup> *Forfeiture Order* at 14-15, para. 33 & n.151. After issuance of the *NAL*, the statutory maximum increased to \$518,283, however, the Commission exercised its discretion under section 503(b) in this proceeding to assess the forfeiture at the amount set forth in the *NAL*. *Id.*

<sup>84</sup> *Id.* at 16-17, para. 35 & n.163.

<sup>85</sup> 47 CFR § 1.80 (a base amount of \$7500 for violation of the cable broadcast carriage rules). Although in this case it is the broadcasters themselves that violated the broadcast carriage rules, rather than a cable operator or other MVPD as envisioned in the guidelines, this is the most analogous type of violation for which the Commission has established guidelines for a base forfeiture amount because it addresses violations of the specific rule in question. *MO&O/NAL*, 35 FCC Rcd at 10718, para. 58 & n.241; *id.* at 10717-18, para. 57 ("In cases in which the Commission

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resulted in an amount that exceeded the maximum allowed under section 503(b)(2)(A) for a single act or failure to act.<sup>86</sup> We then adjusted this amount down to the statutory maximum and applied it to each Defendant Station.<sup>87</sup> This approach was consistent with the requirements of section 503(b), which notified Defendants that their conduct could be subject to a forfeiture amount equal to the maximum allowable for violations of the Act and the Commission's rules.<sup>88</sup>

23. Moreover, the Commission has wide discretion in imposing forfeiture amounts based on the statutory factors, as precedent makes clear. The results of earlier adjudications do not automatically prescribe the outcome of those that follow but rather depend on the unique circumstances involved in each case.<sup>89</sup> Section 503(b)(2)(E) of the Act gives the Commission discretion in determining the amount of a forfeiture to impose in any given situation and directs the Commission to 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>90</sup> After weighing these considerations in this case, we reasonably found that the magnitude of the violations [and the extent and gravity of Defendants' conduct] warranted the forfeiture amount imposed in the *Forfeiture Order*.<sup>91</sup> By taking all of the relevant factors into account, we acted within our authority under section 503(b)(2)(E) of the Act and assessed a reasonable and appropriate forfeiture of \$512,228 against each Defendant.

24. As the *Forfeiture Order* observed, the Sinclair CD, which was issued prior to the negotiations at issue in this case, served to reinforce the notice Defendants received with regard to potential sanctions for violations of the Commission's good faith rule in particular.<sup>92</sup> Contrary to Defendants' assertions in the Petition, the relevant legal issue is not whether Defendants violated the same subparagraph of the good faith negotiation rule that was implicated in the Sinclair CD. Rather, it is whether the LOIs they received in the context of that investigation, the CD itself, and the Commission's statements about the settlement, provided further notice to Defendants that the Commission takes violations of the duty to negotiate in good faith very seriously and is willing to impose significant monetary penalties where that duty is breached. Both the 2016 CD and the *Forfeiture Order* involved the Defendant Stations and section 76.65(b)(1) of our rules.<sup>93</sup> Moreover, the Commission announced at the time of the CD that it “w[ould] not hesitate to take enforcement action where broadcasters or pay TV providers violate their good faith obligations,” and that the CD “demonstrate[d] [the Commission's]

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has not established a base forfeiture amount for an apparent violation, it has looked to forfeitures established or issued in analogous cases for guidance.”); *Forfeiture Order* at 14, para. 32.

<sup>86</sup> *Forfeiture Order* at 14, para. 32.

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

<sup>88</sup> 47 U.S.C. § 503(b)(2)(A).

<sup>89</sup> *Globcom, Inc.*, Forfeiture Order, 21 FCC Rcd 4710, 4722, para. 34 (2006).

<sup>90</sup> 47 U.S.C. § 503(b)(2)(E).

<sup>91</sup> *Forfeiture Order* at 16, para. 34 (“We find the forfeiture amount appropriate and proportional to the nature and consequences of Defendants' actions. Defendants persistently refused to negotiate for carriage of their Stations, even months after the existing contracts and extension agreements expired and stations went dark.”); *id.* at 17, para. 36 (“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>92</sup> *Forfeiture Order* at 15-16, para. 34.

<sup>93</sup> 47 U.S.C. § 325(b)(3)(C); *Sinclair Broadcast Group, Inc.*, Order, 31 FCC Rcd 8576, 8579, para. 4 (2016).

strong commitment to vigilantly enforce [its] retransmission consent rules when necessary.”<sup>94</sup> We therefore find that Defendants had fair notice of the potential magnitude of the forfeiture amount and that the *Forfeiture Order* does not violate Defendants’ due process rights.

25. We are likewise unpersuaded by Defendants’ argument that their constitutional rights were violated because the Commission imposed the statutory maximum the first time it imposed any monetary penalty for a good faith negotiation violation.<sup>95</sup> Regardless whether Defendants are the first parties to be issued an NAL and forfeiture order for committing flagrant violations of the good faith standard, they were well aware that violators of those rules could face significant monetary penalties. The fact that the base forfeiture reached the statutory maximum due to the extended duration of Defendants’ good faith violations is a problem of Defendants’ own making. Indeed, given that the base forfeiture alone surpassed the statutory maximum, the Commission was unable to upwardly adjust the forfeiture to take into account further factors such as the egregiousness of the misconduct and harm caused.<sup>96</sup>

26. To buttress their claim that they were denied fair notice of the potential forfeiture amount, Defendants cite a number of cases that bear little resemblance to their due process claims, involving newly imposed standards and parties who are not similarly situated to Defendants.<sup>97</sup> Unlike *Karem v. Trump* and *Action for Children’s Television v. FCC*, the present case does not rest on a recently adopted standard.<sup>98</sup> In this case, due process does not require the Commission to issue a notice of behavioral expectations, including potential sanctions for such violations, before imposing a forfeiture against Defendants, as the D.C. Circuit found was required of the White House prior to revoking a journalist’s press pass due to allegedly unprofessional behavior.<sup>99</sup> Here, the *per se* standards clearly identified the conduct that was prohibited, and the Commission’s forfeiture statute, rules, and policy clearly identified the scope of potential sanctions for violations of the Act or the Commission’s rules.<sup>100</sup>

27. Equally unpersuasive are Defendants’ arguments that they were not treated like other parties whom they claim were similarly situated.<sup>101</sup> As an initial matter, the decisions Defendants cite are

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<sup>94</sup> FCC, *Sinclair Settles FCC Investigation into Retransmission Negotiation Violations for \$9.5M*, (July 29, 2016), <https://docs.fcc.gov/public/attachments/DOC-340557A1.pdf>.

<sup>95</sup> Petition at 11-12 (citing *Karem v. Trump*, 960 F.3d 656 (D.C. Cir. 2020)).

<sup>96</sup> *MO&O/NAL*, 35 FCC Rcd at 10720, para. 59.

<sup>97</sup> Petition at 11-14.

<sup>98</sup> *Karem v. Trump*, 960 F.3d 656, 665 (D.C. Cir. 2020) (holding that journalist had no notice of the magnitude of the sanction for allegedly unprofessional conduct where White House had not formally articulated standards or sanctions for misconduct); *Action for Children’s Television v. FCC*, 852 F.2d 1332 (D.C. Cir. 1988) (concerning the Commission’s changed enforcement standard for the regulation of indecent material on broadcast television). Furthermore, Commission precedent certainly does not compel us to apply an enforcement scheme comparable to the one established for the agency’s regulation of indecency on broadcast television, rendering that precedent inapposite. See Petition at 12-13 (citing enforcement cases escalating the fines for indecency violations against the broadcasters of the “Howard Stern Show”).

<sup>99</sup> See *id.* at 11-12 (comparing Defendants’ lack of notice to the White House journalist’s lack of notice that his press pass could be revoked for supposedly unprofessional conduct) (citing *Karem*, 960 F.3d at 665).

<sup>100</sup> 47 CFR § 76.65(b)(1) (listing conduct prohibited during retransmission consent negotiations); 47 U.S.C. § 503(b); 47 CFR § 1.80; *Forfeiture Policy Statement*. See *Karem*, 960 F.3d at 665 (finding that there was a “lack of formally articulated standards and sanctions” for the conduct at issue).

<sup>101</sup> Petition at 12-13 (citing *Melody Music, Inc. v. FCC*, 345 F.2d 730 (D.C. Cir. 1965); *Super Towers, Inc.*, File No. EB-11-TP-0142 (rel. July 18, 2012) (Enf. Bur. Field Office); *CBS Commc’ns Servs., Inc.*, File No. EB-10-LA-0110 (rel. Apr. 27, 2011) (Enf. Bur. Field Office); *Jorge L. Bauermeister*, Letter, 22 FCC Rcd 4933 (MB 2007); *Mr. Mel Karmazin*, 5 FCC Rcd. 7291 (Mass Med. Bur. 1988); *Mr. Mel Karmazin*, 8 FCC Rcd. 2688 (Mass Med. Bur. 1992)).

Bureau-level and therefore not binding on the Commission.<sup>102</sup> In addition, the Petition fails to offer any examples of parties who were actually similarly situated to Defendants. Defendants contend that they should have been treated similarly to the defendant in *Bauermeister*, who was found to be in violation of the good faith rule but was not required to pay a forfeiture.<sup>103</sup> Yet earlier in their Petition, Defendants *themselves* concede that they are not similarly situated to the defendant in *Bauermeister* and that “[t]he decision has, in short, no bearing whatsoever here.”<sup>104</sup> We agree; the good faith violation in *Bauermeister* bears little resemblance to the nature, circumstances, extent, and gravity of the violations at issue in the present case. Defendants also claim to be similarly situated to tower owners that briefly failed to properly light their towers.<sup>105</sup> In the cases at issue, the Enforcement Bureau’s regional field offices declined to increase the base forfeiture even though the single violation persisted for multiple days. Because these cases also involved continuing violations, Defendants argue that their forfeitures should be calculated in the same manner—by applying a base forfeiture alone without a daily multiplier.<sup>106</sup> The Commission always retains prosecutorial discretion in the imposition of forfeitures.<sup>107</sup> A decision by Commission staff to propose a certain forfeiture in two completely unrelated cases over a decade ago does not constrain the full Commission today.

28. Finally, we find no basis to alter the forfeiture amount with respect to GoCom. Defendants argue that it was not reasonable for GoCom to anticipate a forfeiture because, although its station WCCU was included in the negotiations with DIRECTV, it only duplicated the programming of its other station WRSP and was never actually carried by AT&T so that there was no “additional harm” imposed when DIRECTV lost the carriage rights to the station.<sup>108</sup> Both WCCU and WRSP were listed separately in AT&T’s good faith complaint at the start of this adjudication, without objection from Defendants in their answer to the complaint or otherwise until the commencement of this enforcement proceeding.<sup>109</sup> Defendants’ negotiating agent, Mr. Lammers, identified both GoCom stations as part of the group of stations he was representing during the retransmission negotiations with AT&T. As a

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<sup>102</sup> See *Comcast Corp. v. FCC*, 526 F.3d 763, 769 (D.C. Cir. 2008).

<sup>103</sup> *Id.* at 12-13.

<sup>104</sup> *Id.* at 8 (“*Bauermeister* concerned a cable operator (not a broadcast station), applied the ‘totality-of-the-circumstances’ test (not a *per se* violation), did not trigger the imposition of a fine, and involved the cable operator’s failure to provide evidence of a valid retransmission consent agreement.”).

<sup>105</sup> *Id.* at 13.

<sup>106</sup> *Id.* In making this comparison, Defendants rely on *Melody Music*, arguing that “[t]he huge fines imposed by the Forfeiture Order are also inconsistent with the principle that the Commission must treat similarly situated parties similarly.” *Id.* However, *Melody Music* is inapplicable here. As the Commission explained in response to a previous attempt to misapply this precedent, “*Melody* and its progeny revolved around what the court felt were Commission failures to properly explain its selection of one applicant over another in licensing proceedings. We are concerned here with a civil monetary forfeiture.” *Liability of Turner Broadcasting Corp., Licensee of Radio Station KBUC, San Antonio, Texas for Forfeiture*, Memorandum Opinion and Order, 59 FCC 2d 133, 134, para. 5 (1976). See also *New Orleans Channel 20, Inc. v. FCC*, 830 F.2d 361, 366 (D.C. Cir. 1987) (affirming the standard articulated in *Melody Music* but distinguishing it from the case before the court because “[t]he basic transaction is not identical, as in *Melody Music*,” and the agency fully conformed with its procedural and substantive obligations).

<sup>107</sup> *Mobile Relay Associates*, Forfeiture Order, 30 FCC Rcd 13642, 13648, para. 13 (2015) (“The Commission has prosecutorial discretion to issue sanctions where appropriate and has broad discretion to consider a variety of factors in determining a forfeiture amount, if warranted, when faced with a violation of its rules.”); *Notices of Apparent Liability for Forfeitures of Emery Telephone*, Memorandum Opinion and Order, 15 FCC Rcd 7181, 7186, para. 10 (1999) (“The Commission is a regulatory agency with broad prosecutorial discretion in enforcement proceedings.”); *supra* para. 23.

<sup>108</sup> Petition at 12 & n.13.

<sup>109</sup> Complaint at 2; Answer at 31 (“Defendants admit that GoCom owns and operates the stations attributed to it in paragraph 2”). See *Forfeiture Order* at 3, para. 3.

member of the negotiating group, WCCU is as liable for its violations of the good faith requirements as WRSP or any of the other Defendant Stations. As such we find reconsideration of GoCom's forfeiture amount is unwarranted.

29. Accordingly, we conclude that the forfeiture satisfies due process requirements and the Commission properly determined the amount of the sanction. We find no basis for reconsideration on this or any other issue raised by the Petition. Therefore, we deny the Petition.

**C. Dismissal and Denial of Second Generation's Supplemental Petition for Reconsideration**

30. We also dismiss Second Generation's Supplemental Petition under section 1.106(c) of the Commission's rules and decline to alternatively grant Second Generation a waiver of our filing requirements. The Supplemental Petition raises facts and arguments that the petitioner did not previously present to the Commission despite having an opportunity to do so, and consideration of Second Generation's ability to pay the assessed forfeiture is not required by the public interest.<sup>110</sup> Second Generation has also failed to show good cause to waive the requirement for an inability-to-pay claim to be made within 30 days of issuance of the *NAL*.

31. Reconsideration of Second Generation's forfeiture amount is not warranted under section 1.106(c) of the Commission's rules.<sup>111</sup> Second Generation asserts that a reduction is required in the public interest pursuant to section 1.106(c)(2) because the proposed forfeiture "is beyond the resources of the enforcement target to pay" and because it is similarly situated to Mercury, a licensee that did receive a reduction in its forfeiture due to its demonstrated inability to pay.<sup>112</sup> However, the public interest does not require that Second Generation receive the same treatment as Mercury.<sup>113</sup> These parties are not similarly situated because, unlike Mercury, Second Generation failed to submit a timely inability-to-pay claim.<sup>114</sup> Moreover, Second Generation has had multiple formal opportunities to present the Commission with evidence of its alleged penury and ample time since the last such opportunity to rectify its failure to file. Instead, it waited ten months after the *NAL*'s issuance, well after the final deadline to demonstrate an inability to pay,<sup>115</sup> holding off until the day before the Commission stated it may refer this forfeiture to the Department of Justice for collection.<sup>116</sup> The public interest is not served by giving defendants unlimited "bites at the apple," particularly in the wake of the kind of unambiguous wrongdoing committed by Second Generation.

32. Second Generation has not demonstrated good cause to grant a waiver of our filing requirements, and, as noted above, such a deviation would not be in the public interest.<sup>117</sup> Acknowledging that it is not filing a timely inability to pay request, Second Generation argues in the alternative that if the Commission does not grant relief pursuant to section 1.106(c), there is good cause for the Commission to consider Second Generation's request as a late-filed claim in response to the *NAL* and to treat Second Generation's ten-month delay as a "filing oversight."<sup>118</sup> We are unpersuaded by Second Generation's argument that it was not able to submit a timely inability to pay claim because it

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<sup>110</sup> 47 CFR § 1.106(c).

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

<sup>112</sup> Supplemental Petition at 2-3.

<sup>113</sup> *Id.*; 47 CFR § 1.106(c)(2).

<sup>114</sup> *Supra* note 2; *see also* 47 CFR § 1.106(c)(1).

<sup>115</sup> *See MO&O/NAL*, 35 FCC Rcd at 10724-25, para. 78.

<sup>116</sup> *Forfeiture Order* at 23, para. 58.

<sup>117</sup> 47 CFR § 1.80.

<sup>118</sup> Supplemental Petition at 3.

temporarily lacked an in-house attorney dedicated to communications law.<sup>119</sup> Regardless of Second Generation's internal affairs, it is our understanding that Second Generation was being represented in this matter by two outside law firms during the time in question. One of those law firms ultimately filed a timely inability-to-pay claim on behalf of Mercury,<sup>120</sup> and the other filed a timely opposition, on Second Generation's behalf, to the *NAL* as a whole.<sup>121</sup> Second Generation has not represented that its lack of in-house communications counsel made it unaware of either its own financial situation or of the opportunity to seek a reduction in the forfeiture amount in response to the *NAL*.<sup>122</sup> Indeed Second Generation had ample opportunity to file a timely inability-to-pay claim, but it chose not to do so.

33. We therefore conclude that Second Generation's Supplemental Petition has failed to meet the requirements for reconsideration of its forfeiture amount under section 1.106 of the Commission's rules or for a waiver of filing requirements pursuant to the Commission's general waiver authority.<sup>123</sup> Accordingly, we deny the Supplemental Petition.

#### IV. CONCLUSION

34. Upon review of the petitions for reconsideration and the entire record, we affirm our conclusion 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 further affirm our decision not to cancel or reduce the forfeitures that apply to the remaining Defendants.

#### V. ORDERING CLAUSES

35. Accordingly, **IT IS ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission's rules, the Petition for Reconsideration filed by: 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; 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., is **DISMISSED** on procedural grounds and, as an independent and alternative basis, **DENIED** for the reasons stated herein.<sup>124</sup>

36. **IT IS FURTHER ORDERED** that, pursuant to section 405 of the Act and section 1.106 of the Commission's rules, the Supplemental Petition for Reconsideration filed by Second Generation of

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<sup>119</sup> *Id.* at 3-4. It is unclear from Second Generation's filing how many lawyers remained on staff, and how many external counsel it had on retainer, during the time in question. The Supplemental Petition specifies only that the position of "company communications counsel" went unfilled during this time. While we are sympathetic to the difficulties licensees have faced as a result of the global pandemic, in this case we do not find a sufficient nexus between the pandemic and Defendant's failure to file a timely inability-to-pay claim, especially given that the Defendant was represented by, at a minimum, outside counsel at two separate law firms based on formal and informal communications with Commission staff by those counsel.

<sup>120</sup> Mercury Broadcasting Company, Inc., Supplemental Request for Cancellation or Reduction of Forfeiture, MB Docket No. 19-168 (filed Oct. 15, 2020).

<sup>121</sup> *Supra* note 9.

<sup>122</sup> Second Generation has also offered no explanation or excuse for its failure to seek this waiver at an earlier date, given that even the position of "company communications counsel" has been filled since "[e]arly in 2021." Supplemental Petition at 4, n.9.

<sup>123</sup> 47 CFR §§ 1.106, 1.3.

<sup>124</sup> 47 U.S.C. § 405; 47 CFR § 1.106.



Iowa, LTD is **DISMISSED** on procedural grounds and, in all other respects, is **DENIED** for the reasons stated herein.<sup>125</sup>

37. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>126</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>127</sup> and section 76.65 of the Commission's rules.<sup>128</sup>

38. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>129</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>130</sup> and section 76.65 of the Commission's rules.<sup>131</sup>

39. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>132</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>133</sup> and section 76.65 of the Commission's rules.<sup>134</sup>

40. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>135</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>136</sup> and section 76.65 of the Commission's rules.<sup>137</sup>

41. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>138</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>139</sup> and section 76.65 of the Commission's rules.<sup>140</sup>

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<sup>125</sup> 47 U.S.C. § 405; 47 CFR § 1.106.

<sup>126</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>127</sup> 47 U.S.C. § 325.

<sup>128</sup> 47 CFR § 1.80.

<sup>129</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>130</sup> 47 U.S.C. § 325.

<sup>131</sup> 47 CFR § 1.80.

<sup>132</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>133</sup> 47 U.S.C. § 325.

<sup>134</sup> 47 CFR § 1.80.

<sup>135</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>136</sup> 47 U.S.C. § 325.

<sup>137</sup> 47 CFR § 1.80.

<sup>138</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>139</sup> 47 U.S.C. § 325.

42. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>141</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>142</sup> and section 76.65 of the Commission's rules.<sup>143</sup>

43. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>144</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>145</sup> and section 76.65 of the Commission's rules.<sup>146</sup>

44. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>147</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>148</sup> and section 76.65 of the Commission's rules.<sup>149</sup>

45. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>150</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>151</sup> and section 76.65 of the Commission's rules.<sup>152</sup>

46. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>153</sup> MPS Media of Scranton 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>154</sup> and section 76.65 of the Commission's rules.<sup>155</sup>

47. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and

(Continued from previous page) \_\_\_\_\_

<sup>140</sup> 47 CFR § 1.80.

<sup>141</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>142</sup> 47 U.S.C. § 325.

<sup>143</sup> 47 CFR § 1.80.

<sup>144</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>145</sup> 47 U.S.C. § 325.

<sup>146</sup> 47 CFR § 1.80.

<sup>147</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>148</sup> 47 U.S.C. § 325.

<sup>149</sup> 47 CFR § 1.80.

<sup>150</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>151</sup> 47 U.S.C. § 325.

<sup>152</sup> 47 CFR § 1.80.

<sup>153</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>154</sup> 47 U.S.C. § 325.

<sup>155</sup> 47 CFR § 1.80.

section 1.80 of the Commission's rules,<sup>156</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>157</sup> and section 76.65 of the Commission's rules.<sup>158</sup>

48. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>159</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>160</sup> and section 76.65 of the Commission's rules.<sup>161</sup>

49. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>162</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>163</sup> and section 76.65 of the Commission's rules.<sup>164</sup>

50. The Commission hereby **REAFFIRMS** that, pursuant to section 503(b) of the Act and section 1.80 of the Commission's rules,<sup>165</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>166</sup> and section 76.65 of the Commission's rules.<sup>167</sup>

51. Payment of the forfeiture was required to 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 the *Forfeiture Order*.<sup>168</sup> Given that the forfeiture was not paid within the period specified in the Forfeiture Order, this case may be referred at any time to the U.S. Department of Justice for enforcement of the forfeiture pursuant to section 504(a) of the Act.<sup>169</sup> Each of Deerfield Media (Port Arthur) Licensee, LLC; Deerfield Media (Cincinnati) Licensee, LLC; Deerfield Media (Mobile) Licensee, LLC; Deerfield Media (Rochester) Licensee; Deerfield Media (San Antonio) Licensee, LLC; GoCom Media of Illinois, LLC; MPS Media of Tennessee Licensee, LLC; MPS Media of Gainesville Licensee, LLC; MPS Media of

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<sup>156</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>157</sup> 47 U.S.C. § 325.

<sup>158</sup> 47 CFR § 1.80.

<sup>159</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>160</sup> 47 U.S.C. § 325.

<sup>161</sup> 47 CFR § 1.80.

<sup>162</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>163</sup> 47 U.S.C. § 325.

<sup>164</sup> 47 CFR § 1.80.

<sup>165</sup> 47 U.S.C. § 503(b); 47 CFR § 1.80.

<sup>166</sup> 47 U.S.C. § 325.

<sup>167</sup> 47 CFR § 1.80.

<sup>168</sup> 47 CFR § 1.80.

<sup>169</sup> 47 U.S.C. § 504(a). Any entity that is a "Small Business Concern" as defined in the Small Business Act (Pub. L. 85-536, as amended) may avail itself of rights set forth in that Act, including rights set forth in 15 U.S.C. § 657, "Oversight of Regulatory Enforcement," in addition to other rights set forth herein.

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 Chief, Media Bureau, Policy Division at [Maria.Mullarkey@FCC.gov](mailto:Maria.Mullarkey@FCC.gov), and Lyle Elder at [Lyle.Elder@FCC.gov](mailto:Lyle.Elder@FCC.gov) on the date said payment is made.

52. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),<sup>170</sup> or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. Below are instructions that payors should follow based on the form of payment selected:<sup>171</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 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 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>172</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 Registration System (CORES) at <https://apps.fcc.gov/cores/userLogin.do>. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, 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 Registration System (CORES) at <https://apps.fcc.gov/cores/paymentFrnLogin.do>. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL/Acct. No. (e.g., NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, 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.

53. 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,

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<sup>170</sup> Payments made using CORES do not require the submission of an FCC Form 159.

<sup>171</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](mailto:ARINQUIRIES@fcc.gov).

<sup>172</sup> Instructions for completing the form may be obtained at <https://www.fcc.gov/Forms/Form159/159.pdf>.

Washington, DC 20554.<sup>173</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.

54. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order and Order on Reconsideration 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; 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

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<sup>173</sup> 47 CFR § 1.1914.