

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Consent to Assign the Authorization of
Television Station WADL from Adell
Broadcasting Corporation to Mission
Broadcasting, Inc.

LMS File No. 0000214896



COMMENTS OF THE AMERICAN TELEVISION ALLIANCE

The American Television Alliance (“ATVA”) hereby comments on an application to assign the license of WADL, a television station in the Detroit Designated Market Area (“DMA”), from Adell Broadcasting Corporation (“Adell”) to Mission Broadcasting, Inc. (“Mission”).¹ Nexstar Broadcast Group (“Nexstar”) proposes to both guarantee financing for the transaction and assume significant financial and operational responsibility for the station.

* * *

The Commission should not approve the transaction as now formulated because Nexstar, not Mission, is plainly the real party in interest here. Nexstar cannot own WADL itself, as doing so would place Nexstar above the national ownership cap. Yet Nexstar proposes to guarantee transaction financing, to negotiate retransmission consent for the station (at inflated rates, bundled with its own stations), to sell all of the station’s advertising, and to at least “assist”

¹ Public Notice, *Applications*, Report No. PN-1-230519-01 (May 19, 2023), <https://docs.fcc.gov/public/attachments/DOC-393526A1.pdf>; Application, File No. 0000214896 (filed May 17, 2023), <https://enterpriseefiling.fcc.gov/dataentry/views/public/assignmentDraftCopy?displayType=html&appKey=25076ff387de8c4a0187e7ea3d64032c&id=25076ff387de8c4a0187e7ea3d64032c&goBack=N>.

Mission with every aspect of the station's operations. Nexstar already reports Mission's stations as its own on its website. It consolidates financial results of Mission's stations as its own in its SEC reports. Any one or two of these things might be sufficient to raise real party in interest questions. All of them together leave little doubt that Nexstar, not Mission, will control WADL.

Mission's purchase of WADL would raise no such concerns if Mission had no relationship with Nexstar. As now constituted, however, the proposed transaction would violate the Commission's rules. The Commission should not grant the application.

I. BACKGROUND

This transaction involves Mission's application to purchase WADL from Adell, with Nexstar guaranteeing transaction financing. Nexstar, for its part, is the largest broadcaster in the United States. It owns or operates 172 television stations in 116 markets. It operates numerous CW affiliates and is seeking to add to that number. Nexstar also recently bought the CW network, and by all accounts seeks to increase the CW's profitability both through acquiring sports rights and through the bundling of CW programming with its own major network programming.² WADL now holds a MyNetwork affiliation, but press reports indicate that it will affiliate with the CW Network—also owned by Nexstar—after consummation.³

With such extensive television holdings, Nexstar has run up against Congress's 39 percent national ownership cap.⁴ By our calculations, Nexstar holds an attributable interest in stations that reach roughly 38 percent of the national audience. Nexstar owns no station in the

² Jon Lafayette, *Nexstar CEO Perry Sook Eyes Bidding Wars for The CW Affiliations*, Broadcasting & Cable (May 9, 2023), <https://www.nexttv.com/news/nexstar-ceo-perry-sook-eyes-bidding-wars-for-cw-affiliations>.

³ Matthew Keys, *WADL Detroit Sold to Mission, Possibly for CW Move*, TheDesk.net (May 20, 2023), <https://thedesk.net/2023/05/nexstar-mission-acquiring-wadl-detroit-cw-network/>.

⁴ 47 C.F.R. § 73.3555(e).

Detroit DMA, which covers nearly two million homes. If Nexstar were to purchase WADL itself, we calculate that it would reach more than 40 percent of the national audience, in violation of the ownership cap.

While *Nexstar* cannot purchase WADL directly, it apparently believes that *Mission* can. *Mission* thus filed the instant application on May 17. This strategy is not new for Nexstar. After it acquired Tribune in 2019, Nexstar “divested” three stations in order to remain compliant with the national ownership cap.⁵ According to complaints filed with the Commission, at least one of those “divestitures” turned out to be a sham.⁶

II. NEXSTAR IS THE REAL PARTY IN INTEREST TO THE APPLICATION

The Commission should not approve the transaction as currently formulated because Nexstar, not *Mission*, is the real party in interest here. This is both unlawful in and of itself and implicates Nexstar’s compliance with the national ownership cap.

Assignment and transfer applications require disclosure of and certifications from the “real party in interest” purchasing the stations at issue.⁷ The Commission has described the “pertinent concern” as whether someone other than the named applicant or licensee is or would be in control.⁸ As the Commission has explained, “a real party in interest issue, by its very

⁵ See Amended Comprehensive Exhibit, File No. BTC-20190107ADI, at 34 (filed Apr. 2019), <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/3201fdc1-8584-5a3d-171e-3c2b7a156b49> (“Nexstar-Tribune Amended Comprehensive Exhibit”).

⁶ George Winslow, *Comcast Tells FCC That Nexstar Is Violating Ownership Cap*, TV Tech (July 7, 2021) <https://www.tvtechnology.com/news/comcast-tells-fcc-that-nextstar-is-violating-ownership-cap>.

⁷ *E.g.*, *Tribune Media Co. and Sinclair Broad. Grp.*, Hearing Designation Order, 33 FCC Rcd. 6830, ¶ 15 (2018) (“*Tribune*”).

⁸ *Tribune* ¶ 15. See *Arnold L. Chase and Chase Broad., Inc.*, Memorandum Opinion and Order, 5 FCC Rcd. 1642, ¶ 7 n.5 (1990).

nature, is a basic qualifying issue in which the element of deception is necessarily subsumed.”⁹

The test for determining whether an entity is a real party in interest in an application is whether that entity “has an ownership interest or is or will be in a position to actually or potentially control the operation of the station.”¹⁰ In the related context of determining *de facto* control of an applicant or a licensee, the Commission will look beyond legal title and financial interests to determine who holds operational control of the station and/or applicant.¹¹ In particular, the Commission examines the policies governing station programming, personnel, and finances. A licensee may delegate day-to-day operations without surrendering *de facto* control, so long as the licensee continues to set the policies governing these three indicia of control.¹² Failure to exercise ultimate control over any one of these three categories is sufficient to find that another entity has *de facto* control.¹³

Here, the combination of the transaction documents and the overall relationship between Nexstar and Mission demonstrates that Nexstar, not Mission, is the real party in interest.

⁹ See *In the Matter of Maritime Commc 'ns/Land Mobile, LLC*, Order to Show Cause, Hearing Designation Order, and Notice of Opportunity for Hearing, 26 FCC Rcd. 6520, ¶ 36 (2011) (citing *Fenwick Island Broad. Corp. & Leonard P. Berger*, Decision, 7 FCC Rcd. 2978, ¶ 7 (Rev. Bd. 1992) (citation omitted)).

¹⁰ *High Sierra Broadcasting, Inc.*, Decision, 96 F.C.C.2d 423, 435 (Rev. Bd. 1983).

¹¹ See *WHDH, Inc.*, 17 F.C.C.2d 856, 863 (1969), *aff'd sub nom.*, *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970).

¹² *WGPR, Inc. and CBS, Inc.*, 10 FCC Rcd. 8140, ¶¶ 11–15 (1995); *Choctaw Broad. Corp. and New South Commc 'ns, Inc.*, 12 FCC Rcd. 8534, ¶¶ 11–13 (1997); *Southwest Texas Broad. Council*, 85 F.C.C.2d 713, 715 (1981).

¹³ See *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, 13 FCC Rcd. 10662, ¶ 50 (1998) (“Control over any one of the areas of personnel, programming and finances would be sufficient for a finding of *de facto* control.”); see also *Terrier Media Buyer, Inc.*, 34 FCC Rcd. 10544 ¶ 15 n.66 (2019) (noting that “the Commission has previously found that control over any one of the areas of personnel, programming, and finances is sufficient for a finding of *de facto* control”).

Financing. The Application states that “Mission may utilize its bank financing to pay for some or all of the purchase price for WADL” and that “Nexstar guarantees repayment of Mission’s bank financing.”¹⁴ Mission has not, however, provided documents related to such financing, so we do not know what rights, if any, it provides to Nexstar. At a minimum, the Commission should require Mission to provide all documents related to Nexstar’s financing. The Commission should also ask questions about this arrangement. Who, for example, led financing negotiations? What is Mission’s creditworthiness and ability to receive financing without Nexstar’s guarantee? Who provides the creditors with reports, *etc.*?

Advertising. The Application contains an “Agreement for the Sale of Commercial Time.”¹⁵ Under this agreement, Nexstar sells all of Mission’s advertising. Nexstar handles Mission’s political advertising issues. Nexstar assumes all of Mission’s advertising contracts. Nexstar “shall employ and be responsible for the salaries, benefits, employer taxes, and related costs of employment of [Mission’s advertising] sales staff.” Nexstar sets advertising rates. Nexstar gains access to WADL’s studio and offices, subject to Mission’s “direction and control,” although we believe such control is nominal at best, as discussed further below. The agreement lasts eight years (eighteen years if auto-renewed), unless Nexstar buys WADL itself. In exchange for these services Nexstar nominally collects all of Mission’s revenues, reverting 70 percent to Mission. But this is not the whole story. Rather, it appears that the “reversion” is, in

¹⁴ Description of Transaction and Documents, File No. 0000214896 (filed May 17, 2023), <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f9188269b2a01882a7282900050> (“Description of Transaction and Documents”).

¹⁵ Agreement for the Sale of Commercial Time, File No. 0000214896 (filed May 17, 2023), <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f9188269b2a01882af183d100bf>.

turn, reverted back to Nexstar in terms of fees for various services under the separate shared service agreement described below.

Retransmission Consent and other Services. The Application contains a Station Services Agreement (“SSA”), pursuant to which Nexstar will provide certain services to Mission in connection with the operation of WADL.¹⁶ Of most interest to ATVA is a “delegation by Mission to Nexstar of authority to negotiate retransmission consent for the station.”¹⁷ *Nexstar*, not Mission, will negotiate retransmission consent for WADL. And retransmission consent revenues will likely constitute up to half of WADL’s revenues. If Nexstar assumes responsibility for such retransmission consent along with its responsibility for advertising, there is little of WADL’s finances for which Mission retains responsibility.

Why would Nexstar want to negotiate retransmission consent for WADL? The obvious answer is bundling. MVPDs almost never pay for standalone CW or MyNetwork stations. MVPDs *do*, however, pay for such stations when bundled with major network stations. This is because large broadcasters force them to do so. That is, paying for CW and MyNetwork stations is part of the “price” MVPDs pay for the right to carry ABC, CBS, NBC, and FOX. If Nexstar negotiates for WADL, it will almost certainly charge more than Mission could on its own. This means that WADL viewers will pay more.

The SSA also permits or requires Nexstar to provide services related to: the execution of promotional policies; continuity, traffic support, and other such tasks; master control functions; payables support (but not actual payment); preparation of monthly accounting statements and

¹⁶ Station Services Agreement, File No. 0000214896 (filed May 17, 2023), <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f9188269b2a01882af4389000c1> (“SSA”).

¹⁷ Description of Transaction and Documents.

other financial reporting activities; maintenance and repair of the stations transmission facilities; “assist[ance]” in procuring programming for broadcast on the station, subject to restrictions (including compliance with FCC rules); upon request, and as to be negotiated, support for local news; and reviewing and assisting in the negotiation of “certain contracts related to, or necessary for, the operation of the Station.”¹⁸

In exchange for these services, Mission pays Nexstar \$155,000 each month, plus a “Performance Bonus” to be determined by Mission in its “sole and absolute discretion,” subject only to the restriction that it be determined in “good faith.”¹⁹ This, in our experience, is highly unusual. Here, it appears to enable the parties to circumvent the “reversion” of advertising revenues to Mission described above. That is, Nexstar could “revert” 70 percent of advertising revenues to Mission under the JSA, and Mission could “in good faith” revert those fees straight back to Nexstar as a performance bonus.

Option to Purchase. The Application contains an Option Agreement under which Nexstar may acquire the license and assets of WADL.²⁰ The option is granted in return for Nexstar’s guarantee of the financing Mission uses to purchase WADL.²¹ The purchase price is the *greater* of (1) Station cash flow during the prior 12 months times 7²² or (2) the amount

¹⁸ SSA at 3.

¹⁹ *Id.* Schedule A.

²⁰ Option Agreement among Mission Broadcasting, Inc., Nancie Smith, Dennis Thatcher, and Nexstar Media Inc., File No. 0000214896 (filed May 17, 2023), <https://enterpriseefiling.fcc.gov/dataentry/api/download/attachment/25076f9188269b2a01882af6c9a100c2> (“Option Agreement”).

²¹ *Id.*

²² This provision also presents the opportunity for mischief. The agreement does not specify how cash flow is to be calculated. If the cash flow is calculated by the parties to exclude payments made to Nexstar, this metric would undervalue the station.

WADL still owes on the financing guaranteed by Nexstar. Mission may not issue stock, nor may its primary stockholders sell or transfer equity in Mission unless the buyer becomes party to Nexstar's Option Agreement.²³

These last two provisions are key. The purchase price provision means that Nexstar can likely purchase the station for amounts that it has already guaranteed—that is, for no additional funds. And it can exercise this option if and when it wants to. In addition, Mission cannot sell the station to any third parties without Nexstar's consent, due to the restriction on sales or issuance of stock. In other words, Mission and its owners have no independent ability to monetize their investment in this station.

To summarize, then, Nexstar proposes to guarantee financing for the transaction; sell all of the station's advertising; negotiate retransmission consent for it; provide practically every other service the station needs from technical services to contract negotiation; and can purchase the station, very likely for nothing more than the money it had guaranteed in the first place. Any one or two of these things would raise real party in interest questions. With *all* of them, there can be no question that Nexstar is the real party in interest here.

This is all before one considers Nexstar's relationship with Mission more generally. As described in an antitrust lawsuit filed by ATVA member DIRECTV,²⁴ Mission's *very purpose* is to permit Nexstar to flout the ownership rules. Mission's key staff comes from Nexstar. To our knowledge, Mission does not own a single station that is not operated by Nexstar. In every market where Mission has a top-four affiliation, Nexstar *also* has a top-four affiliation, meaning

²³ Option Agreement.

²⁴ Complaint, *DIRECTV, LLC v. Nexstar Media Grp.*, No. 1:23-cv-02221-PAC (S.D.N.Y., filed Mar. 14, 2023) (“DIRECTV Complaint”).

that Nexstar could not own the second station directly. Mission is, in other words, the prototypical sidecar.

Today, Nexstar describes Mission stations as its own on its website.²⁵ It is required under U.S. Generally Accepted Accounting Principles (“GAAP”) to disclose information about them in its public SEC filings.²⁶ Nexstar refers to its sidecars as variable interest entities (“VIEs”). It states that it consolidates its VIEs with its own stations because it “is deemed under accounting purposes generally accepted in the United States . . . to have controlling financial interest for financial reporting purposes”²⁷ Under GAAP, this means that Nexstar has “the power to direct the activities of [the VIEs] that most significantly impact [those entities’] economic performance”²⁸; the “obligation to absorb losses of the VIE that could potentially be significant to the VIE”; and “the right to receive benefits from the VIE that could potentially be significant to the VIE.”²⁹ Nexstar thus informs investors that under various local service agreements, it has historically “received substantially all of the consolidated VIEs’ available cash, after satisfaction of operating costs and debt obligations” and “anticipates it will continue to receive substantially all of the consolidated VIEs’ available cash”³⁰

None of these concerns are new. In 2021, Comcast filed a Petition for Declaratory Ruling alleging that Nexstar exercised *complete* control over Mission sidecar WPIX New York,

²⁵ *Stations*, Nexstar Media Group, Inc., <https://www.nexstar.tv/stations/>.

²⁶ *See, e.g.*, Nexstar Media Grp., Inc., *Form 10-K*, SEC (Feb. 28, 2023), <https://www.sec.gov/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm>.

²⁷ *Id.* at F-9.

²⁸ Financial Accounting Standards Board, Accounting Standards Codification § 810-10-25-38A(a) (2009).

²⁹ *Id.* at § 810-10-25-38A(b).

³⁰ *See, e.g.*, Nexstar Media Grp., Inc., *Form 10-Q*, SEC at 10 (Nov. 9, 2022), <https://www.sec.gov/Archives/edgar/data/1142417/000095017022023394/nxst-20220930.htm>.

contrary to Nexstar’s explicit promises to the Commission and in violation of the Communications Act.³¹ Charter likewise filed an informal complaint against Nexstar alleging conduct substantially similar to allegations that Comcast had raised the previous year.³² And DIRECTV recently sued Nexstar and Mission making similar allegations.³³ *Those* allegations—that Nexstar controls retransmission consent, advertising, etc.—reflect many of the allegations here.

Nexstar has, to be sure, been a little more careful in papering this transaction. The documents it has filed here do not, for example, give Nexstar 24/7 “control” over WADL’s programming. They only permit Nexstar to “assist” in procuring programming and to negotiate the contracts. These, however, are changes in form and not substance. In reality, Nexstar, not Mission, will run WADL in every respect.

Nexstar cannot exercise the control over WADL’s finances, personnel, and programming permitted by these transaction documents without assuming real party in interest status here. Nexstar cannot be the real party in interest to this transaction without violating the national ownership cap. Unless and until Nexstar and Mission revise the transaction documents to prevent Nexstar from asserting control, the Commission should not grant the proposed transaction.

* * *

³¹ See Winslow n.6, above.

³² Amy Maclean, *Charter Joins Comcast, Argues Nexstar Violated FCC Cap*, Cablefax (April 18, 2022), <https://www.cablefax.com/regulation/complaint-dept-charter-joins-comcast-argues-nexstar-violated-fcc-cap>.

³³ DIRECTV Complaint.

Mission's purchase of WADL would raise no such issues if Mission had no relationship with Nexstar. In light of the intertwined relationship between the parties reflected in the transaction documents, however, the Commission should not grant this application.

Respectfully Submitted,



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June 20, 2023



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Applications of Adell Broadcasting Corp.)
and Mission Broadcasting, Inc. for Consent) Application File No. 0000214896
to Assignment of the License of)
WADL(TV), Facility ID Number 455)
)

REPLY COMMENTS OF

NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association files these reply comments in response to claims made by Applicants, Adell Broadcasting Corp. (“Adell”) and Mission Broadcasting, Inc. (“Mission”), and the National Association of Broadcasters (“NAB”) in this proceeding.

Contrary to arguments made by one of the Applicants, this is not a “straightforward,” “simple two-party, single-step” transaction.¹ While it involves the sale of only one station, Mission’s response ignores the central role that third-party Nexstar plays in the assignment application and the complex web of proposed arrangements for the management and operation of the station. As we demonstrated in our Informal Objection,² Nexstar’s role in this transaction will result in substantial increases in retransmission consent rates that are not merely the result of a properly functioning competitive marketplace, thereby harming the public interest.

¹ Consolidated Response to Objections of Mission Broadcasting, Inc., File No. 0000214896, at 3, 4 (July 6, 2023) (*Mission Response*).

² Informal Objection of NCTA – The Internet & Television Association, File No. 0000214896 (June 20, 2023) (*NCTA Informal Objection*).

Under a truly “simple two-party, single-step” transaction, the right to elect and negotiate for future retransmission consent fees would go from Adell (the seller) to Mission (the buyer). MVPDs would then carry WADL under the terms of a retransmission consent agreement with Mission, if Mission elected retransmission consent. Here, in contrast, by delegating its retransmission consent negotiating authority to third-party Nexstar, Mission has instead consigned MVPDs to paying much higher retransmission consent fees for WADL *under their agreements with Nexstar*, not the agreement with the actual owner of the station, Mission. By engineering these sidecar arrangements to extract artificially higher retransmission consent rates for the station, the Applicants introduce a public interest harm that the Commission has previously recognized and that will ultimately be borne by Detroit-area consumers. If the parties wish the Commission to treat this as a “simple two-party, single-step” transaction, then they should have no concerns agreeing to NCTA’s proposed condition that Mission *itself* negotiate retransmission consent for WADL without any involvement or interference by Nexstar.³

Contrary to assertions by the Applicants and NAB,⁴ the harms that NCTA describes in its Informal Objection are not speculative. The entire transaction is structured to generate Nexstar-level retransmission consent fees for WADL, a must carry station that currently generates *zero* retrans fees. NAB goes so far as to challenge the basic premise that the terms of the Mission-Nexstar sidecar agreement “will result in MVPDs potentially carrying WADL

³ *Id.* at 12.

⁴ *See, e.g., Mission Response* at 11, 14-15; Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of the American Television Alliance, File No. 0000214896, at 4 (July 6, 2023); Opposition of the National Association of Broadcasters to Informal Objection of NCTA, File No. 0000214896, at 4 (July 7, 2023) (*NAB Opposition*).

pursuant to retransmission consent.”⁵ But that objective is apparent from the Application. Mission and Nexstar plainly contemplate seeking retransmission consent for WADL; otherwise, Mission would not have “delegated” retransmission consent negotiation authority to Nexstar. Indeed, Nexstar’s 10-K states that “[t]he Company has elected to exercise retransmission consent rights for all of its stations where it has legal rights to do so.”⁶ The whole point of delegating retransmission consent negotiating authority to Nexstar is so that it can leverage its massive national footprint⁷ to extract non-market rates for WADL, a station that the Commission’s media ownership rules prevent Nexstar from owning outright. This is exactly what Nexstar and Mission did with WPIX.⁸

Further, the structure of this transaction is similar to the fact pattern that led the Media Bureau to designate the Standard General/TEGNA applications for a formal hearing. There, the Media Bureau expressed concern that the parties “structured the entire transaction around . . . clauses” that “would increase prices without negotiating for such increases, and effectively lead to the application of the [third-party] retransmission consent agreements” to the acquired station.⁹ As the Bureau observed, “Commission precedent . . . allows for a finding of harm

⁵ *NAB Opposition* at 4.

⁶ Nexstar 2022 10-K, at 17, <https://www.sec.gov/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm>.

⁷ Bringing WADL under Nexstar’s retransmission consent umbrella also means that the failure to reach an agreement could trigger a blackout of all Nexstar stations. As reported when Nexstar pulled its stations from DIRECTV, “the blacked-out station count rises to over 200 once outlets owned by groups Mission Broadcasting and White Knight Broadcasting, but operated by Nexstar, are factored into the kerfuffle.” Daniel Frankel, *Hot Blackout Action! DirecTV and Nexstar Wage Huge Broadcast Retrans Battle ... in the Middle of Summer When Fewer People Are Watching*, Next TV (July 2, 2023), <https://www.nexttv.com/news/hot-blackout-action-directv-and-nexstar-wage-huge-broadcast-retrans-battle-in-the-middle-of-summer-when-fewer-people-are-watching>.

⁸ See *NCTA Informal Objection* at 7 & n.30.

⁹ *Applications of SGCI Holdings III LLC; TEGNA, Inc.; and CMG Media Corporation*, MB Docket No. 22-162, Hearing Designation Order, DA 23-149, ¶ 26 (MB Feb. 24, 2023) (*TEGNA HDO*).

where the parties have artificially constructed a deal intending to raise retransmission fees.”¹⁰

That is likewise the case here.

It is no surprise, then, that the Applicants have made no attempt to demonstrate how these arrangements with Nexstar would serve the public interest. Imposing above-market retransmission consent fees for WADL will plainly harm Detroit-area consumers. These un rebutted harms justify the pro-consumer conditions proposed by NCTA.¹¹ In addition to adopting these conditions, we encourage the Commission to act on the pending complaints relating to WPIX.¹² These actions would provide much-needed relief to the many consumers who bear the ultimate burden of sidecar arrangements designed to extract rate increases that “are not simply the product of a properly functioning competitive marketplace.”¹³

¹⁰ *TEGNA HDO* ¶ 26. As Chairwoman Rosenworcel recently affirmed, “the Commission clearly established [the potential for increased retransmission consent rates] as a proper consideration under the Commission’s public interest review.” See Letter from Hon. Jessica Rosenworcel to Hon. Cathy McMorris-Rodgers and Hon. Ted Cruz, at 4 (July 12, 2023).

¹¹ See *NCTA Informal Objection* at 12-13.

¹² See *id.* at n.30.

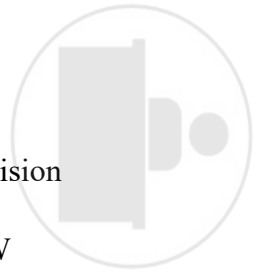
¹³ *TEGNA HDO* ¶ 24; see *id.* ¶ 21 (“The Commission has recognized . . . that supra-competitive increases in retransmission consent fees can result in pressure for retail price increases for subscription video services to the detriment of consumers, and therefore, the public interest.”). Mission’s argument that the WPIX complaints and DIRECTV antitrust litigation against Nexstar, Mission, and fellow Nexstar sidecar White Knight Broadcasting, Inc. “have no relevance” to this transaction ignores the obvious pattern these various proceedings demonstrate involving Nexstar’s use of sidecar arrangements to generate non-market-based retransmission consent fees. *Mission Response* at 10.

Respectfully submitted,

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August 1, 2023



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August 1, 2023

/s/ Radhika Bhat



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In re Application of)	
)	
ADELL BROADCASTING CORPORATION)	File No. 0000214896
(Assignor))	Pleading File Nos. 0000216949
)	and 0000216950
and)	
)	
MISSION BROADCASTING, INC.)	
(Assignee))	
)	
For Consent to the Assignment of License of)	Facility ID No. 455
Television Station WADL(DT), Mount)	
Clemens, Michigan)	
To: The Secretary, Federal Communications Commission		
Attn: The Chief, Video Division, Media Bureau		

CONSOLIDATED RESPONSE TO OBJECTIONS

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July 6, 2023



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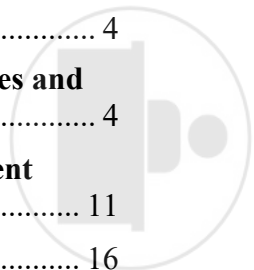
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In re Application of)	
)	
ADELL BROADCASTING CORPORATION)	File No. 0000214896
(Assignor))	Pleading File Nos. 0000216949
)	and 0000216950
and)	
)	
MISSION BROADCASTING, INC.)	
(Assignee))	
)	
For Consent to the Assignment of License of)	Facility ID No. 455
Television Station WADL(DT), Mount)	
Clemens, Michigan)	
To: The Secretary, Federal Communications Commission		
Attn: The Chief, Video Division, Media Bureau		

CONSOLIDATED RESPONSE TO OBJECTIONS

Mission Broadcasting, Inc. (“Mission”), by its attorneys, hereby responds to (1) the “Comments” of the American Television Alliance (“ATVA”) and (2) the Informal Objection of NCTA – The Internet & Television Association (“NCTA” and, collectively with ATVA, the “Objectors”), both filed on June 20, 2023,¹ in connection with the captioned application for consent to Mission’s acquisition of the license of Detroit market television station WADL(DT), Mount Clemens, Michigan (“WADL” or the “Station”).²

As Mission demonstrates below, the Objectors’ submissions (collectively the

¹ NCTA’s pleading is on its face an informal objection, and ATVA’s “comments” are the equivalent thereof. The FCC’s Rules do not establish a formal pleading cycle for informal objections. *See, e.g.*, 47 C.F.R. §§ 1.45 & 73.3587; *WCVO(FM), Gahanna, Ohio*, Letter, 20 FCC Rcd 12348, 12349 n.4 (Med. Bur. 2005).

² FCC Form 2100, Schedule 314, FCC File No. 0000214896 (filed May 17, 2023) (the “Application”). Mission’s proposed acquisition of WADL will be referred to herein as the “Proposed Transaction.”

“Objections”)³ offer not a single valid ground for the Commission to withhold or condition approval of WADL’s sale to Mission. The Objections should be denied and the subject assignment application promptly granted.

I. INTRODUCTION AND SUMMARY

The Proposed Transaction involves the asset sale of WADL by Adell Broadcasting Corporation (“Adell”). WADL is Adell’s only television station. The Station is an affiliate of MyNetworkTV with fewer than five full-time employees and no local news operation. It is the seventh-ranked television station in the Detroit DMA in terms of revenue and audience share. Throughout its history, Adell has elected “must carry” status for WADL with respect to its carriage on cable and satellite systems serving the market. Adell proposes to sell WADL to Mission, a woman-controlled company that owns twenty-nine full-power television stations in twenty-six markets throughout the country. Mission’s stations have a diversity of network affiliations and a demonstrated commitment to localism and public service, with the vast majority offering local news.

No entity with a concrete interest in the Proposed Transaction has opposed it. No competitor in the Detroit television market has objected to the sale to Mission. No viewer of WADL has opposed it. Not even an actual multichannel video programming distributor (“MVPD”) serving the market has lodged a challenge. The only grievances on record are expressed by two lobbying organizations for the MVPD industry, neither of which even attempts to establish anything in the way of a judiciable interest in the Proposed Transaction.

³ Comments of the American Television Alliance, File No. 0000214896, Pleading File No. 0000216949 (filed June 20, 2023) (“ATVA Comments”); Informal Objection of NCTA – The Internet & Television Association, File No. 0000214896, Pleading File No. 0000216950 (filed June 20, 2023) (“NCTA Objection”).

The Commission should recognize the ATVA and NCTA submissions for what they are: unabashed attempts by lobbying organizations seeking to further the business agendas of their MVPD constituents. The ATVA and NCTA pleadings are nothing more than the latest in a years-long series of efforts by MVPD advocates to bolster the profits of their members through advocacy for regulatory changes that favor only their constituents and, increasingly in recent years, broadside attacks on broadcast television transactions both large and (as here) small. With their challenge to the proposed assignment of WADL, the MVPD interests may have hit their lowest point. Their opposition to this transaction—a straightforward assignment of a single, historically “must carry” television station rated far outside the top four in the Detroit market—appears to be rooted mainly in the fear that MVPDs *might* someday need to pay *something* in the way of retransmission consent fees for the Station or similarly situated stations.

As discussed below, both the ATVA and NCTA filings lack any semblance of merit. The Proposed Transaction complies fully with established FCC rules and policies. The various aspersions which the Objectors cast on Mission hoping one will “stick” amount to nothing more than a hodgepodge of irrelevancy, misstatement, and speculation. The Objectors’ predictable intonations that the subject assignment will result in harm to consumers and “manipulation” of retransmission consent fees serve only to display their naked self-interest and that of their constituents, particularly in the context of this straightforward transaction. The Objections should be rejected out of hand.

II. DISCUSSION

A. The Proposed Transaction Complies With All Applicable FCC Rules and Policies

The Application seeks FCC consent for Mission to acquire a single television station located in the Detroit DMA from a broadcaster that is exiting the industry. Despite the simplicity of the Proposed Transaction, NCTA likens it to the ill-fated TEGNA/Standard General deal, attempting to characterize the Proposed Transaction as having a “unique structure,” so as to support the lobbyist’s contention that the Commission should impose extraordinary, “prophylactic” conditions on Mission.⁴ In fact, there is nothing remotely “unique” about the Proposed Transaction. In stark contrast to the TEGNA deal—which involved complicated, sequential, and multi-party assignments and transfers of control⁵—the Proposed Transaction involves a simple two-party, single-step assignment of WADL from Adell to Mission. The conditions proposed by NCTA are in no way, shape, or form consistent with the Commission’s rules, and they are inappropriate, unnecessary, and contrary to the public interest.

⁴ See NCTA Objection at 6, 13.

⁵ See *In the Matter of Consent to Transfer Control of Certain Subsidiaries of TEGNA Inc. to SGCI Holdings III LLC*, MB Docket No. 22-162, Hearing Designation Order, LMS File Nos. 0000186355, 0000186354, 0000186353, 0000186458, ¶ 1 (2023) (summarizing the transaction as applications “...seeking consent to transfer control of TEGNA Inc. (TEGNA) to SGCI Holdings III LLC (SGCI Holdings), as well as three other sets of applications filed contemporaneously seeking consent for a series of related transactions: (1) the transfer of control of the four full-power television stations of Community News Media LLC (CNM), an affiliate of Standard General L.P. (Standard General), to CMG Media Operating Company, LLC, a wholly-owned subsidiary of CMG Media Corporation (CMG), which the Media Bureau (Bureau) has previously determined to be under the de facto control of Apollo Global Management, Inc. (AGM); (2) the transfer of control of Teton Parent Corp. (TPC), the parent company of licensee WFXT(TV), Boston, Massachusetts, from a wholly-owned subsidiary of CMG to SGCI Holdings (the WFXT Transfer); and (3) immediately upon consummation of the merger of TEGNA with TPC, the assignment of the licenses of four full-power television stations from subsidiaries of post-merger TEGNA (New TEGNA) to indirect, wholly-owned subsidiaries of CMG.”).

The Proposed Transaction complies fully with FCC rules and policy. Specifically, the Application openly discloses that, upon consummation, Mission intends to enter into an Agreement for the Sale of Commercial Time (“JSA”), a Station Services Agreement (“SSA”), and an Option Agreement with Nexstar Media Inc. (collectively with its affiliates, “Nexstar”).⁶ Forms of these agreements are included with the Application. Furthermore, the Application states that (1) the proposed SSA contains a delegation by Mission to Nexstar—which owns no television stations in the Detroit market—of authority to negotiate retransmission consent for WADL, and (2) Nexstar guarantees Mission’s bank financing, which may be utilized to pay some or all of the purchase price for the Station. Each and every one of these components of the Proposed Transaction is permissible under the FCC’s longstanding rules, policy and precedent.

First, joint sales agreements are common in the television industry, as the Objectors are doubtless aware, and they are expressly nonattributable under FCC rules.⁷ The JSA proposed here is substantially similar to numerous agreements between Mission and Nexstar that the FCC has reviewed and approved. Among other customary provisions, the JSA provides for Nexstar to sell substantially all advertising on WADL and (in accordance with staff guidance) remit seventy percent of the advertising revenue to Mission. Section 8 of the JSA states that “Mission shall maintain full control over the operations of [WADL], including programming, finances, editorial policies, employees of Mission, and Mission-

⁶ “Description of Transaction and Documents,” included as an attachment to the Application.

⁷ *2014 Quadrennial Regulatory Review – Review of the Commission’s Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecomms. Act of 1996*, MB Docket Nos. 14-50 et al., Order on Reconsideration and Notice of Proposed Rulemaking, 32 FCC Rcd 9802, ¶¶ 96-113 (2017) (eliminating television JSA attribution rule) (“*2014 Quadrennial Order*”).

controlled facilities,” and that “Mission may, in its sole discretion, decline to accept advertising sold by Nexstar....”⁸

Similarly, the SSA is a recognized and non-attributable agreement under Commission rules and policies,⁹ and the form proposed for this transaction contains customary provisions that have been included in similar agreements reviewed and approved by the agency over the years. The SSA too makes clear that “[c]onsistent with the FCC Rules, Licensee shall maintain full control, supervision and direction of the Station, including its management, programming, finances, editorial policies, personnel, facilities and compliance with the FCC Rules.”¹⁰ The SSA also provides for a “Performance Bonus” that Mission may—in its sole and absolute discretion—choose to award to Nexstar.¹¹ While ATVA attempts to cast this provision as “highly unusual,”¹² and both ATVA and NCTA speculate that the bonus allows Nexstar to “claw back” substantial additional compensation,¹³ performance bonuses for the advertising seller are not uncommon in joint sales agreements, and the words “in the sole and absolute discretion of [Mission]” mean precisely what they say. The performance bonus affords Mission discretion over how much it pays Nexstar for the services that Nexstar provides and is entirely consistent with the JSA’s intent that Mission have full control over WADL’s finances.

⁸ Form of Agreement for the Sale of Commercial Time ¶ 8 (“Form JSA”).

⁹ 2014 Quadrennial Order ¶¶ 114-120 (television SSAs non-attributable but disclosable).

¹⁰ Form of Station Services Agreement ¶ 2 (“Form SSA”).

¹¹ Form SSA ¶ 4.

¹² AVTA Comments at 7.

¹³ NCTA Objection at 10; *see also* ATVA Comments at 7.

The SSA component “[o]f most interest” to the Objectors,¹⁴ however, is the delegation to Nexstar of authority to negotiate retransmission consent for WADL. This delegation clearly and indisputably complies with FCC rules. Not even the Objectors maintain otherwise. ATVA acknowledges that Nexstar does not own any station in Detroit.¹⁵ For its part, NCTA actually expressly concedes that “out-of-market joint negotiation is permissible under current FCC rules.”¹⁶ The prohibition on joint negotiation for retransmission consent by non-commonly owned stations applies only where the stations are located in the same market.¹⁷ Indeed, the Commission has previously rejected calls to extend the prohibition outside same-market situations.¹⁸ The proscription is thus wholly inapplicable here.

Similarly, the proposed Option Agreement, like the form JSA and SSA, is a rule-compliant document with customary terms that have been included in numerous option agreements between Nexstar and Mission reviewed and approved by the Commission.¹⁹

¹⁴ ATVA Comments at 6; *see also* NCTA Objection at 12 (proposing condition prohibiting retransmission negotiation authority delegation).

¹⁵ ATVA Comments at 2-3 (“Nexstar *owns no station in the Detroit DMA*, which covers nearly two million homes.” (emphasis added)).

¹⁶ NCTA Objection at 3 n.9. Of course, NCTA wishes the rules were otherwise, and it notes that it has urged revision of the rule in comments in the Commission’s 2022 quadrennial review of its media ownership rules. *Id.* That proceeding is not the appropriate one to consider changes to the retransmission consent rules, either, but at least NCTA recognizes that, as discussed *infra*, the rulemaking process—not a purchase and sale transaction—is the appropriate forum for NCTA’s views.

¹⁷ *See* 47 C.F.R. § 76.65(b)(1)(viii) (prohibiting joint negotiation for retransmission consent by non-commonly owned stations only where such stations are located “in the same local market”); *see also* 47 U.S.C. § 325(b)(3)(C)(iv); *DIRECTV, LLC, AT&T Services, Inc., v. Deerfield Media, Inc., et al.*, MB Dkt. No. 19-168, Memorandum Opinion and Order, 34 FCC Rcd 10367 ¶ 21 (2019) (“Nothing in the Act or the Commission’s good faith rules prohibits broadcast stations located in different markets from jointly negotiating for retransmission consent.”).

¹⁸ *See Amendment of the Commission’s Rules Related to Retransmission Consent*, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 3351, 3368 n. 95 (2014).

¹⁹ *See, e.g.*, BALCT-20041012ABR (WTVO(DT), Rockford, IL, Facility Id. No. 72945); BALCT-20070705AAR (KTVE(DT), El Dorado, AR, Facility Id. No. 35692); BALCT-20030519AEP (KAMC(DT), Lubbock, TX, Facility Id. No. 40820); BALCT-20030519AET (KHMT(DT), Hardin, MT, Facility Id. No.

This includes the option purchase price, which ATVA bizarrely claims enables Nexstar to purchase the Station “for no additional funds.”²⁰ The option price formulation (the greater of seven times 12-month cash flow and the Station’s debt) is designed to provide Mission upside for positive Station performance (the cash flow component) while ensuring at least the payment of the Station’s outstanding debt. And the fact that Nexstar guarantees Mission’s debt does not mean Nexstar has *paid* that debt, so ATVA’s assertion that a future purchase of the Station pursuant to the Option Agreement would require no outlay of funds by Nexstar is patently false. Moreover, the prohibitions on issuance and transfers of Mission stock appear in numerous FCC-approved Nexstar/Mission option agreements and, in fact, are customary in option agreements generally.²¹

Nexstar’s guarantee of Mission’s financing is permissible as well. The Commission has affirmed, in a prior decision regarding the financial relationship between Nexstar and Mission, that Nexstar does not control or have an attributable interest in Mission by virtue of its guarantee, reaffirming that “loan guarantees do not confer an interest upon the guarantor requiring attribution.”²² The law has not changed since then,

47670); BALCT-20030519AEQ (KOLR(DT), Springfield, MO, Facility Id. No. 28496); BALCT-20030522AFE (WAWV-TV (formerly WBAK-TV), Terre Haute, IN, Facility Id. No. 65247); BALCT-20031222ACA (WUTR(TV), Utica, NY, Facility Id. No. 57837); and BALCDT-20121109ADH (WVNY(DT), Burlington, VT, Facility Id. No. 11259). Attached to each of these applications was an option agreement that granted Nexstar an option to acquire the station that was the subject of the application in the future, with Mission granting Nexstar such an option under materially the same terms as involved here.

²⁰ ATVA Comments at 8 (“The purchase price provision means that Nexstar can likely purchase the station for amounts that it has already guaranteed—that is, for no additional funds.”).

²¹ ATVA also contends that “[t]he option is granted in return for Nexstar’s guarantee of the financing Mission uses to purchase WADL.” *Id.* at 7. This is misleading; the agreement actually says that “[t]his Option is granted in return for, *among other consideration*, Buyer’s guarantee of Seller’s debt.” Form Option Agreement ¶ 1.1 (emphasis added). This language, too, has been included in many past Nexstar/Mission option agreements.

²² *Nexstar Broadcasting, Inc., and Mission Broadcasting, Inc.*, 23 FCC Rcd 3528, 3536 (2008) (“*Nexstar/Mission Opinion*”) (citing *In the Matter of Review of the Commission’s Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, 16 FCC Rcd 1097, 1112 (2001)).

and ATVA's suggestion that the Commission waste its resources by engaging in a fishing expedition surrounding a loan guarantee that comports entirely with precedent²³ is absurd.

In addition, there is simply no basis for ATVA's contention that "[t]he Commission should not approve the transaction as currently formulated because Nexstar, not Mission, is the real party in interest here."²⁴ As shown above, all of the major elements of the Proposed Transaction—the JSA, SSA, and Option Agreement, the proposed delegation of retransmission consent authority, and the Nexstar loan guarantee—have been expressly disclosed in the Application and fully comply with FCC law and policy. Moreover, the remainder of Objectors' "real party in interest" allegations consist of nothing more than a jumble of assertions and innuendo—some irrelevant, some inappropriately raised in this proceeding, some devoid of any specificity or relevance, and some simply false.

For instance, despite ATVA's suggestion to the contrary, Mission's status as a "variable interest entity" of Nexstar is irrelevant.²⁵ In its 2008 decision examining Mission's relationship with Nexstar, the Media Bureau confirmed that "[w]e do not believe the statements in Nexstar's SEC's filings ... are probative of *de facto* control in this instance. The Commission has long held that it is not bound by the definition of 'control' used in securities law."²⁶ The Objectors also cite pending complaints by Comcast Cable Communications, LLC and Spectrum Management Holding Company, LLC involving a separate Mission station, as well as a pending lawsuit by DirecTV, LLC in a New York

²³ ATVA Comments at 5.

²⁴ ATVA Comments at 3.

²⁵ ATVA Comments at 9 (noting that "Nexstar refers to its sidecars as variable interest entities" and citing Nexstar's SEC filings).

²⁶ *Nexstar/Mission Opinion* at 3535 (citing *Fox Television Stations, Inc.*, 10 FCC Rcd 8452, 8519 (1995), *recon. denied*, 11 FCC Rcd 7773 (1996); *Storer Communications, Inc.*, 101 F.C.C.2d 434, 442 (1985)).

court.²⁷ The long-pending Comcast and Spectrum matters are under separate consideration by the FCC and have no relevance to the Proposed Transaction. Moreover, those matters and the DirecTV lawsuit all center around private disputes, and “[t]he Commission has repeatedly held that it will not insert itself into the private commercial affairs of parties, including any litigation between them.”²⁸

ATVA is also mistaken that “Mission’s key staff comes from Nexstar.”²⁹ Nancie Smith, Mission’s majority owner and Chairwoman, and Dennis Thatcher, Mission’s President, have no prior connection to Nexstar. Ms. Smith has been majority owner and Chairwoman of Mission for more than a decade. Mr. Thatcher has served as Mission’s President since 2011 after previously serving as the company’s Executive Vice President & COO.³⁰ Mission’s other executive officers, Sharon Moser and Lance Carwile, were former Nexstar employees but were hired by Mission sometime after they departed Nexstar. Further, while ATVA asserts without any additional context that “Nexstar describes Mission stations as its own on its website,”³¹ this bare allegation is false. The

²⁷ ATVA Comments at 8-10; NCTA Objection at 4, 9.

²⁸ *Application of Green Eagle Networks, Inc. & Convey Commc’ns, Inc. For Commission Consent to the Assignment of Personal Communications Service Licenses*, Memorandum Opinion and Order, 27 FCC Rcd. 5732, ¶ 19 (2012) (citing *Applications of Vodafone AirTouch, Plc and Bell Atlantic Corporation et al. For Consent to Transfer Control or Assignment of Licenses and Authorizations*, Order on Further Reconsideration, 17 FCC Rcd 10998, ¶ 6 (2002); see also *Cellco P’ship*, 23 FCC Rcd 17444, ¶ 214 n.743 (2008) (citing *A.L.Z. Broadcasting, Inc.*, CS Dkt. No. 97-98, Memorandum Opinion and Order, 15 FCC Rcd 23200, ¶ 3 (2000) (finding contractual dispute concerning payment obligations to be within the province of a court of competent jurisdiction, not the Commission) (citations omitted)); *Applications of Verestar, Inc. (Debtor-In-Possession) for Consent to Assignment of Licenses to SES Americom, Inc.*, Memorandum Opinion, Order, and Authorization, 19 FCC Rcd 22750, ¶ 16 (2004) (declining to defer action on assignment applications pending resolution of litigation, noting it is “long-standing Commission policy not to involve itself with private contractual disputes”) (citations omitted).

²⁹ ATVA Comments at 8.

³⁰ *About*, Mission Broadcasting, Inc., <https://missionbroadcastinginc.com/about/> (last visited Jul. 6, 2023).

³¹ ATVA Comments at 9.

list of stations on Nexstar’s website makes clear that the stations include those which Nexstar “owns, operates, programs or provides sales to . . . (including partner stations).”³² Moreover, ATVA’s allegation is meaningless, as the Commission has previously held that the listing of Mission stations on Nexstar’s website is irrelevant to determining *de facto* control.³³

Finally, the Objectors’ “real party in interest” allegations are similarly a canard. The claims stem not from any legitimate basis to question the legally-compliant nature of the Proposed Transaction, but rather the Objectors’ dissatisfaction with the FCC’s well-established attribution and retransmission consent rules. As the FCC (and the Supreme Court) have long recognized, thinly-veiled requests for rule modifications have no place in assignment proceedings.³⁴ The Proposed Transaction fully complies with the FCC’s rules, and ATVA and NCTA have not demonstrated otherwise.

B. The Objectors’ Remaining Assertions About Retransmission Consent Issues Are Self-Serving and Speculative

Faced with the reality that each of the elements of the Proposed Transaction is permissible under established Commission rules and policies, the Objectors speculate that delegating to Nexstar the ability to negotiate for carriage of WADL by MVPDs will cause

³² See *Stations*, Nexstar Media Group, Inc., <https://www.nexstar.tv/stations/> (last visited Jul. 6, 2023) (emphasis added). The same web page clearly denotes in a “Status” column with accompanying footnote those stations owned by an “independent third party” with which Nexstar has service agreements, and those which Nexstar owns and operates. *Id.*

³³ *Nexstar/Mission Opinion* at 3534-35 (citing *Secret Communications II, LLC*, 18 FCC Rcd 9139 (2003); *Kathryn R. Schmeltzer, Esq.*, 19 FCC Rcd 3897, 3900 (2004)).

³⁴ See, e.g., Reply Comments of Kansas City Cable Partners, MB Docket No. 02-70, 96-97 (May 21, 2002) (“[t]he Commission has repeatedly held that it ‘will not consider arguments in [merger] proceeding[s] that are better addressed in Commission proceedings or other legal fora, including the [courts] and the Congress.’”) (quoting *Applications of Craig O. McCaw and American Tel. & Tel. Co.*, 9 FCC Rcd 5836, 5904 ¶ 123 (1994), *aff’d sub nom SBC Communications, Inc. v. FCC*, 56 F.3d 1484 (D.C. Cir. 1995)).

“harm” in the form of increased fees.³⁵ First, the Objectors’ claims in this regard are wholly speculative.³⁶ Mission cannot predict the outcome of any retransmission consent negotiations for WADL, except to note that if the Proposed Transaction is consummated and Mission (as intended) delegates to Nexstar authority for such negotiations, Nexstar will be required to conduct those negotiations in good faith.³⁷ Regardless, the Objectors have not established, and are unable to establish, that any future increase in MVPD retransmission fees regarding the Station would be the result of anything other than a functioning competitive marketplace.

The Commission has long held that price increases, standing alone, do not create the type of consumer harm that is appropriate for the FCC to redress.³⁸ Moreover, the Commission has acknowledged that Congress did not intend for the agency to adopt requirements that dictate the outcome of retransmission consent negotiations or serve as a

³⁵ See NCTA Objection at 1, 5-9; ATVA Comments at 6.

³⁶ NCTA’s prediction that Mission may change WADL’s network affiliation to The CW (NCTA Comments at 10) is equally speculative, and in any case the Commission has affirmed in numerous decisions its very limited role in overseeing licensee programming decisions because of First Amendment concerns. See, e.g., *Applications of Mortenson Broad. Co. of Texas, Inc. (Assignor) & iHM Licenses, LLC (Assignee), et al*, Memorandum Opinion and Order, 37 FCC Rcd 5935, 5938-39 ¶ 8 (2021) (“The Commission’s role in overseeing program content is very limited. . . . [T]he Commission issued a Policy Statement in 1976 that concluded the review of program formats was not required by the Act, would not benefit the public and would deter innovation. The Supreme Court of the United States has upheld this policy[.]”).

³⁷ See 47 CFR § 76.65(a).

³⁸ See *Tribune Media Company and Nexstar Media Group, Inc., et al.*, MB Dkt. No. 19-30, Memorandum Opinion and Order, 34 FCC Rcd 8436 ¶ 29 (2019) (“*Nexstar/Tribune Order*”) (“. . . [W]e do not believe that an increase in retransmission consent rates, by itself, is necessarily a public interest harm.”); *J. Stewart Bryan III and Media General Commc’ns Holdings, LLC (Transferor), S’holders of New Young Broad. Holding Co., Inc., and its Subsidiaries (Transferor), and Post-Merger S’holders of Media General, Inc. (Transferee)*, Memorandum Opinion and Order, 28 FCC Rcd. 15509, 15518, ¶ 20 (2013) (finding that claim by DISH that grant of the merger may result in higher retransmission fees is “speculative” and “improper in the context of this adjudicatory proceeding”); cf. 138 Cong. Rec. H8649-05 (daily ed. Sept. 17, 1992) (statement of Rep. Markey) (“If they have to . . . pay some of these other channels a little less in order to get revenues over to Channel 4, 5, 7, and 9 so that the local children’s programming, the local news and public affairs programming that the rest of us watch on free television is there, fine.”).

back door inquiry into parties' private contractual negotiations, even when those negotiations are ongoing.³⁹ It would be entirely inappropriate for the Commission to take adverse action on the Application or impose prophylactic conditions based on hypothetical characterizations of future negotiations.

Yet, NCTA maintains that the Proposed Transaction “as currently structured will result in substantial increases in retransmission consent rates that are not merely the result of a properly functioning marketplace.”⁴⁰ As noted above, however, there is nothing “unique” about the proposed sale of WADL.⁴¹ This is a simple asset sale. That the proposed buyer would delegate retransmission consent negotiation authority to a third party upon closing *in accordance with Commission rules* is hardly exceptional.⁴²

At their core, the Objectors' complaints that the Proposed Transaction will interfere with a “properly functioning competitive marketplace” are nothing more than an attempt to ensure that their constituents never pay a penny for retransmission of WADL. This underlying motive is painfully evident from NCTA's objection, which opens by crying that the sale would “effectively compel[] carriage of WADL, *currently a must-carry station*,”⁴³ and later bemoaning that “Detroit-area MVPDs would have no choice but to start paying

³⁹ See S. Rep. No. 92, 102d Cong., 1st Sess. 35-36 (1991) (“It is the Committee's intention to establish a marketplace for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to dictate the outcome of the ensuing marketplace negotiations”); see also *In the Matter of Implementation of the Satellite Home Viewer Improvement Act of 1999*, Report and Order, 15 FCC Rcd 5445 ¶ 23 (2000) (“Congress clearly did not intend the Commission to sit in judgement of every retransmission consent agreement executed between a broadcaster and an MVPD.”).

⁴⁰ NCTA Objection at 1.

⁴¹ See *id.* at 6.

⁴² See *supra* n. 17 and accompanying text.

⁴³ NCTA Objection at 1 (emphasis added).

substantial new fees for programming they have previously received without charge.”⁴⁴ NCTA conveniently ignores the fact that every commercial television station in the country has a legal right every three years to change a prior must-carry election to retransmission consent.⁴⁵ It seems that in NCTA’s view, WADL should be forever frozen as a must-carry station. Thus, the Objectors themselves are seeking action that would interfere with the proper functioning of a competitive retransmission consent marketplace.

Moreover, the Objectors’ attempts to shout “retransmission consent fee manipulation” with respect to this transaction ring hollow.⁴⁶ Essentially, the Objectors’ allegations boil down to the absurd contention that a television station owner such as Adell, looking to exit the business, may not sell WADL to a buyer which may be capable of charging higher (or in this case *some*) retransmission consent fees for the Station. For instance, ATVA’s protest that allowing Nexstar to negotiate retransmission consent for WADL will cause harm because Nexstar also owns stations affiliated with ABC, CBS, NBC, and FOX⁴⁷ is senseless. As ATVA later acknowledges,⁴⁸ Mission also owns stations affiliated with those same networks. For that matter, so do other television group owners who are the most logical buyers of single stations.

Further, to the extent the Objectors speculate that Nexstar may claim that WADL falls under its existing retransmission consent agreements as an “after acquired” station,⁴⁹ Mission is not privy to the precise terms of those agreements. Inasmuch as the Objectors

⁴⁴ *Id.* at 3.

⁴⁵ 47 CFR § 76.64(f).

⁴⁶ NCTA Objection at 8.

⁴⁷ ATVA Comments at 6.

⁴⁸ *See id.* at 8-9.

⁴⁹ NCTA Objection at 1, 3, 6-7; *see also* ATVA Comments at 6.

are seeking to have the Commission nullify the application of contractual terms to which the Objectors' member companies expressly agreed, NCTA and ATVA are seeking a remedy that the FCC has rightly refused to grant and in essence are inappropriately using this proceeding as a forum to advocate for modification of the FCC's retransmission consent rules, which generally permit enforcement of such clauses.⁵⁰

NCTA also mischaracterizes precedent by claiming the FCC “has previously found” that “this type of retransmission consent fee manipulation” (*i.e.*, Nexstar's negotiation of retransmission consent for WADL) would “result in public interest harms.”⁵¹ NCTA cites the *Nexstar/Tribune Order* as a “previous finding,” but that decision did not involve a delegation of retransmission consent authority. Moreover, the Commission expressly rejected MVPD claims similar to the ones that the Objectors advance here. The *Nexstar/Tribune Order* did not find an absence of “competitive marketplace considerations.” In fact, the Commission arrived at the opposite conclusion:

“[T]o the extent that rates rise over time pursuant to a functioning retransmission consent marketplace, rather than as a product of market power, it is difficult to see how the public interest is harmed. And here, DISH fails to demonstrate that Nexstar would have market power following the transaction, such that it would be able to obtain anything other than competitive rates.”⁵²

The same would be true in any future retransmission consent negotiation for WADL, regardless of the negotiator for the Station. A delegation of negotiation authority that

⁵⁰ See *Nexstar/Tribune Order* ¶ 59 (after-acquired station clauses “were negotiated by the parties outside of [the transaction under review], and there is no apparent reason to step in and deny one party the benefit of the negotiated bargain absent evidence of anticompetitive practices or other wrongdoing . . .”).

⁵¹ See NCTA Objection at 8.

⁵² *Nexstar/Tribune Order* ¶ 29.

complies with Commission rules is neither “anticompetitive” nor “manipulation,” notwithstanding the Objectors’ shrill cries to the contrary.

In short, the Objectors’ motivations are all too transparent. Their contention, in a nutshell, is that any television industry transaction that might conceivably result in higher retransmission consent fees must *per se* amount to anticompetitive “fee manipulation” entitling their constituents to regulatory relief. This is absurd, not to mention inconsistent with current FCC rules.⁵³ Under the Objectors’ theory, a historic must-carry station such as WADL must forever remain so, never seeking to realize the value of its programming through a retransmission consent election. Under this nonsensical theory, a station would have little incentive to enhance its programming, such as by incorporating local news or higher-quality network programming, because it could not avail itself of retransmission consent revenues to invest in more expensive programming with obvious value to viewers. Nor could a single-station broadcaster like Adell seeking to exit the business realize a return by selling to a group broadcaster who might feel it appropriate to seek payment for carriage of the Station. In this context, the public interest would be disserved by a decision that does nothing more than preserve the profits of MVPDs. The specious objections raised by the Objectors serve only to demonstrate the MVPD community’s myopic focus on their own bottom line and their desire to alter the playing field in their favor.

III. CONCLUSION

As demonstrated above, the Objectors have advanced no colorable ground for the Commission to delay or refuse action on the Proposed Transaction. Nor is there any basis

⁵³ Here again, to the extent that the Objectors are seeking changes to the FCC’s existing rules, such requests have no place in this proceeding but, rather, should be raised through the rulemaking process. *See supra* n. 16.

for the “prophylactic” conditions that NCTA urges the Commission to impose.⁵⁴ NCTA’s suggested prohibition on a delegation of retransmission consent authority is nothing more than an inappropriate request that the Commission modify its rules in the context of an adjudicatory proceeding. Further, the Objectors’ calls for “[s]afeguards” with respect to agreements between Mission and Nexstar and “[r]obust and transparent reporting obligations to ensure compliance with these conditions” lack specificity and at bottom are utterly misplaced because the Proposed Transaction and its underlying agreements fully comply with FCC rules and precedent.

For all of the foregoing reasons, the Objections should be denied and the Application promptly granted.

Respectfully submitted,

MISSION BROADCASTING, INC.

Dated: July 6, 2023

By: /s/ Gregory L. Masters /s/
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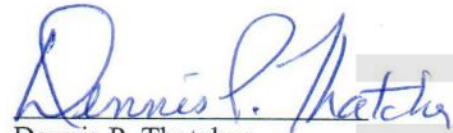
⁵⁴ See NCTA Objection at 12-13.

DECLARATION OF DENNIS P. THATCHER

I, Dennis P. Thatcher, hereby state to the best of my ability, knowledge and belief as follows:

- 1.) I am President of Mission Broadcasting, Inc.
- 2.) I have read the foregoing "Consolidated Response to Objections." I declare under penalty of perjury that the facts contained therein are true and correct.

Date: July 6, 2023


Dennis P. Thatcher



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CERTIFICATE OF SERVICE

I, Kathryn Dickerson, do hereby certify that I have on this 6th day of July 2023, caused a copy of the foregoing “Consolidated Response to Objections” to be served by first class United States mail, postage prepaid, upon the following:

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Radhika Bhat
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/s/ Kathryn Dickerson /s/



**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Application to Assign Station WADL(DT))
from Adell Broadcasting Corporation to)
Mission Broadcasting, Inc.)

LMS File No. 0000214896



**CONSOLIDATED RESPONSE OF
ADELL BROADCASTING CORPORATION TO
INFORMAL OBJECTION OF NCTA AND
COMMENTS OF THE AMERICAN TELEVISION ALLIANCE**

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Application to Assign Station WADL(TV))
from Adell Broadcasting Corporation to)
Mission Broadcasting, Inc.)

LMS File No. 0000214896

**CONSOLIDATED RESPONSE OF
ADELL BROADCASTING CORPORATION TO
INFORMAL OBJECTION OF NCTA AND
COMMENTS OF THE AMERICAN TELEVISION ALLIANCE**

Adell Broadcasting Corporation (“Adell Broadcasting”), through its undersigned counsel, hereby responds to the Informal Objection filed by the NCTA - The Internet & Television Association (“NCTA”)¹ and the Comments filed by the American Television Alliance (“ATVA”)² against the above-captioned assignment application (the “Application”), which Application requests the Commission’s consent to assign full-power television broadcast station WADL(DT), Mount Clemens, Michigan (“WADL”) from Adell Broadcasting to Mission Broadcasting, Inc. (“Mission”).³

I. INTRODUCTION

Adell Broadcasting is a small, family-owned company that has been in the broadcasting business for over three decades. The transaction proposed in the Application is very important to

¹ Informal Objection of NCTA – The Internet & Television Association (filed Feb. 24, 2022) (“NCTA Informal Objection”).

² Comments of the American Television Alliance (filed June 20, 2023) (“ATVA Comments”).

³ See Application to Assign Station WADL(DT) from Adell Broadcasting Corporation to Mission Broadcasting, Inc., FCC LMS File No. 0000214896 (filed May 17, 2023).

the Adell family and Adell Broadcasting's other shareholders, and would culminate in the realization of a long-awaited return on the many years of investment of resources and sweat equity made in Adell Broadcasting's standalone television station WADL.

NCTA's and ATVA's filings contain nothing more than baseless claims and regurgitated arguments, all made in an attempt to have the Commission depart from precedent and change its rules and policies regarding retransmission consent. Regardless of NCTA's and ATVA's policy objectives, the Application is not the proper forum to seek changes to the Commission's rules and policies. And, as such, NCTA's Informal Objection and ATVA's Comments serve only to impede the consummation of this transaction in an attempt to deprive a life-long broadcaster from reaping the rewards of having built a successful local television station.

Adell Broadcasting urges the Commission to promptly reject NCTA's Informal Objection and ATVA's Comments, and grant the Application without conditions.

II. THE PROPOSED TRANSACTION IS THE CULMINATION OF YEARS OF WORK AND INVESTMENT BY THE ADELL FAMILY AND ADELL BROADCASTING'S SHAREHOLDERS

Adell Broadcasting has been the FCC licensee of television station WADL from the very beginning of the station. Franklin Z. Adell formed Adell Broadcasting and secured WADL's original construction permit in 1985. He and his son Kevin Adell, who is the current CEO of Adell Broadcasting, built WADL from the ground up. WADL commenced operations and went on the air in 1989. As described by Kevin Adell, "I started this journey 34 years ago at my parents'

kitchen table, where I mortgaged their home in order to build what would later become WADL-TV.”⁴

Since Adell Broadcasting’s launch of WADL in 1989, the Adell family has continued to significantly invest in the station’s facilities and programming, all in service to WADL’s community of license and the broader Detroit area. Throughout the years, and largely as an independent station unaffiliated with a major network, Adell Broadcasting has invested in and delivered quality programming, including locally-produced public interest affairs programming such as “Real Talk with Reverend Sheffield” and “Sunday Nation with Bankole Thompson,” as well as hosting political debates and other forums for community discussion.

Franklin Z. Adell died in 2006, and Kevin Adell continues to lead Adell Broadcasting as its Chief Executive Officer and majority shareholder. In addition to Kevin Adell, Adell Broadcasting shareholders include family friends and former employees of WADL. As noted in Adell Broadcasting’s ownership reports, these shareholders include African Americans and Asians and their family beneficiaries, who in some cases received stock in Adell Broadcasting as part of their employee compensation, and in other cases invested their own money and credit facilities to help build WADL. It is not just the Adell family, but also these minority shareholders, who will be harmed if Adell Broadcasting is unable to complete this rule-compliant transaction.

While bittersweet, it is time for Adell Broadcasting to sell WADL. The media landscape has changed over the years. Now, more than ever, it is difficult to operate as a single-station television broadcaster. WADL is ranked seventh in the market in revenue and audience share. Adell Broadcasting has done the best it can; however, it has struggled to compete for programming

⁴ Mission Broadcasting, Inc., *Mission Broadcasting To Acquire WADL-TV Detroit From Adell Broadcasting* (May 18, 2023), <https://missionbroadcastinginc.com/2023/05/18/mission-broadcasting-to-acquire-wadl-tv-detroit-from-adell-broadcasting/>.

and viewers against other broadcast stations in Detroit, including television stations affiliated with the “Big 4” networks ABC, CBS, NBC, and FOX, and the myriad of new media platforms in the ever-changing television industry. The decision to sell has been challenging and emotional, but the Adell family and Adell Broadcasting’s shareholders are confident that Mission is well-suited to carry forward WADL and serve the station’s community and the broader Detroit area.

III. NCTA’S AND ATVA’S FILINGS ADVANCE CLAIMS THAT ARE INCONSISTENT WITH PRECEDENT, HAVE NO FACTUAL SUPPORT, AND ATTEMPT TO CHANGE COMMISSION RULES AND POLICY WITHOUT USING THE PROPER PROCEDURES AND FORUMS

Unfortunately, NCTA and ATVA have decided to use Adell Broadcasting as a pawn in their policy wars and threaten to roadblock this transaction. As almost on cue, the NCTA’s Informal Objection and ATVA’s Comments attack Mission and Nexstar Media Group, Inc., and claim, with mere speculation and without any factual support, that Adell Broadcasting’s sale of WADL to Mission would result in an increase of retransmission consent fees. As explained in detail in Mission’s response to NCTA’s and ATVA’s filings:

- The proposed transaction complies with all applicable Commission rules and longstanding Commission precedent;
- NCTA and ATVA provide no factual basis to support claims that retransmission consent fees would actually increase, and as such, NCTA’s and ATVA’s assertions are merely self-serving and speculative; and
- The fact that Adell Broadcasting has historically elected “must carry” status for WADL should not now be used as an encumbrance on Adell Broadcasting’s ability to sell WADL.

As the proposed transaction is consistent with longstanding rules and precedent, NCTA’s and ATVA’s filings are merely veiled attempts to circumvent the formal rulemaking process and

have the Commission adopt new rules and policies governing retransmission consent by placing unprecedented conditions on the transaction. The Commission should not allow NCTA and ATVA to use Adell Broadcasting and this transaction as a sounding board to try to advance their policy objectives. While Adell Broadcasting may not agree with NCTA's and ATVA's views and positions, there are more appropriate forums if NCTA and ATVA desire to seek changes to the Commission's rules and policies—including filing a petition for rulemaking and engaging with Congress. It is entirely inappropriate to impose new “rules” and “policies” in the context of a standalone television station transaction, and Adell Broadcasting should not be collateral damage from NCTA's and ATVA's improper tactics and improper use of Commission processes.

IV. NCTA'S AND ATVA'S IMPROPER ATTEMPTS TO DELAY AND IMPAIR THE TRANSACTION ARE CONTRARY TO THE PUBLIC INTEREST

Time is of the essence. As indicated in the Asset Purchase Agreement included in the Application, either party can terminate the transaction if the closing is not consummated on or before September 30, 2023.

If NCTA and ATVA are “successful” in their improper procedural attempts to derail this transaction, that would come not only at the expense of the Adell family and Adell Broadcasting's minority shareholders, but at the expense of the entire broadcast industry. This would immediately result in more regulatory approval uncertainty in the broadcast television transaction marketplace. How can parties considering broadcast television transactions be assured that applications that comply with Commission rules and precedent, like the Application, will not similarly be held up and delayed by organizations like NCTA and ATVA who are willing to sacrifice small, family-owned broadcasters like Adell Broadcasting while seeking to advance their policy objectives?

By playing into the hands of policy advocacy groups and delaying or conditioning the grant of the Application, the Commission would send the message to prospective investors in

broadcast television, including women and minorities, that even if potential buyers play by the rules, there are no regulatory assurances that transitions will be approved. And of course, if there are no such assurances, there is even less possibility a broadcast owner can realize a profitable exit plan, which would further stifle investment and innovation in broadcasting and impact service to the public in the ever-changing media landscape. All of this is ultimately to the public's harm and contrary to the public interest.

V. CONCLUSION

The Adell family and Adell Broadcasting's shareholders should not be deprived from realizing the benefits from all the hard work and investments they have poured into WADL over the years simply because NCTA and ATVA wish to exploit WADL and the Application, which is in compliance with the Commission's rules and precedent, to achieve NCTA's and ATVA's policy goals. And the broadcast industry and public should not be harmed by allowing NCTA and ATVA to interfere with this transaction and cause further regulatory uncertainty in the broadcast transaction marketplace.

* * * * *

For the foregoing reasons, Adell Broadcasting urges the Commission to expeditiously reject NCTA's Informal Objection, dismiss ATVA's Comments, and promptly grant the Application without conditions.

Respectfully submitted,

/s/ Coe W. Ramsey

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Counsel for Adell Broadcasting Corporation

July 6, 2023



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DECLARATION OF KEVIN ADELL

Kevin Adell hereby states as follows:

1. I am more than 18 years old and am under no disability. I have personal knowledge of the matters set forth in this Declaration, and I am competent to testify to them.
2. I am the Chief Executive Officer of Adell Broadcasting Corporation.
3. I have reviewed the foregoing Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of The American Television Alliance, and I certify under penalty of perjury under the laws of the United States of America that the facts set forth therein are true, complete, and correct to the best of my personal knowledge, and, as to facts and matters not within my personal knowledge, I certify under penalty of perjury under the laws of the United States of America that I believe them to be true.
4. I certify under penalty of perjury that the foregoing is true and correct.

Executed on July 6, 2023.


Kevin Adell



AdellDesk.net

Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that she has caused a copy of the foregoing Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of The American Television Alliance to be served by email and/or placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

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This the 6th day of July, 2023.

/s/ Sekoia Rogers Diggs
Sekoia Rogers Diggs



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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

Consent to Assign the Authorization of
Television Station WADL from Adell
Broadcasting Corporation to Mission
Broadcasting, Inc.

LMS File No. 0000214896



REPLY COMMENTS OF THE AMERICAN TELEVISION ALLIANCE

The American Television Alliance (“ATVA”) hereby submits this brief reply to issues raised in oppositions to ATVA’s initial comments.¹ This proceeding involves an application to assign the license of WADL, a television station in the Detroit Designated Market Area (“DMA”), from Adell Broadcasting Corporation (“Adell”) to Mission Broadcasting, Inc. (“Mission”). Nexstar Broadcast Group (“Nexstar”) proposes to both guarantee financing for the transaction and assume significant financial and operational responsibility for the station.

In our initial comments, we argued that Nexstar, not Mission, is plainly the real party in interest here. Nexstar cannot own WADL itself, as doing so would place Nexstar above the national ownership cap. Yet Nexstar proposes to guarantee transaction financing, to negotiate retransmission consent for the station (at inflated rates, bundled with its own stations), to sell all of the station’s advertising, and to at least “assist” Mission with every aspect of the station’s

¹ Consolidated Response to Objections of Mission Broadcasting, Inc. (filed July 5, 2023) (“Mission Response”); Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of the American Television Alliance (filed July 5, 2023) (“Adell Response”) Opposition of the National Association of Broadcasters to Informal Objection of NTCA (filed July 6, 2023) (“NAB Opposition”). Each of these was filed in LMS File No. 0000214896.

operations. Nexstar already reports Mission's stations as its own on its website. It consolidates financial results of Mission's stations as its own in its SEC reports. Any one or two of these things might be sufficient to raise real party in interest questions. All of them together leave little doubt that Nexstar, not Mission, will control WADL. In response, Applicants and NAB raise three issues, which we address briefly below.

First, Applicants and NAB each suggest that we seek changes to the FCC's rules and policies, which can only occur through notice-and-comment rulemaking.² Not so. We argued that the specific facts of this proposed transaction would grant Nexstar *de facto* control of WADL because it would permit Nexstar to exercise control of policies related to finances, personnel and programming. This has been the governing standard for decades.³ For even longer, the Commission has stated that such an analysis "involves an issue of fact which must be resolved by the special circumstances presented."⁴ We have not asked the Commission to do anything out of the ordinary here.

Second, Mission argues that "[e]ach and every one of [the] components of the Proposed Transaction is permissible under the FCC's longstanding rules, policy and precedent."⁵ Yet the question here is not whether each "component" of Nexstar's arrangements with Mission is

² E.g., Mission Response at 3 (Comments are advocacy for regulatory changes that favor only [ATVA's] constituents"); Adell Response at 2 (Comments are an "attempt to have the Commission depart from precedent and change its rules and policies regarding retransmission consent") NAB Objection at 1 (NCTA information objection an attempt to "use [this] proceeding[] as an end-run around the notice-and-comment rulemaking process.").

³ E.g., *Southwest Texas Pub. Broad. Council*, 85 F.C.C.2d 713, 715 (1981) ("Generally, the principal indicia of control examined to determine whether an unauthorized transfer of control has occurred are control of policies regarding (a) the finances of the station, (b) personnel matters and (c) programming.")

⁴ E.g., *Stereo Broadcasters, Inc.*, 55 F.C.C.2d 819, 821 (1975).

⁵ Mission Response at 5.

permissible. It is whether the totality of the components—including agreements and behavior—would grant Nexstar *de facto* control over WADL. Here, even if the individual JSAs, SSAs, and financing arrangements were permissible, all of them together would not be, especially when combined with Nexstar’s record of behavior with respect to Mission.⁶

Third, NAB argues here, as it did with respect to Standard General and TEGNA, that the Commission lacks authority to consider retransmission consent in the merger context.⁷ That is incorrect. The Commission may properly consider potential anticompetitive retail price increases in its public interest review. In *FCC v. National Citizens Committee for Broadcasting*, for example, the Supreme Court said that the Commission “is permitted to take antitrust policies into account in making licensing decisions pursuant to the public- interest standard.”⁸ Those policies include whether a “merger or other acquisition” may “create an appreciable danger of [higher prices] in the future.”⁹

Indeed, this sort of analysis is not merely *permissible*; it may well be *required*. In reviewing the Federal Energy Regulatory Commission’s (“FERC”) application of the essentially identical “public convenience and necessity” standard under Section 7 of the Natural Gas Act—where “antitrust concepts are [as here] intimately involved in a determination of what action is in the public interest”¹⁰—the DC Circuit found that FERC’s failure to consider the potential for

⁶ See, e.g., Informal Complaint of DIRECTV, LLC (filed June 29, 2023); Petition for Declaratory Ruling of Comcast Corp., MB Docket No. 21-__ (filed July 1, 2021); Amy Maclean, *Charter Joins Comcast, Argues Nexstar Violated FCC Cap*, Cablefax (Apr. 18, 2022), <https://www.cablefax.com/regulation/complaint-dept-charter-joins-comcast-argues-nexstar-violated-fcc-cap>.

⁷ NAB Opposition at 8.

⁸ 436 U.S. 775, 795 (1978).

⁹ *Hosp. Corp. of Am. v. FTC*, 807 F.2d 1381, 1389 (7th Cir. 1986).

¹⁰ *Md. People’s Couns. v. FERC*, 761 F.2d 780, 786 (D.C. Cir. 1985)

higher prices for some consumers under the challenged order was unreasonable and required remand.¹¹

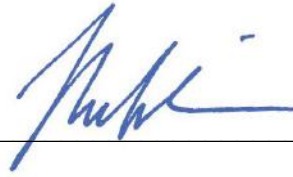
For decades, the Commission has interpreted its public interest review under Section 309 to include protecting consumers from anticompetitive, transaction- related retail price increases. For example, in the *Comcast/Time Warner* order, the Commission imposed remedial conditions because “we find that the transactions . . . ultimately could increase retail prices for consumers . . .”¹² Similarly, in the *XM/Sirius* order, the Commission found that voluntary commitments and other conditions were necessary in part because otherwise the applicants there “would have the incentive and ability to raise prices for an extended period of time.”¹³ These Commission determinations went unchallenged in the courts, and were not even subject to reconsideration at the Commission on the issue relevant here. There is no “retransmission consent” exception to this straightforward application of the Commission’s merger review authority, and nothing in Section 325 of the Act suggests otherwise. NAB thus has the law backward: It is not unlawful to consider potential consumer price increases in merger review; it might be arbitrary and capricious to decline to do so.

¹¹ *Id.* at 786-89; see also *FTC v. Whole Foods Mkt., Inc.*, 548 F.3d 1028, 1037 (D.C. Cir. 2008) (remanding for further analysis of possible price increases for “targeted buyers” as a result of the proposed merger)

¹² *Adelphia Commc'ns Corp., Time Warner Cable Inc., and Comcast Corp.*, 21 FCC Rcd. 8203, ¶ 116 (2006).

¹³ *XM Satellite Radio Holdings and Sirius Satellite Radio Inc.* 23 FCC Rcd. 12,348, ¶ 6 (2008).

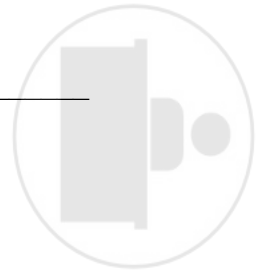
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July 27, 2023



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CERTIFICATE OF SERVICE

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Applications of Adell Broadcasting Corp.)
and Mission Broadcasting, Inc. for Consent) Application File No. 0000214896
to Assignment of the License of)
WADL(TV), Facility ID Number 455)
)

REPLY COMMENTS OF

NCTA – THE INTERNET & TELEVISION ASSOCIATION

NCTA – The Internet & Television Association files these reply comments in response to claims made by Applicants, Adell Broadcasting Corp. (“Adell”) and Mission Broadcasting, Inc. (“Mission”), and the National Association of Broadcasters (“NAB”) in this proceeding.

Contrary to arguments made by one of the Applicants, this is not a “straightforward,” “simple two-party, single-step” transaction.¹ While it involves the sale of only one station, Mission’s response ignores the central role that third-party Nexstar plays in the assignment application and the complex web of proposed arrangements for the management and operation of the station. As we demonstrated in our Informal Objection,² Nexstar’s role in this transaction will result in substantial increases in retransmission consent rates that are not merely the result of a properly functioning competitive marketplace, thereby harming the public interest.

¹ Consolidated Response to Objections of Mission Broadcasting, Inc., File No. 0000214896, at 3, 4 (July 6, 2023) (*Mission Response*).

² Informal Objection of NCTA – The Internet & Television Association, File No. 0000214896 (June 20, 2023) (*NCTA Informal Objection*).

Under a truly “simple two-party, single-step” transaction, the right to elect and negotiate for future retransmission consent fees would go from Adell (the seller) to Mission (the buyer). MVPDs would then carry WADL under the terms of a retransmission consent agreement with Mission, if Mission elected retransmission consent. Here, in contrast, by delegating its retransmission consent negotiating authority to third-party Nexstar, Mission has instead consigned MVPDs to paying much higher retransmission consent fees for WADL *under their agreements with Nexstar*, not the agreement with the actual owner of the station, Mission. By engineering these sidecar arrangements to extract artificially higher retransmission consent rates for the station, the Applicants introduce a public interest harm that the Commission has previously recognized and that will ultimately be borne by Detroit-area consumers. If the parties wish the Commission to treat this as a “simple two-party, single-step” transaction, then they should have no concerns agreeing to NCTA’s proposed condition that Mission *itself* negotiate retransmission consent for WADL without any involvement or interference by Nexstar.³

Contrary to assertions by the Applicants and NAB,⁴ the harms that NCTA describes in its Informal Objection are not speculative. The entire transaction is structured to generate Nexstar-level retransmission consent fees for WADL, a must carry station that currently generates *zero* retrans fees. NAB goes so far as to challenge the basic premise that the terms of the Mission-Nexstar sidecar agreement “will result in MVPDs potentially carrying WADL

³ *Id.* at 12.

⁴ *See, e.g., Mission Response* at 11, 14-15; Consolidated Response of Adell Broadcasting Corporation to Informal Objection of NCTA and Comments of the American Television Alliance, File No. 0000214896, at 4 (July 6, 2023); Opposition of the National Association of Broadcasters to Informal Objection of NCTA, File No. 0000214896, at 4 (July 7, 2023) (*NAB Opposition*).

pursuant to retransmission consent.”⁵ But that objective is apparent from the Application. Mission and Nexstar plainly contemplate seeking retransmission consent for WADL; otherwise, Mission would not have “delegated” retransmission consent negotiation authority to Nexstar. Indeed, Nexstar’s 10-K states that “[t]he Company has elected to exercise retransmission consent rights for all of its stations where it has legal rights to do so.”⁶ The whole point of delegating retransmission consent negotiating authority to Nexstar is so that it can leverage its massive national footprint⁷ to extract non-market rates for WADL, a station that the Commission’s media ownership rules prevent Nexstar from owning outright. This is exactly what Nexstar and Mission did with WPIX.⁸

Further, the structure of this transaction is similar to the fact pattern that led the Media Bureau to designate the Standard General/TEGNA applications for a formal hearing. There, the Media Bureau expressed concern that the parties “structured the entire transaction around . . . clauses” that “would increase prices without negotiating for such increases, and effectively lead to the application of the [third-party] retransmission consent agreements” to the acquired station.⁹ As the Bureau observed, “Commission precedent . . . allows for a finding of harm

⁵ *NAB Opposition* at 4.

⁶ Nexstar 2022 10-K, at 17, <https://www.sec.gov/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm>.

⁷ Bringing WADL under Nexstar’s retransmission consent umbrella also means that the failure to reach an agreement could trigger a blackout of all Nexstar stations. As reported when Nexstar pulled its stations from DIRECTV, “the blacked-out station count rises to over 200 once outlets owned by groups Mission Broadcasting and White Knight Broadcasting, but operated by Nexstar, are factored into the kerfuffle.” Daniel Frankel, *Hot Blackout Action! DirecTV and Nexstar Wage Huge Broadcast Retrans Battle ... in the Middle of Summer When Fewer People Are Watching*, Next TV (July 2, 2023), <https://www.nexttv.com/news/hot-blackout-action-directv-and-nexstar-wage-huge-broadcast-retrans-battle-in-the-middle-of-summer-when-fewer-people-are-watching>.

⁸ See *NCTA Informal Objection* at 7 & n.30.

⁹ *Applications of SGCI Holdings III LLC; TEGNA, Inc.; and CMG Media Corporation*, MB Docket No. 22-162, Hearing Designation Order, DA 23-149, ¶ 26 (MB Feb. 24, 2023) (*TEGNA HDO*).

where the parties have artificially constructed a deal intending to raise retransmission fees.”¹⁰

That is likewise the case here.

It is no surprise, then, that the Applicants have made no attempt to demonstrate how these arrangements with Nexstar would serve the public interest. Imposing above-market retransmission consent fees for WADL will plainly harm Detroit-area consumers. These un rebutted harms justify the pro-consumer conditions proposed by NCTA.¹¹ In addition to adopting these conditions, we encourage the Commission to act on the pending complaints relating to WPIX.¹² These actions would provide much-needed relief to the many consumers who bear the ultimate burden of sidecar arrangements designed to extract rate increases that “are not simply the product of a properly functioning competitive marketplace.”¹³

¹⁰ *TEGNA HDO* ¶ 26. As Chairwoman Rosenworcel recently affirmed, “the Commission clearly established [the potential for increased retransmission consent rates] as a proper consideration under the Commission’s public interest review.” See Letter from Hon. Jessica Rosenworcel to Hon. Cathy McMorris-Rodgers and Hon. Ted Cruz, at 4 (July 12, 2023).

¹¹ See *NCTA Informal Objection* at 12-13.

¹² See *id.* at n.30.

¹³ *TEGNA HDO* ¶ 24; see *id.* ¶ 21 (“The Commission has recognized . . . that supra-competitive increases in retransmission consent fees can result in pressure for retail price increases for subscription video services to the detriment of consumers, and therefore, the public interest.”). Mission’s argument that the WPIX complaints and DIRECTV antitrust litigation against Nexstar, Mission, and fellow Nexstar sidecar White Knight Broadcasting, Inc. “have no relevance” to this transaction ignores the obvious pattern these various proceedings demonstrate involving Nexstar’s use of sidecar arrangements to generate non-market-based retransmission consent fees. *Mission Response* at 10.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Radhika Bhat, certify that on this 1st day of August 2023, I caused true and correct copies of the foregoing Reply Comments to be served by electronic mail on the following:

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