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WHAT THE INDUSTRY READS FIRST

Retrans Rumble: Comcast Files Bad Faith Complaint Against Nexstar at FCC

Things keep getting messier between **Comcast** and **Nexstar**, with the cable operator filing a complaint at the **FCC** late Monday alleging that Nexstar and **Mission** have failed to negotiate retransmission consent in good faith. It comes as the cable operator faces the possibility of losing more than 90 Nexstar stations this weekend.

At the heart of the complaint is **WPIX**, a **CW** affiliate out of NYC owned by Mission but largely managed by Nexstar. Comcast lost WPIX on Dec. 3 because it wouldn't agree to carry the station under an agreement with Nexstar rather than through a retrans agreement with Mission. Comcast told the FCC Nexstar is threatening to withhold the signals of its owned-and-licensed stations unless Comcast agrees to carry Mission's WPIX under a new Nexstar agreement. According to the latest Nexstar statement, that deal appears to up at the end of the week, with Nexstar already running warnings to Comcast subscribers that they could lose stations in dozens of markets, including Chicago, Denver, Sacramento, CA, and Grand Rapids, MI.

"Over the past several years, defendants have flouted the Commission's ownership and attribution rules and undermined the integrity of the Commission's transactional review process. Defendants' bad-faith negotiating tactics for continued carriage of WPIX and their other stations are just the latest outrageous example of their disregard for the Commission's requirements and adjudicatory processes," Comcast told the

FCC in its heavily redacted complaint.

Nexstar said it has been negotiating with Comcast since October and wants to get a deal done. "Nexstar is simply seeking fair market rates for the live sports, local news and high-quality entertainment programming we provide to millions of viewers across the country. We have a long track record of negotiating fairly and avoiding service interruptions in our markets and we hope to reach agreement with Comcast," a spokesperson said. "We don't want the viewers in Nexstar's local markets to miss any of this weekend's World Cup, NFL football, college basketball, or any of the other valuable programming that we provide."

According to Comcast's FCC complaint, Mission, Nexstar's largest sidecar partner, sought to renew carriage of 17 of Mission's-owned-and-licensed stations but withheld any offer for WPIX during the parties' negotiations. Comcast and Mission executed a renewal agreement on Dec. 2 for 17 Mission stations (minus WPIX). "Comcast made clear that its execution of the agreement was being done under protest and with full reservation of its legal claims and rights relating to WPIX," Comcast said.

The FCC is investigating separate informal complaints filed by Comcast and **Charter** in 2021 that argue Nexstar is in violation of the 39% national broadcast ownership cap because they believe WPIX should be attributable to Nexstar given its marketing agreement with Mission. Nexstar was required to divest WPIX when it bought **Tribune** in 2019 to stay under the cap, but the cable operators argue it is effectively in control of the station. Nexstar said everything it's done with WPIX is above board and it has sued

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Charter and Comcast over millions of dollars that it says is owed in unpaid retransmission fees for the CW station. Both court cases as well as the FCC complaints are still pending. Charter's retrans deal with Nexstar is presumably up for renewal by year-end as well.

Comcast claims that Mission violated FCC rules by not making a single offer, formal or informal, that could result in carriage of its owned-and-licensed station WPIX. It believes Nexstar's refusal to engage in repeated proposals for a standstill and true up agreement or other option to put aside for the moment the legal obstacles over WPIX from continued carriage of Nexstar stations is also a violation. "Nexstar's failure to engage with these reasonable proposals from Comcast is indistinguishable from conduct the Commission has previously found to violate section," Comcast wrote "Using the Commission's words from such past precedent, Nexstar has flatly 'disregarded' and not substantively 'address[ed] in any way' Comcast's proposals for a standstill and true up or other similar alternative for WPIX."

Comcast said Nexstar's initial retrans proposal included a note suggesting WPIX might be kept separate from the proposed "clean slate" provision, but the note proved to be a "sham" when Nexstar refused to engage with Comcast's proposals.

Comcast is also alleging that Mission and Nexstar refused to put forth more than a single, unilateral proposal and both unreasonably delayed negotiations for WPIX. The operator said that it sent a counterproposal on Nov. 20 to Nexstar that the broadcaster waited 17 days to respond to, including five days after WPIX had gone dark on Comcast systems in the NY DMA. In addition to the claims of per se violations of retrans good faith negotiations, Comcast argues that the totality of

circumstances reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties.

Many FCC good faith complaints end up being dropped once the parties work out a new deal, but there are exceptions. In 2020, the Commission levied a [record fine](#) of over \$8 million against a number of stations groups managed by **Sinclair** and represented by *Duane Lammers* of **MaxRetrans**.

TRIBAL NATIONS WANT FCC CHALLENGE EXTENSION

Tribal nations are asking **NTIA** to extend the deadline for challenges to be submitted to the **FCC's** preliminary broadband availability maps after spotting wild inaccuracies on the location fabric. During a **Senate Communications Subcommittee** hearing Tuesday, **Connect New Mexico Council** Chair *Kimball Sekaquaptewa* revealed that the map only shows three residences in her rural community when it should show 275. The current deadline for challenges to be submitted is Jan. 13, less than two months after the maps' initial reveal. In some cases, the inaccuracies on Tribal lands have been borne from the same methodologies that were designed to make the maps more accurate. For example, a switch to more granular reporting methods, including residential-based reporting, has been a smart move on the whole, but causes problems in Tribal communities where households aren't organized in the same way. "We don't necessarily have street addresses, so how are we going to match that P.O. box to that underserved home?" Sekaquaptewa said. "We're having to look at the systems that were used to build the maps and look at the methodologies and the challenges that lie therein." She also has questions about how anchor institutions like schools and libraries are or should



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be noted on the map to transform the maps into planning tools for broadband strategy creation in various communities. “I know we desperately need broadband. I know that people are hurting and basic human services are being compromised until we can get broadband deployed as fast as possible, but also rushing into decision making and creating funding allocations that might not be in the best interest of those same communities would be a miss, I think, for this generational opportunity,” she said.

ZUCKER BACK WITH REDBIRD IMI

Former **CNN** head *Jeff Zucker* is back on the scene, partnering with **RedBird Capital Partners** and **International Media Investments** to create a jv focused on acquiring and investing in media, entertainment and sports content. The venture, called **RedBird IMI**, will launch with initial committed capital of \$1 billion and Zucker will serve as CEO. He has also joined RedBird Capital Partners as an Operating Partner.

DISH GETS \$2.1M IN LAWSUIT

IBCAP announced that a federal court in Texas ordered a seller of the **Super Arab IPTV** service to pay \$2.1 million in damages to **DISH Network** for willful copyright infringement. The court also issued a broad injunction instructing dealers and distributors from selling the Super Arab service, ordering hosting providers to disable specific IP addresses used by the service, telling registries and registrars to disable domains used by the service and removing all IBCAP member channels from the pirate service. IBCAP’s investigation found that the Super Arab service received multiple notices of copyright infringement but ignored them. DISH first filed the lawsuit in Jan. 2018.

ZIPLY BUYS IFIBER

Zipty Fiber is acquiring **iFIBER Communications**, a high-speed internet provider with partnerships with PUDs in western, central and eastern Washington. The imminent purchase furthers Zipty’s 2020 plan of growth in the northwest region by allowing Zipty to expand service via an indefinite right of use with partner PUDs. Current iFIBER customers will continue to receive the same service, and iFIBER employees will remain on board as well.

DIRECTV TESTING GEMINI HARDWARE

Select **DirectTV** customers have been selected for a trial to test its next-generation hardware, Gemini. Customers chosen for the tests already have a Genie 2 and reside in Oklahoma City, Nashville or Birmingham. New markets will be added in phases and a national rollout for Gemini is planned in the first half of 2023.

RATINGS

Fox News unseated **ESPN** at the top of the primetime ratings for the week. Fox News reeled in an average of 2.18 million viewers P2+, with ESPN moving to second after a two-week stay at No. 1 with 2.16 million. **MSNBC** came third with 1.46 million and was followed by **Hallmark Channel** with 1.31 million and **Paramount** with 866,000. For total day, Fox News was first with 1.42 million as the channel’s airing of “Yellowstone: One-Fifty” on Sunday at 10pm had 1.1 million viewers and 114,000 in the 25-54 group. MSNBC cracked the top two with 842,000. Hallmark Channel and ESPN were behind with 746,000 and 712,000, respectively, as

CNN capped the total-day top five with 551,000. – Christmas is almost here and **Hallmark Channel’s** Countdown to Christmas event continues to pull in ratings. This weekend’s premieres of “The Most Colorful Time of the Year,” “Christmas Class Reunion” and “The Holiday Sitter” helped the network be the No. 1 entertainment cable net in total day and weekend total day among households, W18+, total viewers, W25-54 and women and persons 18-49. The Most Colorful Time of the Year and Christmas Class Reunion combined to take two of the top 3 most-watched entertainment cable programs of the week in W18+. Since Oct. 21, Hallmark Channel has reached 36.3 million unduplicated total viewers.

VCTI READY TO ASSIST WITH FCC CHALLENGES

Broadband and network technology firm **VCTI** has launched a broadband map integrity service. The product is designed to help states, municipalities and other interested groups quickly and easily submit challenges to the recently-released **FCC** broadband availability maps. Current estimates have inaccuracies on the maps coming in at 1-2%, potentially meaning up to 3 million households have been left off of the draft.

FIBER FRENZY

Ritter Communications announced the completion of a self-funded \$1.5 million expansion project to bring its telecom services and cloud solutions to businesses and organizations in Union City, Tennessee. The provider will bring XGS-PON technology to the community to help provide speeds of up to 100 Gbps, as well as Ritter’s data technology center that provides local customer support teams, advanced cloud solutions and storage needs. – **Vexus Fiber** completed the process for a franchise license agreement to bring its FTTP network to Las Cruces, New Mexico. Once complete, Vexus will bring multi-gigabit symmetrical speeds to residents and businesses. The fiber network will initially be configured at 10 Gbps to accommodate future growth. Construction for the estimated \$50 million project is estimated to take 24-36 months and is set to begin in early 2023.

CARRIAGE

MotorTrend Group, the automotive media company owned by **Warner Bros. Discovery**, is growing distribution by adding **MotorTrend FAST TV to Amazon Freevee**. Users can access MotorTrend’s content that includes “Roadkills,” “Texas Metal” and “Faster with Finnegan” without a subscription. MotorTrend FAST TV is already available on **Samsung TV Plus** and **Xumo**, with more providers to be revealed soon. – **Discovery+** is now available on **Prime Video** in Canada. Users can access the platform’s library of 60,000+ episodes on the ad-free plan for \$6.99 CAD/month or the ad-supporter tier for \$4.99 CAD/month.

ON THE CIRCUIT

The WICT Network is partnering with the **Motion Picture Association** to support the Network’s 2023 Signature Awards Luncheon. The event will take place May 2 at the Beverly Wilshire Hotel in L.A., the first time that the gathering will be held on the West Coast in 10+ years. The new location will provide more accessibility to entertainment and tech leaders, who have been a growing portion of The WICT Network in recent years.