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WHAT THE INDUSTRY READS FIRST

Another Round: Broadcasters Fight Back Against Good Faith Forfeitures

The broadcast stations charged with violating the **FCC's** good faith standards by refusing to negotiate retrans consent with **DirectTV** are fighting back against the Commission's decision [one more time](#).

In a petition for reconsideration filed with the FCC late last week, **Deerfield Media, GoCom Media, Mercury Broadcasting, MPS Media, Nashville License Holdings, KMTR Television, Second Generation of Iowa** and **Waitt Broadcasting** claim there are a number of issues with the Commission's forfeiture order that imposed a per-station penalty of \$512,228 against 17 of the stations in violation of the agency's policies. Mercury Broadcasting's proposed forfeiture was dropped to \$30,000 after it demonstrated its inability to pay the full amount.

Last month, the FCC upheld its decision to impose those forfeiture amounts, which were first proposed in September 2020. After the initial proposal, the broadcast stations filed a response claiming the forfeitures should be dropped entirely or reduced to \$25,000 per station. The agency stood its ground, ruling that the stations willfully and repeatedly violated Commission rules by unreasonably delaying retrans consent negotiations with **AT&T** and failing to respond to proposals sent by AT&T.

The petitioners argued the agency's actions were in direct conflict with their right to due process under the Fifth Amendment. They hold that the Commission has long allowed the

joint negotiation of retransmission, and this is the first time the agency has required that those negotiations must include individual responses from each involved party on individual proposals.

"That newly announced standard effectively permits the counterparty to refuse joint negotiation whenever it chooses by persisting with individual proposals, which then must be responded to individually—effectively nullifying joint negotiation, which the Commission supposedly still permits," the petitioners said.

They continued on to say that the FCC's interpretation of its good faith rules in this case is by no means the obvious interpretation of the regulations, and there were no previous Commission decisions addressing sequenced joint negotiation leading up to this point. If anything, they claim that the forfeiture order is at odds with the agency's precedent that says that it will not intrude in retrans consent negotiations.

"In short, there was not a single prior statement by the Commission that fairly notified Defendants that, when they embarked early in 2019 on what they reasonably expected to be a repeat of their 2016 staggered, template-based approach to joint negotiation, they needed instead to comply from the outset with AT&T's unilateral demand for individual responses," the petitioners said.

The broadcasters also claimed they were not given adequate warning of the magnitude of the punishment dished out by the FCC. This is the first time the Commission has imposed a penalty since the retransmission consent good faith nego-

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tiation rules were established, and it moved to impose the statutory maximum. The petitioners said the only other time the Commission had found a good faith negotiation violation, it ordered the violating party to resume talks.

“Defendants could not have reasonably understood that they would be subject to a massive forfeiture for jointly negotiating using a sequenced, template-based approach—conduct that the Commission had never addressed in any statement, and which mirrored the parties’ prior successful negotiations—simply because a separate entity paid a large penalty related to an entirely different, and very clear rule,” the petitioners said.

INDEPENDENT SHOW GOING VIRTUAL

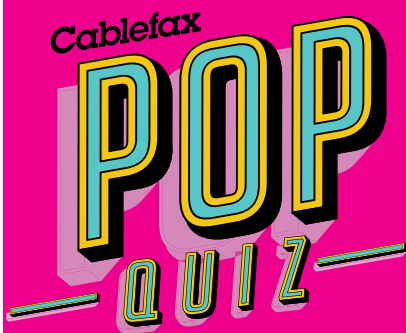
Another of the shows planning to return to an in-person presentation has been forced back into a virtual environment. **NCTC** and **ACA Connect’s Independent Show** was to be held Oct 4-6 in Minneapolis, but has now decided to nix those plans and put on a digital program. “We were looking forward to a great in-person Independent Show, but it’s not a surprise that COVID has been a moving target,” the organization said in an email to attendees. “The teams at ACA Connects and NCTC have determined the responsible thing to do is convert this year’s conference to a virtual experience for our attendees’ safety.” The virtual event will take place on the same dates as those set for the in-person conference. Those who were registered for the in-person conference will see their registration automatically converted into a ticket for the virtual show. Those that paid for their registration will receive a partial refund, and NCTC and ACA Connects will accept cancellation requests for virtual registrations until Sept 15.

MORE IDA UPDATES

Time is bringing more details on the devastation caused by Hurricane Ida in Louisiana and its neighbors. All of **Cox’s** team members are safe and accounted for at this time, with many based in Louisiana forced to evacuate. Now, the focus has turned to the safety of the provider’s customers as well as assessing the damage done to its network. “Our process, which began Monday, requires visually inspecting thousands of miles of our network, and pieces of equipment below, on, or above the ground near power lines. Hundreds of personnel have arrived in our south Louisiana service area to assist in Cox restoration efforts,” a company spokesperson told **CFX**. “As of Tuesday, repair work has been completed on the fiber backbone near Donaldsonville in Baton Rouge and repairs to two critical network facilities in St Charles Parish near New Orleans continue.” **Mediacom** was one of the lucky ones, seeing minimal impacts to its networks in Mississippi and Alabama. Folks turned to their preferred news and weather networks over the weekend to track the storm and the damage it left on its wake. On Saturday, **The Weather Channel** reached over 11.8 million total viewers and ranked 2nd in delivery among cable news networks with P25-54, falling behind **Fox News**.

HENTHORN HEADING OUT

Jana Henthorn, the president/CEO of **The Cable Center**, is retiring at the end of the year. Her departure will mark the end of a 17-year journey at the nonprofit, with five of those years at the top. “Grit, determination, and hard work are the principles upon which our great industry was founded, and I believe that we have been entrusted with the responsibility to



One winner will be selected each week for a Starbucks gift card

Last week’s answer: “The Movie Masters” was AMC’s first original series, premiering in 1989.

Name the TV criminal defense attorney best known for his love of hot dogs and grey suits.

[CLICK HERE TO ANSWER](#)

inspire the next era of innovation,” Henthorn said in a statement. “I am incredibly proud of my dedicated Cable Center team of collaborators and ambassadors. We have been able to accomplish so much together due to the collective support, agility, enthusiasm, and diligence of our staff.” Before joining The Cable Center in 2004, Henthorn served as vp, affiliate sales for **A+E Television Networks**. She also spent time at **Jones Intercable** as vp, operations and service fulfillment. The Cable Center’s board has already begun the process of naming her successor. Upon her retirement, Henthorn will remain on the board as the immediate past president.

SPECTRA MERGING WITH OAK VIEW GROUP

Sports and entertainment company **Oak View Group** will merge with venue management and food services firm **Spectra**, which is principally owned by **Comcast Spectator**. Should all go according to plan, the transaction is set to be completed in the last three months of 2021. Oak View plans to eventually buy out Comcast Spectator and **Altairos’** stakes in Spectra, according to the *Philadelphia Inquirer*.

U.S. SVOD SUBS AND USAGE LEVELS OFF

The portion of households in the U.S. with an SVOD subscription to **Netflix**, **Amazon Prime** and/or **Hulu** remained stationary this year at 78%, same as 2020, according to the latest report from **Leichtman Research Group**. The percentage of households that have more than one of those three services grew to 58%, up slightly from 55% in 2020. While more than a majority of U.S. consumers surveyed have these services, only 41% of adults stream a top SVOD service daily, up slightly from 40% in 2020. When the researchers included 11 additional streaming services in the survey data, 82% of all households have at least one SVOD or DTC service and 53% have three or more. The mean number of SVOD/DTC services among all households grew to 3.1 from 2.9 in 2020. Slightly less adults are watching video on non-TV devices, down 1% to 54% from 2020.

ESPN+ TO STREAM 500+ COLLEGE FOOTBALL GAMES

ESPN+ set its largest college football streaming slate for fall 2021 with more than 500 games scheduled. Teams from FBS and FCS conferences will be featured in the lineup, which starts Thursday with Western Illinois vs Ball State at 7pm ET. This season will also be the first time ESPN+ features SEC games, which will be simulcast on **SECN+**. ESPN+ will also debut several commentary series for college football including “Eli’s Places,” “Our Time: UCF Football” and “SMU All-Access” on Sept 1, Sept 9 and Sept 2, respectively.

RATINGS

Fox News continued its streak of topping both primetime and total day ratings last week, with 3.104 million and 1.864 million total viewers, respectively. **MSNBC** took second in both categories, with 1.411 million and 792,000 total viewers, respectively. **ESPN** (1.260 million) ranked third in primetime and **CNN** (753,000) took the corresponding spot in total day ratings. **HGTV** came in fourth for both categories, with 1.152 million and 626,000 total viewers, respectively. CNN (962,000) and

ESPN (514,000) rounded out the respective categories. – **Fox Business Network** post-market program “Kudlow” closed out August with 192,000 viewers. The net’s market open program “Varney & Co.” garnered 210,000 total viewers, making it the highest-rated show on the network. All of FBN’s Business Day (9am-5pm ET) programs placed among the top 20 shows in business news viewers including “The Claman Countdown” (136,000 average total viewers,) “Cavuto: Coast to Coast” (134,000) and “Making Money with Charles Payne” (132,000).

CARRIAGE

Disney general entertainment and sports streamer **Star+** launched Tuesday in Latin America. The service includes productions created in Latin America for its viewers as well as **ESPN**, all animated comedies from **20th Television**, exclusive movie premieres and more. Latin American viewers can subscribe to Star+ as a standalone service or as part of a bundled offering alongside **Disney+** called **Combo+**.

PROGRAMMING

ESPN re-signed “SportsCenter” anchor *Elle Duncan* to a multi-year contract. Duncan joined the programmer in 2016 and co-anchors the 6pm ET edition of SportsCenter. – **AMC Networks’ IFC** and **Sundance Now** acquired exclusive U.S., Canada and U.K. premiere rights to New Zealand comedy series “Good Grief,” which they have co-commissioned for a second season. The first season of the series will make its premiere in the three countries on Sept 30 as a binge release on Sundance Now followed by a North American broadcast premiere on IFC starting Oct 4. Season 2 will start production later in 2021 and premiere in 2022. – **Disney Channel** greenlit a second season of animated comedy series “The Ghost and Molly McGee” ahead of its Season 1 premiere Oct 1 at 9:35pm ET. New episodes following the debut will drop Saturdays at 9am ET through Nov 27 on Disney Channel and episodes will be available to stream in October on **Disney+**.

HONORS

NAMIC revealed its 2021 Next Generation Leaders and Luminaries. The Next Generation Leader Awards are given to those that actively work to advance multi-ethnic diversity in the industry through education, advocacy and empowerment. This year’s recipients are **Charter** svp/chief diversity officer *Rhonda Crichlow*; **ESPN** svp/editor-at-large, ESPN content *Rob King*; **Cox** svp, law & policy *Joiava Philpott*; and **NBC** Asian America editorial director *Jessica Prois*. The Luminary Awards are meant for up-and-coming leaders, and will be given this year to ESPN vp, talent development and negotiations *Rosetta Ellis-Pillie*; Charter svp, field operations *Gregg Fujimoto*; **WarnerMedia** svp, equity and inclusion, programs *Karen Horne*; ESPN vp/editor-in chief, The Undeclared *Raina Kelley*; **AMC Networks** vp, development and production, **ALLBLK** *Nikki Love*; WarnerMedia svp, equity and inclusion, content *Samata Narra*; **Altice USA** vp, programming and brand partnerships for **News 12 Networks** *Manoj Shamdasani*; and WarnerMedia svp, equity and inclusion, workforce *MyKhanh Shelton*. The two groups will be honored Oct 6 at 1pm during NAMIC’s 35th Annual Conference.