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

In the Matter of	)	
	)	
Mission Broadcasting, Inc.	)	NAL/Acct. No. MB-202441440001
Licensee of Station WPIX, New York, NY	)	FRN: 0004284899
	)	Facility ID No. 73881
	)	
Nexstar Media Group, Inc.	)	NAL/Acct. No. MB-202441440002
	)	FRN: 0025293747
	)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Adopted: March 20, 2024 **Released: March 21, 2024**

By the Commission: Chairwoman Rosenworcel issuing a statement; Commissioner Carr concurring and issuing a statement.

TABLE OF CONTENTS

Heading Paragraph #

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (NAL), issued pursuant to section 503(b) of the Communications Act of 1934, as amended (Act),[1] and section 1.80 of the Commission's Rules (Rules),[2] we find that Mission Broadcasting, Inc. (Mission) and Nexstar Media Group, Inc. (Nexstar) (collectively, Parties) apparently willfully and repeatedly violated several of the Commission's

[1] 47 U.S.C. § 503(b).

[2] 47 CFR § 1.80.

Rules in a series of transactions through which Mission acquired WPIX(TV), New York, NY (WPIX or Station). To be specific, the Parties' actions before, during, and after Mission's acquisition of WPIX (the Acquisition) apparently resulted in Nexstar taking *de facto* control of WPIX, resulting in Nexstar and Mission violating section 310(d) of the Act through an unauthorized transfer of control.[3] In addition, Nexstar apparently violated the ownership restrictions in section 73.3555(e) of the Rules by obtaining undisclosed cognizable attributable interests in WPIX without Commission authorization. These interrelated violations apparently placed Nexstar in violation of the national television multiple ownership limitations in Section 73.3555(e) of the Rules (National Ownership Cap), when its undisclosed cognizable interests in WPIX, combined with its existing interests in television stations across the country, gave Nexstar cognizable ownership interests exceeding the 39% percent aggregate national audience reach limitation set by the National Ownership Cap.[4]

II. BACKGROUND

2. *The Commission's Rules.* The Commission, as directed by Congress, has placed limits on the ability of the largest television station group owners to increase their national coverage areas.[5] These limits were created to protect localism, which focuses on the incentives and ability of licensees to provide programming responsive to the needs and interests of the local communities in which they are licensed.[6] The National Ownership Cap prohibits a single entity from owning television stations that, in the aggregate, reach more than 39% of the total television households in the United States.[7] In determining compliance with the 39% National Ownership Cap, stations broadcasting in the VHF spectrum are attributed with all television households in their Nielsen Designated Market Areas (DMAs), while UHF stations are attributed with only 50% of the households in their DMAs (known as the UHF discount).[8]

3. In measuring compliance with Commission ownership rules, including the National Ownership Cap, licensees must consider all broadcast stations in which they are deemed to hold an attributable interest. Codified in the notes to section 73.3555, the attribution rules seek to identify ownership interests, corporate positions, and contractual relationships that, in the Commission's long-standing experience, afford the interest holder the potential to influence the licensee to a significant degree.[9] In addition to traditional interests such as officers, directors, certain shareholders of a corporation, or the uninsulated partners of a limited partnership, the Commission's Rules also address attribution arising from a debt interest or a non-voting equity interest in particular circumstances.

---

[3] 47 U.S.C. § 310(d); *see also* 47 CFR § 73.3540 ("Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control").

[4] 47 CFR § 73.3555(e).

[5] *See* Consolidated Appropriations Act, 2004, Pub. L. No. 108-199, 118 Stat. 3, § 629 (1)-(2) (2004).

[6] *See Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-318, Notice of Proposed Rulemaking, 32 FCC Rcd 10785, 10786-77, para. 3 (2017) (*2017 National Ownership Cap NPRM*); *2002 Biennial Review Order – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 13620, 13815, 13842, paras. 501, 578 (2003).

[7] 47 CFR § 73.3555(e)(1); *see also Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 13-236, Report and Order, 31 FCC Rcd 10213 (2016), *reconsidered in part*, Order on Reconsideration, 32 FCC Rcd 3390 (2017) (*UHF Discount Recon Order*), *pet. for rev. dismissed*, *Free Press et al. v. FCC*, No. 17-1179 (D.C. Cir. July 25, 2018).

[8] *UHF Discount Recon Order*, 32 FCC Rcd at 3391, para. 2. UHF stations are those that transmit on channel 14 and above. WPIX broadcasts over-the-air on television channel 11, a VHF channel, making the station ineligible for the UHF discount under the National Ownership Cap.

[9] 47 CFR § 73.3555, Note 2(i)(1)-(2).

4. Specifically, the Commission's Equity/Debt Plus (EDP) rule addresses certain otherwise non-attributable interests that could allow the holder to exert significant influence over a licensee, and which are thus considered attributable.[10] Under the EDP rule, an entity that: (1) is a major program supplier (i.e., it provides programming constituting over 15% of the broadcast station's total weekly broadcast programming hours), and (2) holds an interest that exceeds 33% of the total assets of the licensee, aggregating both debt and equity holdings, will be deemed to hold an attributable interest in the station.[11] In other words, attribution results where the financial interest exceeds 33% of the equity plus debt *and* the interest holder is a major program supplier of the station. The Commission adopted the EDP rule in part to address concerns raised that certain non-attributable investments, while permissible under the rules, might permit a degree of influence warranting their attribution.[12] The rule was also adopted to address the concern that individually permissible cooperative arrangements between broadcasters were being combined to result in a degree of influence that the rules had intended to prohibit.[13]

5. In addition to the specific attribution rules, an entity or individual may be found to have exercised *de facto* control in a particular situation based on the specific facts and circumstances of the case, regardless of what interest it holds in the licensee, if any.[14] In such cases, the Commission looks to the totality of the circumstances to determine whether an entity or individual exercises control of a station, looking in particular at the station's programming, personnel, and finances.[15] Thus, regardless of what interest an entity or individual holds in a licensee, it may nonetheless be found to have exerted actual control of a station. Furthermore, a finding that a party exercises *de facto* control in a particular case often indicates that the parties have engaged in an unauthorized transfer of control, which is prohibited by the Commission's Rules and the Communications Act.[16]

6. *The Parties.* Nexstar is the largest broadcast television station group in the country with $4.9 billion in annual revenue.[17] According to Nexstar, it "owns, operates, programs or provides sales

---

[10] As the Commission has explained previously, the "EDP rule is designed to resolve concerns that multiple non-attributable interests could be combined to allow the holders to exert significant influence over licensees such that these interests should be counted in applying the multiple ownership rules." *Promoting Diversification of Ownership in Broadcasting Services*, MB Docket No. 07-294, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 5922, 5932 (2008) (*Promoting Diversification Order*).

[11] 47 CFR § 73.3555, Notes 2(a) & (i).

[12] *Review of the Commission's Regulations Governing Attribution of Broadcast and Cable/MDS Interests*, MM Docket No. 94-150, Report and Order, 14 FCC Rcd 12559, 12578-82, paras. 35-46 (1999) (*1999 Attribution Order*).

[13] *Promoting Diversification Report and Order*, 23 FCC Rcd at 5932, para. 20. In particular, the Commission intended that the EDP rule would operate in conjunction with its other attribution standards and would increase the precision of the attribution rules. *Id*. at 5932, para. 21 (citing *1999 Attribution Order*, 14 FCC Rcd at 12573, para. 27).

[14] *See, e.g.*, 47 CFR § 73.3540 (requiring that parties obtain the Commission's prior consent before engaging in a voluntary assignment of license or transfer of control).

[15] *See, e.g., Stereo Broadcasters, Inc. Station WLIR (FM), Garden City, N.Y. for Renewal of Broadcast License*, Memorandum Opinion and Order, 55 F.C.C. 2d. 819, 821-23, paras. 7-9 (1975) (*Stereo Broadcasters, Inc.*); *see also* 47 CFR § 73.3540.

[16] Under section 310(d) of the Communications Act, a broadcast station license may not be transferred without prior application to, and consent by, the Commission. 47 U.S.C. § 310(d) ("No construction permit or station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."); *Entertainment Media Trust, Dennis J. Watkins, Trustee, et al.*, Hearing Designation Order and Notice of Opportunity for Hearing, 34 FCC Rcd. 4351, para. 32 (MB 2019).

[17] Harry A. Jessel, *Updated Top 30 Station Groups: Nexstar Retains Top Spot, Gray Now No. 2 As FCC-Rejected Standard General Drops Off*, (Aug. 14, 2023), https://tvnewscheck.com/business/article/top-30-station-groups-

(continued….)

and other services to over 200 broadcast stations (including partner stations) and their related low power and digital multicast signals reaching 117 markets or more than 68% of all U.S. television households."[18] In addition, Nexstar owns cable news network NewsNation, and in October 2022 it acquired a 75% controlling interest in The CW Network.[19] The company is publicly traded,[20] with a market capitalization of approximately $5.5 billion, and as of December 31, 2023, the company had 13,294 employees, including 11,877 full-time employees.[21]

7. Nexstar and Mission have a long-standing and deeply interwoven relationship. While Mission is not a subsidiary of Nexstar, it operates as a Variable Interest Entity (VIE) of the larger company, meaning that Nexstar is considered to have a controlling financial interest in Mission for financial reporting purposes.[22] Consistent with Generally Accepted Accounting Principles (GAAP), Nexstar includes Mission's assets, revenue, and financial information as part of its own financial calculations and reporting.[23] As Nexstar explains in its most recent Annual 10-K report filed with the U.S. Securities and Exchange Commission (SEC):

> Mission and the other consolidated VIEs are included in our Consolidated Financial Statements because we are deemed to have controlling financial interests in these entities as VIEs for financial reporting purposes as a result of (i) local service agreements we have with the stations they own, (ii) Nexstar's (excluding The CW) guarantee of the obligations incurred under Mission's senior secured credit facility, (iii) our power over significant activities affecting these entities' economic performance, including budgeting for advertising revenue, advertising sales and, in some cases, hiring and firing of sales force personnel and (iv) purchase options granted by each consolidated VIE which permit Nexstar to acquire the assets and assume the liabilities of all of these VIEs' stations at any time, subject to FCC consent. These purchase options are freely exercisable or assignable by Nexstar without consent or approval by the VIEs. These option agreements expire on various dates between 2024 and 2033. We expect to renew these option

(Continued from previous page)
nexstar-retains-top-spot-after-standard-general-tegna-deal-dies/; *see also* Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 4 (filed Feb. 28, 2024) (reporting information for the fiscal year ending December 31, 2023), https://www.sec.gov/Archives/edgar/data/1142417/000095017024021979/nxst-20231231.htm (Nexstar 10-K or Annual Report).

[18] Nexstar Media Group, Inc., Company Profile, https://www.nexstar.tv/company/ (last visited Mar. 11, 2024).

[19] Nexstar Media Group, Inc., *Nexstar Media Closes Acquisition of The CW Network* (Oct. 3, 2022), https://www.nexstar.tv/nexstar-closes-acquisition-of-the-cw-network/.

[20] The company is publicly traded on the NASDAQ Global Select Market exchange under the symbol "NXST."

[21] *See* Nexstar 10-K at 17.

[22] Nexstar 10-K at 45; *see also Northstar Wireless, LLC; SNR Wireless LicenseCo, LLC; Applications for New Licenses in the 1695-1710 MHz, and 1755-1780 MHz and 2155-2180 MHz Bands*, Memorandum Opinion and Order on Remand, 35 FCC Rcd 13317, 13345, para. 85 (2020) (citing, as evidence of DISH's "own continued recognition of its financial responsibility for the Applicants," the fact that DISH identified the applicants—Northstar and SNR—as VIEs of DISH and consolidated the entities into its financial statements based on Financial Accounting Standards Board guidance). VIE status attaches where certain conditions exist, such as (1) where the total equity investment at risk is not sufficient to permit the entity at issue to finance its activities without additional subordinated financial support, or (2) the entity lacks the power to direct activities that most significantly impact its performance. Financial Accounting Standards Board, Accounting Standards Codification 810-10-15-14, https://asc.fasb.org/1943274/2147481410/GUID-6558A531-EFBA-446C-A31D-A3D1D9D5BFA1 (last visited Mar. 11, 2024).

[23] Nexstar 10-K at 6 (describing Mission as a "consolidated VIE").

agreements upon expiration. Therefore, these VIEs are consolidated into these financial statements.[24]

As Nexstar states in its Annual Report, "[i]n return for the services we provide, we receive substantially all of the consolidated VIEs' available cash, after satisfaction of their operating costs and any debt obligations."[25] Nexstar also often issues press releases regarding Mission's business decisions or financial results.[26]

8. Thus, while Mission—a company with fewer than 60 employees—is the licensee of 29 full power television stations in 26 markets around the country, all of the stations are operated by, or in conjunction with, Nexstar.[27] In 25 of these 26 markets, Mission and Nexstar each hold the license for at least one full power television station. Nexstar then operates the Mission station, performing various functions for the station pursuant to a Shared Services Agreement (SSA), a Joint Sales Agreement (JSA), a Local Marketing Agreements (LMA), or a combination of several such agreements.[28] The only market in which Mission owns a station but Nexstar does not is the New York DMA.[29]

9. In addition to Mission being contractually dependent on Nexstar for the operation of its stations, the two companies are financially intertwined in other ways. As reported in Nexstar's Annual Report to the SEC, each company provides cross-guarantees of the other's debts. Specifically, Nexstar guarantees full payment of all obligations incurred under Mission's senior secured credit facility. Mission is also a guarantor of Nexstar's senior secured credit facility and several of its outstanding debt instruments, despite the fact that Mission is a fraction of the size of the publicly traded Nexstar and is largely dependent on Nexstar for the provision of programming and business services.[30] Further, Nexstar

---

[24] *Id.* at 45.

[25] *Id*. at 23. The Commission's attribution rules do not address Variable Interest Entities. Thus, for SEC purposes, Nexstar must include Mission's assets and revenue for accounting purposes and financial reporting, and is deemed to have a controlling financial interest in the smaller company. But for FCC purposes, the VIE relationship itself does not trigger attribution under the Commission's current rules.

[26] *See, e.g.*, Nexstar, *Nexstar Variable Interest Entity, Mission Broadcasting, Closes New $300 Million Senior Secured Term Loan B Facility* (June 3, 2021), https://www.nexstar.tv/nexstar-variable-interest-entity-mission-broadcasting-closes-new-300-million-senior-secured-term-loan-b-facility/.

[27] *See* Nexstar Media Group, Inc., Securities and Exchange Commission Quarterly Report (Form 10-Q) at 9 (filed Aug. 8, 2023), https://www.sec.gov/ixviewer/ix.html?doc=/Archives/edgar/data/0001142417/000095017023039930/nxst-20230630.htm (reporting information for the fiscal year ending June 30, 2023 and indicating that Nexstar holds agreements pertaining to the operation of each of the Mission stations) (Nexstar 10-Q); *see also* Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023); *https://en.wikipedia.org/wiki/Mission_Broadcasting* (last visited Mar. 11, 2024) "All but one of Mission's stations are located in markets where Nexstar Media Group also owns a station, and all of Mission's stations (including its lone stand-alone station) [WPIX] are managed by Nexstar through shared services and local marketing agreements—effectively creating duopolies between the top two stations in a market or in markets with too few stations or unique station owners to legally allow duopolies."); Response to Letter of Inquiry, from Dennis P. Thatcher, Mission Broadcasting, Inc., to Christopher Sova and Ty Bream, Industry Analysis Division, FCC Media Bureau, at 3 (Dec. 5, 2022) (Mission Second LOI Response).

[28] Nexstar 10-Q at 9.

[29] *Id*.; *see also* Nexstar 10-K at 7-10.

[30] Nexstar 10-K at 43. Unlike Nexstar, which is a publicly traded company, Mission is a privately held company owned by two individuals, Nancie J. Smith, who holds 51% of the voting and equity stock of the company, and Dennis P. Thatcher, who holds the remaining 49% interest. *See* Mission Broadcasting, Inc., Biennial Ownership Report, FCC File Number 0000224346 (filed Oct. 31, 2023). Mr. Thatcher is also Mission's President and Chief Executive Officer. Response to Letter of Inquiry, from Dennis P. Thatcher, Mission Broadcasting, Inc., to Brendan

(continued….)

holds options permitting it to acquire the assets and assume the liabilities of each of Mission's stations, subject to FCC consent. Such options are freely exercisable or assignable by Nexstar without consent or approval by Mission.[31] In addition, Nexstar also holds an option to buy all of the capital stock of Mission for the greater of: (1) five times (5x) the cashflow generated by the Mission stations in the preceding 12 months minus the company's outstanding debt,[32] or (2) $100,000.[33] In exchange for this option to acquire 100% of the capital stock of the company, Nexstar paid Mission's two shareholders only $50 apiece.[34]

10. Although the general arrangements described immediately above apply to all of the Mission stations that are reliant on Nexstar, only one—WPIX—is without a Nexstar-owned station in the same local market. It is important to note the distinction made in the Commission's Rules between relationships concerning entities that own stations in the same geographic market (i.e., same-market) and those that do not.[35] When presented with same-market instances, the Commission has recognized the efficiencies that SSAs, JSAs, or LMAs, can produce.[36] The Commission has not considered previously

(Continued from previous page)
Holland and William Durdach, Industry Analysis Division, FCC Media Bureau, at 4 (Jan. 14, 2022) (Mission LOI Response).

[31] Nexstar 10-K at 43. Nexstar explains that the purchase options allowing it to acquire the assets and assume the liabilities of each Mission station are, in part, the consideration that Mission has granted to Nexstar in exchange for it guaranteeing Mission's outstanding debt. Nexstar 10-Q at 15.

[32] Nexstar recently reported that Mission's long-term debt alone, consisting of a term loan and a revolving line of credit, was $357 million. Nexstar 10-Q at 14.

[33] The parties originally entered into the option agreement in 2011 and subsequently amended it in 2021 to extend the agreement until November 2028. *See* Stock Option Agreement, https://www.sec.gov/Archives/edgar/data/1142417/000114241712000010/missionoptionagmt.htm (last visited Mar. 11, 2024); Amendment of Option Agreement, https://www.sec.gov/Archives/edgar/data/1142417/000156459021009747/nxst-ex104_14.htm (last visited Mar. 11, 2024); *see also* Mission Broadcasting, Biennial Ownership Report FCC File Number 0000165413.

[34] *See* Stock Option Agreement, https://www.sec.gov/Archives/edgar/data/1142417/000114241712000010/missionoptionagmt.htm (last visited Mar. 11, 2024). Additionally, the stock option agreement restricts Mission's existing shareholders, Ms. Smith and Mr. Thatcher, from selling or otherwise transferring their ownership interests to any entity or individual that does not agree to be bound by the same contractual terms, thereby ensuring that Nexstar retains the option to acquire the company.

[35] *See* 47 CFR § 73.3555, Note 2(j) (stipulating that for the "sale by a licensee of discrete blocks of time to a 'broker' that supplies the programming to fill that time and sells the commercial spot announcements in it," the licensee's station is attributable to the broker if it "brokers more than 15 percent of the broadcast time per week of the other such station"); *Id.* § 76.65(b)(1)(viii) (prohibiting "[c]oordination of negotiations or negotiation on a joint basis by two or more television broadcast stations in the same local market to grant retransmission consent to a multichannel video programming distributor, unless such stations are directly or indirectly under common de jure control permitted under the regulations of the Commission").

[36] *See, e.g., 2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Order on Reconsideration, MB Docket No. 14-50, 32 FCC Rcd 9802, 9852, para. 108 (2017) (stating that "television JSAs have created efficiencies that benefit local broadcasters—particularly in small- and medium-sized markets—and have enabled these stations to better serve their communities"); *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, Second Report and Order, MB Docket No. 14-50, 31 FCC Rcd, 9864, 10008, para. 337 (2016) (stating that SSAs between stations in the same local market "no doubt result in cost savings—savings that could be reinvested in improved programming and other public interest-promoting endeavors"); *1999 Attribution Order*, 14 FCC Rcd at 12598, n.183 (noting the LMA attribution rule's intent to "allow[ ] a station the flexibility to broker a small amount of programming through an LMA with another station in the same market").

whether the same benefits occur to the same degree when a licensee outsources these functions to a party that does not already operate in the same market.

11. *Nexstar-Tribune Transaction.* In November 2018, Nexstar entered into an agreement to acquire Tribune Media Company (Tribune), which was then one of the largest television station groups in the country, owning 41 full-power television stations and one AM radio station. Given the number of full power television stations already owned by Nexstar at the time, it was unable to acquire all of the Tribune stations as the resulting station combinations would have violated both the Commission's National Ownership Cap[37] and Local Television Ownership Rule.[38] Accordingly, in order to comply with the Commission's Rules and obtain approval for the transaction, Nexstar divested a number of full power television stations to three unrelated companies: Scripps Media, Inc. (Scripps); TEGNA, Inc. (TEGNA); and CCB License, LLC.[39] In particular, in order to maintain compliance with the 39% National Ownership Cap, Nexstar divested three stations to Scripps: WSFL-TV, Miami, Florida; KASW, Phoenix, Arizona; and WPIX.[40]

12. In divesting these stations to comply with the National Ownership Cap, Nexstar represented that it would not provide ongoing services via sharing, joint sales, or local marketing agreements to any divested station, including WPIX.[41] Nexstar, however, retained an option to purchase WPIX from Scripps at some point in the future if, for example, the Commission were to change the National Ownership Cap or if Nexstar were to otherwise obtain room under the 39% cap (i.e., by selling stations in other markets equivalent to the audience share of the New York DMA).[42] The WPIX option was exercisable until December 31, 2020. Based on the divestitures made as part of the transaction and Nexstar's representation that it would not engage in joint operations with any of the divested stations, the

[37] *See supra* para. 2.

[38] The Commission's Local Television Ownership Rule allows an entity to own two television stations licensed in the same Nielsen DMA if: (1) the digital noise limited service contours of the stations (as determined by section 73.622(e) of the Commission's Rules) do not overlap; or (2) at the time the application to acquire or construct the station(s) is filed, at least one of the stations is not rated among the top-four stations in the DMA, based on the most recent all-day (9 a.m.-midnight) audience share, as measured by Nielsen Media Research or by any comparable professional, accepted audience ratings service. *See* 47 CFR § 73.3555(b)(1).

[39] *Tribune Media Company (Transferor) and Nexstar Media Group, Inc. (Transferee), et al.*, Memorandum Opinion and Order, 34 FCC Rcd 8436, 8437, 8439-42, paras. 2, 4-8 (2019) (*Nexstar-Tribune Order*). Notably, Nexstar did not divest any stations to its long-standing partner Mission as part of this transaction.

[40] *Id.* at 8441-42, para 8. The New York DMA is the largest television market in the country, accounting for approximately 6% of the TV households in the country. *See infra* para. 54.

[41] *Nexstar-Tribune Order*, 34 FCC Rcd at 8444, para 14, note 65 (quoting the applicants' representation that "Nexstar will not be providing ongoing services under sharing agreements (JSAs, local marketing agreements ('LMAs') or shared services agreements ('SSAs')) to any of the stations that it is divesting").

[42] The Commission has an open rulemaking proceeding considering potential revisions to the National Ownership Cap, including raising the 39% limit. *See 2017 National Ownership Cap NPRM*, 32 FCC Rcd at 10785. At the time of the Nexstar-Tribune transaction, interested parties—including Nexstar—were actively lobbying the Commission to increase the ownership cap, which might have afforded Nexstar the ability to acquire WPIX directly. *See, e.g., Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-138, Letter from Perry Sook, Chairman, President & CEO, Nexstar Broadcasting, Inc., et al., to Ajit Pai, Chairman, FCC, et al. (filed Mar. 11, 2019) (*ex parte* letter advocating setting the national ownership cap at 78% of television households in the country).

Commission found concerns raised by petitioners opposed to the transaction to be moot,[43] and it granted the Nexstar-Tribune transaction on September 13, 2019.[44]

13. *WPIX, New York, New York.* Less than a year after the consummation of the Nexstar-Tribune transaction, Nexstar assigned its option to purchase WPIX from Scripps to Mission in July 2020.[45] Shortly thereafter, on August 28, 2020, Mission—using a line of credit guaranteed and cross-collateralized by Nexstar—exercised the option to purchase WPIX from Scripps for approximately $82.6 million.[46]

14. On September 1, 2020, Mission and Scripps filed an application seeking Commission consent to Mission's acquisition of the station.[47] The Application included an unexecuted draft of a Local Programming and Marketing Agreement (LPMA) between Mission and Nexstar, which called for, among other things, Nexstar to provide all of the programming for WPIX, as well as to collect all of the revenue from the station.[48] The Media Bureau (Bureau) granted the unopposed Application on December 1, 2020. Mission closed on the acquisition of the station on December 30, 2020.[49] That same day Mission entered into the LPMA authorizing Nexstar to program and operate the station.

15. Mission's acquisition of WPIX from Scripps was made possible by the revolving line of credit effectively shared by Mission and Nexstar (the Revolver). The Revolver was part of a joint credit facility with Nexstar under which Nexstar both guaranteed repayment and provided its own assets as collateral to secure the money borrowed. The Revolver took effect on January 17, 2017, with Bank of America serving as agent for a syndicate of lenders.[50] Although the overall credit facility provides Mission and Nexstar with separate lines of credit for each respective company, Mission and Nexstar both guarantee each other's borrowing and provide collateral for each other, in what essentially creates a single securitized pool of assets that can be seized in case either party defaults.[51] The credit agreements

[43] *Nexstar-Tribune Order*, 34 FCC Rcd at 8444, para 14 & n.65.

[44] *Id.* at 8444, para 13. Nexstar consummated the transaction on September 19, 2019. *See* Nexstar Consummation Notice, Lead File No. BALCDT-20190403ABL (filed Sept. 20, 2019).

[45] Application for Consent to Assignment of WPIX from Scripps Media, Inc. to Mission Broadcasting, Inc., FCC File No. BALCDT-20200901AAB, at Exh. 13 (granted Dec.1, 2020) (containing Assignment and Assumption Agreement by which Nexstar conveyed its option to acquire WPIX to Mission, dated July 8, 2020) (WPIX Application or Application).

[46] Response to Letter of Inquiry, from Dennis P. Thatcher, Mission Broadcasting, Inc., to Christopher Sova and Ty Bream, Industry Analysis Division, FCC Media Bureau, at n.10 (May 8, 2023) (Mission Response to Further LOI). More precisely, Mission states that it paid ${[ ]}. Mission LOI Response at 15. We note that, although the reported sale price may vary slightly as reported by different sources, even accounting for small adjustments, any difference in the final sales price does not change our conclusions herein. *See, e.g.,* Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at 6 (filed Mar. 1, 2021) (Nexstar 2020 10-K) (reporting that Mission paid $85.1 million for WPIX). As discussed further above, Mission relied on a revolving line of credit to acquire WPIX.

Material set off by double brackets {[ ]} is business-confidential information and is redacted from the public version of this document.

[47] *See* WPIX Application, FCC File No. BALCDT-20200901AAB (granted Dec. 1, 2020).

[48] The LPMA is, for programming purposes, similar to what are more commonly known as Local Marketing or Time Brokerage agreements. Although Nexstar Inc. is the signatory to the LPMA, we use "Nexstar" to indicate wholly-owned subsidiaries of Nexstar Media Group, Inc., such as Nexstar Media Inc. and Nexstar Inc.

[49] *See* Mission Consummation Notice, FCC File No. BALCDT-20200901AAB (filed Dec. 30, 2020).

[50] Revolver Credit Agreement, dated Jan. 17, 2017, and amendments thereto, as submitted at Exh. A to Mission Response to Further LOI.

[51] Mission Response to Further LOI at 2.

governing the Revolver's lending facility also permit the parties to jointly request reallocation of unused credit from one party to the other. On December 3, 2020, Mission and Nexstar jointly requested that Bank of America reallocate $80 million from Nexstar's Revolver line to Mission's Revolver line.[52] Mission then purchased WPIX using that available credit line. While Mission was the borrower obligated to repay the Revolver loan, Nexstar's assets were at risk as collateral should Mission default.[53]

16. Consistent with the options that Nexstar holds for Mission's other stations,[54] Nexstar also entered into an option to purchase the license and assets of WPIX in the future.[55] Under the terms of the option agreement, Nexstar can purchase WPIX from Mission for less than the amount that Mission paid to Scripps to acquire the station.[56] Mission granted this option to Nexstar, in part, in exchange for Nexstar granting Mission the option to acquire the station from Scripps in the first place.[57]

17. As described above, on September 13, 2019, the Commission granted Nexstar's acquisition of Tribune predicated upon the divestiture of WPIX to Scripps, an unaffiliated, independent third party. Both before and after that date, however, Nexstar took steps that contemplated the possibility that a Nexstar-affiliated entity, such as Mission, would acquire WPIX in place of Nexstar, as Nexstar was unable to lawfully acquire the station and remain in compliance with the National Ownership Cap. Specifically, Nexstar negotiated for and signed retransmission consent agreements with multichannel video programming distributors (MVPDs), which provided that, {[ ]}.[58] {[ ]}, it was "understood" between Nexstar and Mission that Nexstar "would negotiate for retransmission consent of WPIX upon Mission's acquisition of the

[52] *Id.* at n.10.

[53] *Id.* at 7 (stating that "all of Mission's assets (excluding FCC licenses) are collateralized assets").

[54] Nexstar 10-K at 43 ("In consideration of our guarantee of Mission's senior secured credit facility, Mission has granted us purchase options to acquire the assets and assume the liabilities of each Mission station, subject to FCC consent. These option agreements (which expire on various dates between 2024 and 2033) are freely exercisable or assignable by us without consent or approval by Mission or its shareholders. We expect these option agreements to be renewed upon expiration.").

[55] *See* WPIX Application at Exh. 17; *see also* Nexstar Media Group, Inc., Securities and Exchange Commission Annual Report (Form 10-K) at F-20 (filed Feb. 28, 2023), https://www.sec.gov/Archives/edgar/data/1142417/000095017023005209/nxst-20221231.htm (Nexstar 2022 10-K) ("Upon Mission's acquisition of WPIX, it entered into a TBA with Nexstar. Mission also granted Nexstar an option to purchase WPIX from Mission, subject to FCC consent. These transactions allowed [Nexstar]'s entry into this market [New York City].").

[56] *See infra* Section III.A.1.a.iii.

[57] *See* WPIX Application at Exh. 17 ("The Option is granted in return for, among other consideration, the sale to Option Seller of the Purchased Assets pursuant to the Scripps Option Agreement"); *see also* Nexstar 2022 10-K at F-20.

[58] *See, e.g.,* Response to Letter of Inquiry, from Jennifer A. Johnson, Counsel to Nexstar Media Inc., to Christopher Sova and Ty Bream, Industry Analysis Division, FCC Media Bureau, at 10-11 (Dec. 2, 2022) (Nexstar Second LOI Response) ({]}); Response to Letter of Inquiry, from Jennifer A. Johnson, Counsel for Nexstar Media Inc., to Brendan Holland and William Durdach, Industry Analysis Division, FCC Media Bureau, at Exh. C (Jan. 10, 2022) (Nexstar LOI Response) (including an excerpt from Nexstar's retransmission consent agreement with DIRECTV/AT&T, dated August 29, 2019, which provided that {[ ]}).

station."[59] In accordance with that understanding between Nexstar and Mission, following Mission's acquisition of WPIX, Mission did, in fact, "authorize[ ] Nexstar to negotiate retransmission consent for WPIX (but only WPIX) {[ ]}."[60]

18. This complete delegation of authority with respect to retransmission consent for the Station became apparent {

}.[61] Although Mission {

]}.[62] For instance, on December 30, 2020, Comcast received a letter from Mission indicating that {[

}.[63] Subsequent to that {

]}.[64] Nexstar {[

}.[65] Mission has since indicated to Commission staff that it is

]}[66]

19. In addition to Nexstar's involvement with the station's retransmission consent negotiations, Nexstar took other actions with respect to WPIX in the months immediately following the Bureau's approval of Mission's acquisition of the Station from Scripps. For instance, on February 17, 2021, Nexstar issued a press release announcing the promotion of one of its own employees, Chris McDonnell—who had been serving as the Vice President and General Manager of Nexstar station

---

[59] Mission Second LOI Response at 4.

[60] *Id.* Although such behavior is not prohibited by the Commission's Rules—which only address the delegation of retransmission consent negotiation authority between parties that both own a station in a given market—nothing in the Commission's Rules or precedent precludes such behavior from being considered as a factor in the totality of the circumstances when evaluating the party in control of an out-of-market station.

[61] Nexstar Second LOI Response at 17 & Exh. F; Letter from Maureen A. O'Connell, Vice President, Regulatory Affairs, Charter Communications, Inc., and Howard J. Symons, Counsel to Spectrum Management Holding Company, LLC, to Holly Saurer, Chief, Media Bureau, FCC, at 3 & n.15, Exh. 2 (Apr. 12, 2022) (Spectrum Informal Complaint); Comcast Cable Communications, LLC, Petition for Declaratory Ruling, at 15-17 (filed July 1, 2021) (Comcast Petition for Declaratory Ruling).

[62] Mission Second LOI Response at 4 & n.15 ("{[

}.").

[63] Response to Letter of Inquiry, from Jonathan A. Friedman, Counsel for Comcast Cable Communications, LLC, to Christopher Sova and Ty Bream, Industry Analysis Division, FCC Media Bureau, at 2-3 (Nov. 23, 2022) (Comcast LOI Response).

[64] *Id.* at 3.

[65] *Id.*

[66] Response to Letter of Inquiry, from Dennis P. Thatcher, Mission Broadcasting, Inc., to Maria Mullarkey and Lyle Elder, Policy Division, FCC Media Bureau, at 3 (July 21, 2023) (Mission Good Faith Negotiation LOI Response) (responding to June 21, 2023 Letter of Inquiry on good faith negotiations).

KRON-TV—to become the new Vice President and General Manager of WPIX.[67] In his new role at WPIX, Mr. McDonnell remained subject to oversight under the Nexstar corporate umbrella, reporting to Nexstar's Broadcast President, Tim Busch.[68] Moreover, on May 24, 2021, Nexstar issued another press release to announce Nexstar's hiring of Nicole Tindiglia as News Director for WPIX, reporting to Mr. McDonnell, and with the responsibility of "overseeing the newsgathering operations of WPIX-TV, PIX11.com and their related digital, mobile, and social media applications."[69]

20. *Commission Investigation and Letters of Inquiry.* Following complaints about the operation and ultimate control of WPIX,[70] the Bureau sent several letters of inquiry to Mission and Nexstar, respectively, seeking information about the ownership and control of the station. Specifically, the Bureau sent initial Letters of Inquiry on November 9, 2021 (*First LOI*), follow-up Letters of Inquiry on October 27, 2022 (*Second LOI*), and Further Letters of Inquiry on March 16, 2023 (*Further LOI*). The Bureau received Nexstar's responses to these LOIs on January 10, 2022, December 2, 2022, and May 15, 2023, and Mission's responses on January 14, 2022, December 5, 2022, and May 8, 2023, respectively.[71] The Parties' LOI responses inform this NAL.

III. DISCUSSION

21. We find that Mission and Nexstar have committed apparent willful and repeated violations of the Act and the Rules, and are apparently liable for their respective violations in two areas. First, we find that the Parties apparently violated section 310(d) of the Act and section 73.3540 of the Rules by undertaking a *de facto* transfer of control of WPIX from Mission to Nexstar without prior authorization and, in doing so, Nexstar also apparently violated the National Ownership Cap by exceeding the 39% aggregate national audience limit. Second, on an independent basis from unauthorized transfer of control, we find that Nexstar also apparently violated the National Ownership Cap by disregarding the EDP rule when Nexstar obtained an attributable interest by providing collateral for a line of credit that financed Mission's acquisition of WPIX. We then set forth two divestiture options under which (1) Nexstar and Mission can remedy their unauthorized transfer of control, and (2) Nexstar can remedy its noncompliance with the National Ownership Cap. We also propose forfeitures for the Parties tailored to their apparent violations.

---

[67] Press Release, Nexstar, Nexstar Inc. Promotes KRON-TV's Chris McDonnell to Vice President and General Manager of its New York City Operations (Feb. 17, 2021), https://www.nexstar.tv/chris_mcdonnell_wpix_vp_gm_nexstar_2021/.

[68] *Id*.

[69] Press Release, Nexstar, WPIX-TV Names Nicole Tindiglia as News Director (May 24, 2021), https://www.nexstar.tv/wpix-tv-names-nicole-tindiglia-as-news-director/. According to Mission, it {[ ]}—Ofelia Castiblanco, WPIX's Station Manager, and Abraham Adler, WPIX's Chief Operator. Mission LOI Response at 4.

[70] *See, e.g.,* Comcast Petition for Declaratory Ruling (seeking a declaratory ruling from the Commission that Nexstar's relationship with WPIX violates the National Ownership Cap and the *Nexstar-Tribune Order*); Spectrum Informal Complaint (arguing that Nexstar asserts control over WPIX in violation of the National Ownership Cap and the *Nexstar-Tribune Order*); DIRECTV, LLC, Informal Complaint (filed June 29, 2023) (urging the Commission to conclude that Nexstar controls WPIX).

[71] In addition to the letters sent to Nexstar and Mission, the Bureau sent letters to Comcast, Spectrum Management Holding Company, LLC (Spectrum), and Scripps on October 27, 2022, and received responses from Comcast on November 23, 2022, Spectrum on December 2, 2022, and Scripps on December 5, 2022.

A. Apparent Violations

1. Unauthorized Transfer of Control and National Ownership Cap Violation

a. Unauthorized Transfer of Control

22. Section 310(d) of the Act states that no "station license, or any rights thereunder, shall be transferred, assigned, or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control . . . to any person except upon application to the Commission and a Commission finding that the public interest, convenience, and necessity will be served thereby."[72] Thus, under section 310(d) of the Act, the Commission prohibits *de facto*, as well as *de jure*, transfers of control of a station license, or any rights thereunder, without prior Commission consent.[73]

23. In determining whether an entity has *de facto* control of a broadcast applicant or licensee, we have traditionally looked beyond legal title and financial interests to determine who holds operational control of the station.[74] The Commission in particular looks to whether the entity in question controls the policies governing station programming, personnel, and finances.[75] And while the Commission has held that a licensee may delegate day-to-day operations regarding those three areas without necessarily surrendering *de facto* control, the licensee must retain ultimate authority over the policies governing those operations.[76] In addition, the Commission will consider other factors, such as whether someone other than the licensee holds themselves out to station staff and/or the public as one who controls station affairs.[77]

24. Based on the totality of the circumstances and the record in this case, we find that Nexstar and Mission apparently willfully violated section 310(d) of the Act. The Commission has previously found that a licensee's surrender of control over any one of the areas of personnel, programming, and finances to another is sufficient to find that the other entity has *de facto* control.[78] As discussed below, we find that Nexstar and Mission, acting together, violated section 310(d) in each of these three areas. We emphasize that while the record shows that Nexstar has assumed control from Mission over each of these areas, the cumulative effect makes clear Mission's apparent abdication of control of WPIX to Nexstar. Consistent with the Bureau's previous examinations of *de facto* control in situations involving licensees with sharing arrangements in multiple markets,[79] our decision here is limited to an analysis of WPIX and a finding that Nexstar has apparent control over WPIX. We adopt the Bureau's approach because we focus on the programming, personnel, and finances of the station subject to the inquiry, and while those station-specific facts may overlap with the circumstances and practices of a licensee's other stations, a wholesale audit of all of the licensees' practices at other stations is beyond

---

[72] 47 U.S.C. § 310(d); *see also* 47 CFR § 73.3540.

[73] *See id*.

[74] *See WHDH, Inc.*, Memorandum Opinion and Order, 17 FCC 2d 856, 863 (1969), *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971); *Paxson Mgmt. Corp. & Lowell W. Paxson (Transferors) & CIG Media LLC (Transferee)*, Memorandum Opinion and Order, 22 FCC Rcd 22224, 22234, para. 28 (2007).

[75] *See supra* note 15.

[76] *See, e.g., Radio Moultrie, Inc.*, Order to Show Cause and Notice of Opportunity for Hearing, 17 FCC Rcd 24304, 24306 (2002).

[77] *See WQRZ, Inc.*, Decision, 22 FCC 1254, 1332, para. 51 (1957).

[78] *Hicks Broadcasting of Indiana, LLC*, Hearing Designation Order, MM Docket 98-66, 13 FCC Rcd 10662, 10677 (1998). *See also Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 24 FCC Rcd 14078, 14095, para. 38 (MB 2009).

[79] *See*, *e.g.*, *Applications for Assignment of License KFTA-TV, Fort Smith, Arkansas and KNWA-TV, Rogers, Arkansas*, Order, 23 FCC Rcd 3528 (MB 2008) (*Nexstar-Mission Arkansas 2008 Order*).

the scope of this NAL. Accordingly, we do not make any other finding with regard to Mission's other licensed stations at this time.

25. To be clear, the Commission was previously aware of certain elements of the Nexstar/Mission relationship, including the proposed LPMA and Nexstar's option to purchase WPIX, both of which remain relevant as part of the facts we consider herein. Beyond those elements, however, additional facts have come to light, the most notable being Mission's complete delegation of its retransmission consent authority for WPIX—which we confirmed only during the course of our investigation. This factor, in combination with the application of the LPMA and the operation of the relationship in practice, leads us to conclude that Nexstar has overstepped the bounds and assumed *de facto* control of WPIX.

26. As a natural consequence of this apparent *de facto* control of WPIX, we also find an apparent violation by Nexstar of the National Ownership Cap, as its cognizable interest in a station in the New York DMA causes it to exceed that ownership restriction.[80]

(i) Programming

27. We first find that Nexstar exercises apparent *de facto* control over WPIX with regard to the Station's programming. At the outset, we recognize that the LPMA has delegated to Nexstar virtually all of the programming responsibilities of WPIX. Specifically, the LPMA grants Nexstar the right to program "all of the airtime on the Station (including the primary and all secondary program streams and ancillary uses) for programming provided by [Nexstar] for broadcast on the Station twenty-four (24) hours per day, seven (7) days per week."[81] By making available to Nexstar the use of all airtime on the station, Mission has effectively ceded to Nexstar all upfront, initial decision-making responsibility with regard to how the station's licensed broadcast spectrum will be used to provide service to the public or generate revenue, including what will appear on any and all of the station's program streams as well any "ancillary uses" of the station's spectrum. While Mission does retain the theoretical right to reject, substitute, refuse, or preempt Nexstar programming under certain circumstances, that power is limited, including a constraint that the substitute programming must be "of equal or greater value to [Nexstar]."[82] Under the open-endedness of the terms of the contract, the determination of that value remains exclusively with Nexstar, ultimately giving it, rather than Mission, the final say to interpret the contract in its favor as to whether any substitute programming is acceptable.

28. Further, apart from limitations on staffing and programming availability, the LPMA imposes another disincentive on Mission to exercise the nominal right to substitute by qualifying Mission's ability to be reimbursed only where an expense is deemed "reasonable."[83] Specifically, we find it highly unlikely that Nexstar would concur that it is "reasonable" for Mission to reject Nexstar-supplied programming and then reimburse Mission for the expense it incurred to replace that programming. Accordingly, we find unpersuasive Mission's assertion that if Nexstar-supplied programming is falling

---

[80] 47 CFR § 73.3555(e).

[81] LPMA at A-1. Currently, WPIX broadcasts three channels of programming on its over-the-air signal, all of which are subject to Nexstar's programming agreement: 11.1 The CW Network; 11.2 Antenna TV; and 11.4 Rewind TV. There is currently no programming available on 11.3 and 11.5. *See* https://pix11.com/about-us/tv-listings// (last visited Mar. 11, 2024); *see also* https://en.wikipedia.org/wiki/WPIX (last visited Mar. 11, 2024) (listing WPIX's multicast programming streams and noting that WPIX serves as the *de facto* flagship of The CW Television Network, which is 75% owned by Nexstar); *see also* https://www.nexstar.tv/stations/wpix/ ("PIX11 was a true Independent station until 1995 when it became the flagship of the WB Network, followed by the transition to the CW Network in 2006").

[82] LPMA § 5(c).

[83] *See* LPMA Sched. A (obligating Nexstar to reimburse Mission only for the "reasonable operating and maintenance expenses of the Station incurred by the Licensee in the ordinary course of business").

short of furthering WPIX's public interest obligations or is in violation of the Commission's Rules or other laws, "Mission will not hesitate to address the issue."[84]

29. In finding that Nexstar exercises *de facto* control of the Station's programming, we find probative that in more than a year since Mission acquired WPIX and the LPMA took effect, Mission has not exercised its right to preempt, reject, or otherwise refuse to broadcast any programming supplied by Nexstar pursuant to the LPMA.[85] While the LPMA does require Nexstar

},[86] the Parties' LOI responses do not provide any indication of any actions undertaken in practice by the Parties (such as regular or even irregular correspondence or other communication) to give effect to that contractual obligation. Specifically, nothing in the record identifies any *affirmative* behavior by Mission with regard to overseeing local programming, such as communicating with Nexstar with regard to local issues, much less previewing or even reviewing the Nexstar-supplied and broadcast programming.[87] At best, Mission commits to {[

---

[84] *Id*. There is clearly a large monetary risk for Mission to undertake in determining that it should (1) reject or substitute for Nexstar-supplied programming for whatever reason; (2) front the expense to produce or procure and then air substitute programming; and then (3) hope that Nexstar, contrary to its owns self-interest, would agree that it is "reasonable" for Nexstar's own programming to be rejected or substituted and reimburse Mission.

[85] Mission LOI Response at 7; Nexstar LOI Response at 9.

[86] LPMA § 6(a).

[87] {[

} Mission LOI Response at 6. In response to an LOI question asking for a description of Mission senior employees with roles and responsibilities for WPIX programming, Mission identified three people with potential programming responsibilities: (1) CEO Thatcher, who has overall responsibility for day-to-day operation of all Mission stations, including WPIX; (2) Ms. Castiblanco, who reports on station activities to Mr. Thatcher and Ms. Moser as well as serving as the station's Public Service Director; and (3) Mr. Adler, who oversees the station's technical operations. Mission LOI Response at 4. {

]} *Id.* at 4-5. In response to another question about a description of who is involved in the decision-making process regarding the negotiation, selection, production, and approval of programming, Mission responded that {[

]} *Id*. at 6. Accordingly, the identified resources do not indicate a capacity for making informed decisions about rejecting programming prior to airing, especially where, as the record indicates, there is a seven-hour weekday morning broadcast. *Id.* Based on the responses from the parties, it does not appear that Mission produces any original programming on the Station. Further, the LPMA does not reserve any portion of the WPIX broadcast schedule on any of its five channels for any time to be programmed by Mission, the licensee. Although the Commission does not require such a reservation to establish control, it has relied on it in concluding that a broker has not impermissibly asserted control over a licensee. *See*, *e.g.*, *Choctaw Broadcasting Corp.*, Memorandum Opinion and Order, 12 FCC Rcd 8534, 8539, para. 12 (1997) (relying on an LMA's provision that the licensee must not only be responsible for monitoring the broker's programming, but also be responsible for preparing up to three hours per week of programming material responsive to the needs and interests of community residents); *KHNL/KGMB License Subsidiary*, *LLC*, Memorandum Opinion and Order, 33 FCC Rcd 12785, 12790-91, para. 14 (2018) (*KHNL/KGMB License Subsidiary*) (affirming no unauthorized transfer of control based, in part, on the fact that pursuant to its contract, for example, the licensee's General Manager writes and delivers two editorials per week). The reservation of some time on the schedule would therefore help show control by the licensee.

]}.[88]

30. The Commission previously has found that nominal ownership or programming rights do not necessarily confer *de facto* control where a licensee has surrendered control of programming to a broker.[89] In contrast, the Commission has denied claims of unauthorized transfer of control where, among other facts, the licensee has actually rejected programming.[90] The execution of an LPMA that purports to comply with the Commission's Rules and policies,[91] coupled with a limited, hard-to-use exception that is subject to the broker's ultimate approval and that has never been exercised in any event, does not insulate Nexstar and Mission from our reaching a finding of effective surrender of control over programming.

31. Further evidence of Nexstar's actions, in practice, in the time since Mission acquired WPIX, reveal how Nexstar exercises its control over WPIX's programming. As Comcast points out, WPIX consistently attaches Nexstar's logo (rather than Mission's) at the end of each broadcast.[92] Indeed, even in its recent June 15, 2023 broadcast celebrating 75 years of service to New York, WPIX featured the Nexstar logo at the end of the broadcast, without any indication of Mission as licensee.[93] While Mission correctly points out that it would not be unusual for a Nexstar logo to appear in the credits of a show that it produced,[94] the absence of any Mission logo in conjunction with or even separately from

---

[88] Mission has in practice and writing repeatedly expressed its comfort with the selection of its programmer. *See*, *e.g.*, Mission LOI Response at 7 ("Nexstar has been a trusted partner of Mission in time brokerage and other sharing arrangements for many years. Indeed, in Section 6(a) of the LPMA, Mission 'acknowledges that it is familiar with the type of programming [Nexstar] currently produces or licenses and has determined that the broadcast of such programming on the Station would serve the public interest.' Thus, Mission expected at the time it entered into the LPMA, and still expects, that it will rarely if ever need to preempt Nexstar-supplied programming"). However well-vetted it believes its programmer to be, it does not relieve Mission of its obligations to safeguard vigilantly the interests of its community.

[89] *See, e.g.*, *Revocation of the License of Blue Ribbon Broadcasting, Inc.*, Decision, 90 FCC 2d 1023, 1025 (1982) ("*De facto* control is necessarily a complex concept which arises out of a totality of circumstances and cannot always be gleaned from evidence of nominal ownership. The Commission requires that the legal owners also exercise *de facto* control over the station so that the party granted the license will retain ultimate responsibility for station performance. Nevertheless, professional service contracts which vest great operational authority in management employees are not impermissible.") (citations omitted); *Stereo Broadcasters, Inc.*, Memorandum Opinion and Order, 55 FCC 2d 819, 821-23, paras. 7-9 (1975), *modified*, 59 FCC 2d 1002 (1976).

[90] *See, e.g.*, *KHNL/KGMB License Subsidiary*, 33 FCC Rcd at 12790-91, para. 14 (affirming a Bureau finding that a licensee has retained programming control where, among other facts, the licensee actually exercised its right to reject local news programming).

[91] *See* LPMA § 6(a)

]}; *id.* § 6(b)

}.

[92] Letter from Jonathan A. Friedman, Counsel for Comcast Communications, LLC, to Holly Saurer, Chief, Media Bureau, FCC, at 4 (filed Apr. 18, 2022) (Comcast Apr. 18, 2022 Letter) (citing https://www.youtube.com/watch?v=k7cckiMF-ts).

[93] *See* "PIX11 Special: Celebrating 75 Years of WPIX," https://www.youtube.com/watch?v=G5V74TEo964.

[94] Mission LOI Response at 7-8 ("Because Nexstar legally owns the programs it produces for WPIX, it would not be unusual for a local newscast, for example, to feature a Nexstar logo in the credits or other references to Nexstar as the producer of the program. Indeed, any other disclosure would be inaccurate. . . . In short, the appearance of Nexstar 'branding' on WPIX programming and website content is simply a truthful acknowledgment of Nexstar's

(continued….)

Nexstar's branding would appear to give viewers the impression that Nexstar is the only party involved and the licensee of the Station. Where WPIX features Nexstar branding exclusively, viewers would not see Mission as the licensee. In addition, the non-broadcast media generated by Nexstar and WPIX further perpetuate the representation to the public that Nexstar controls WPIX's programming. Nexstar press releases identify WPIX as a Nexstar station;[95] viewers wishing to share video or photos with WPIX must agree to a content license agreement with Nexstar as the content licensee;[96] and WPIX's own website home page and website footers feature the Nexstar Media logo without any Mission logo.[97] Again, the issue is not whether Nexstar has a right to brand its property, but the persistent exclusion of Mission's branding and role as licensee.

32. While the licensee has little response to the fact that Nexstar appears to be branding the station as its own with no indication as to the true owner of the station, Mission's LOI responses object to one specific point. Namely, Mission seeks to minimize the significance of Nexstar's branding on WPIX's website by arguing that the Commission places no relevance on station website disclosures.[98] However, the Bureau-level pronouncements it cites about the relevance of station websites are not only inconsistent with contemporaneous Bureau-level guidance,[99] but an overstatement of the Commission's position. In *Secret Communications II*—the Commission-level case underlying the Bureau decisions that Mission cites—the Commission stated that allegations based *solely* on Internet website icons are speculative and inadequate to raise a substantial and material question of fact concerning abdication of control.[100] However, contrary to Mission's suggestion, the full Commission has never deemed website content to be irrelevant. To the extent that the Bureau's decision in *Schmeltzer* could be interpreted as holding that website content is irrelevant to questions of control, we disavow that reasoning.[101] Furthermore, *Secret Communications II* is over 20 years old, adopted at a time when an Internet presence and branding was less central to a station's business identity and daily operations than it is now. Indeed, the decision predates the creation of Facebook, YouTube, Yelp, Twitter/X, Instagram, and the Commission's Online Public Inspection File, among other things. In assessing how a licensee holds itself out to the public, the full Commission has relied upon a variety of media as probative with regard to how a licensee presents

(Continued from previous page)
production of and property rights in that material, which it is obligated to supply under the LPMA. This does not equate to a concerted effort to portray WPIX as a 'Nexstar station.'")

[95] *See*, *e.g.*, Press Release, Nexstar, Nexstar Media Inc. To Host Exclusive Statewide Live Telecast of Debate Between the Candidates for U.S. Senate from Pennsylvania on October 25 at 8 P.M. ET, (Oct. 11, 2022), https://www.nexstar.tv/nexstar-to-host-debate-us-senate-from-pa-on-oct-25/ .

[96] *See "Sharing Media with PIX11"* (available at https://pix11.com/sharing-media-with-pix11/) (last visited Mar. 11, 2024).

[97] Mission points out that an online user can click through on the "About Us" tab to learn that Mission is indeed the owner of WPIX, which is operated by Nexstar. Mission Second LOI Response at 7-8. However, Mission's presence on the WPIX website is dwarfed by that of Nexstar's.

[98] *See* Mission Second LOI Response at 7 (citing *Nexstar Broad., Inc., & Mission Broad., Inc.*, 23 FCC Rcd 3528, 3534–35 (MB 2008); *Kathryn R. Schmeltzer, Esq.*, Letter Order, 19 FCC Rcd 3897, 3900 (MB 2004) (*Schmeltzer*)).

[99] In 2005, after the *Schmeltzer* decision was released, the Bureau evaluated on the merits whether a station's website identification of Clear Channel personnel established whether Clear Channel "holds itself out as if it owns" the station, which indicates that a station's website representations were indeed relevant and probative. *WJZD, Inc., c/o Dennis J. Kelly*, Letter Order, 20 FCC Rcd 9941,9944-45, para. 3 (AD 2005).

[100] *See Secret Communications II, LLC*, Memorandum Opinion and Order, 18 FCC Rcd 9139, 9148-49, para. 24 (2003) (*Secret Communications II*).

[101] It is well established that an agency is not bound by the actions of its staff if the agency has not endorsed those actions. *See, e.g., Comcast Corp. v. FCC,* 526 F.3d 763, 769 (D.C. Cir. 2008) (an agency is not bound by unchallenged staff guidance).

itself to the public,[102] and as a Commission we affirm that we do not categorically deem irrelevant any such communication or publication. In light of the language in *Schmeltzer* suggesting that website content is irrelevant to questions of control, which we disavow here, we do not rely in this case on Nexstar's branding on the Station's website as evidence of control of programming. Even without this evidence, however, we would reach the same conclusion that Mission has ceded control of WPIX.

33. Furthermore, we disagree with Nexstar's implication that the Commission's approval of the Application for consent to assign the license of WPIX to Mission, which included an unexecuted draft LPMA as an attachment, affords Nexstar carte blanche to exert control of WPIX with impunity.[103] It is true that, in the absence of additional facts that were not known at the time of application, the Bureau did not raise objections to the LPMA in the course of approving the Application. Under the totality of the circumstances, facts that were known from the face of the LPMA (i.e., the contract affords the broker round-the-clock programming rights[104] and the licensee's ability to exempt or substitute programming is at best constrained), when combined with facts that have emerged in application of the LPMA in actual practice (i.e., the licensee's ability to exempt or substitute programming in practice has never been exercised, and Nexstar's comprehensive representation of itself to the public as controlling WPIX programming), we are compelled to make a finding of apparent *de facto* control by Nexstar of WPIX programming.[105]

(ii) Personnel

34. In light of the actual practices of Nexstar and Mission after Mission acquired WPIX, we find their claim that Mission controls the personnel at the Station to ring hollow, and we find that Nexstar exercises apparent *de facto* control in this area as well. How Nexstar holds itself out to the public with

[102] *See*, *e.g.*, *WGPR, Inc.,* Memorandum Opinion and Order, 10 FCC Rcd 8140, 8142, para. 14 (1995) (*WGPR, Inc.*), *vacated on other grounds sub nom. Serafyn v. FCC*, 149 F.3d 1213 (D.C. Cir. 1998) (evaluating correspondence to local program producers as evidence with regard to control over programming, although eventually finding no transfer of control).

[103] Letter from Jennifer A. Johnson, Counsel for Nexstar Media Inc., to Michelle Carey, Chief, Media Bureau, FCC, at 4-5 (filed July 26, 2021) (Nexstar July 26, 2021 Letter) ("Nexstar and Mission acted in reliance upon the FCC's existing rules and its approval of the WPIX Application (which included the LMA) in making business decisions regarding financial investments and the operation of WPIX."); *see also* Nexstar LOI Response at 3 ("Nexstar relied in good faith on [the Commission's] rules and precedents, and the FCC's approval of Mission's application to acquire WPIX (including the LPMA). . . . However, it would be inequitable for the FCC to subject Nexstar to an enforcement proceeding when Nexstar has acted in reliance on existing FCC rules and actions and has conducted its business in accordance with the LPMA approved by the FCC.").

[104] The LPMA also grants Nexstar control of any "ancillary uses" of the Station's broadcast spectrum, which under the Commission's Rules could include datacasting or experimentation with the emerging ATSC 3.0 standard, among other uses, and could generate ancillary fees to which Nexstar would be wholly entitled.

[105] We are aware that the Bureau has previously found that 15 years ago there was no substantial and material question of fact as to whether Nexstar had *de facto* control over a Mission station at that time, but the facts in that case are readily distinguishable from the present situation in all significant aspects. *See Nexstar-Mission Arkansas 2008 Order*. Most notably, Nexstar did not have any input into the station's programming beyond newscasts, which were limited to 15 percent of the station's programming; Mission retained control over the format and even the title of those newscasts; and Mission received 70 percent of all advertisement revenue. *Nexstar-Mission Arkansas 2008 Order*, 23 FCC Rcd at 3534-35. In addition, while comparing in-market sharing arrangements and out-of-market sharing arrangements is not dispositive here, in *Nexstar-Mission Arkansas 2008 Order*, the governing SSA specified that for all programming other than news programming, "[e]ach Party will maintain for the Station(s) operated by it separate managerial and other personnel to carry out the selection and procurement of programming for such Station," and even for news programming, Mission will determine the title and format of such newscasts. *Id.* at 3533-34.

regard to employment is a key factor in our analysis, consistent with prior Bureau precedent[106] which we endorse today. Here, despite nominal and minimal recognition of Mission's ownership, Nexstar presents itself as controlling the affairs of WPIX in this regard.

35. The Commission's elimination of the Main Studio Rule in 2017 also eliminated the requirement that stations must have at least two employees (one management and one staff) present on a full-time basis at a main studio during normal business hours.[107] While the Commission reasoned that doing so would provide broadcasters with more flexibility to staff their operations as they see fit and allow them to allocate greater resources to programming and other matters, the Commission cautioned at the time that eliminating the rule did not in any way limit or reduce broadcast licensees' obligation and responsibility to retain and maintain control over essential station matters, such as personnel, programming, and finances.[108] Further, the Commission stated that it "expects that broadcast licensees will continue to be able to demonstrate such control notwithstanding the elimination of the main studio rule and the staffing requirements associated with the main studio rule."[109] Mission does not clearly make such a demonstration here.

36. WPIX is located in New York City, the number one market in the country based on Nielsen rankings. Yet, the record shows that, at best, Mission only maintains two employees at the Station, and the status of these two nominal on-site Mission employees is heavily qualified, and their independence is questionable. As Mission explains, {[

}[110] Having supervision or management by Nexstar or Nexstar employees, even if {[ ]}, over Mission's Station Manager and Chief Operator would appear to be probative of Mission relinquishing control over WPIX's station personnel. In contrast, in its 2008 finding that a petition failed to raise a substantial and material question of fact as to whether Mission had ceded *de facto* control of its station to Nexstar, the Bureau relied on the terms of a shared services agreement specifying that the Mission station employees will report *solely* to Mission.[111] The record shows that centralized Mission employees (who are not specific to WPIX) carry out certain

[106] In considering whether an individual is exercising *de facto* control over a station's "employment, supervision, and dismissal of personnel," the Commission "has traditionally considered indicia such as . . . who is in charge of employment, supervision, and dismissal of personnel," and the Commission "will consider such factors as whether someone other than the licensee holds themselves out to station staff and/or the public as one who controls station affairs." *Entertainment Media Trust*, Hearing Designation Order and Notice of Opportunity for Hearing, MB Docket No. 19-156, 34 FCC Rcd 4351, 4358, para. 32 (MB 2019) (citation omitted); *see also J. Stewart Bryan III*, Memorandum Opinion and Order, 28 FCC Rcd 15509, 15516, para. 16 (VD 2013) (recognizing that correspondence with a signature block identifying the manager of a broker as the manager of the licensee coupled with other evidence may constitute persuasive evidence of *de facto* control).

[107] *Elimination of Main Studio Rule*, Report and Order, 32 FCC Rcd 8158, 8169-70, paras. 17-18 (2017) (*Elimination of Main Studio Rule Order*). The Main Studio Rule, which was eliminated in 2017, required the licensee of a broadcast station to maintain a main studio in order to serve the needs and interests of the residents of the station's community of license. Mission maintains that {[

]} Mission LOI Response at 4.

[108] *Elimination of Main Studio Rule Order*, 32 FCC Rcd at 8170, para. 18 & n.83 (stating that, "We caution that the deletion of the main studio rule does not in any way limit or reduce broadcast licensees' obligation and responsibility to retain and maintain control over essential station matters, such as personnel, programming, and finances.").

[109] *Id.*

[110] *See* Mission LOI Response at 4-5 (emphasis added).

[111] *Nexstar-Mission Arkansas 2008 Order*, 23 FCC Rcd at 3534.

administrative and other functions at a corporate level for all Mission-owned stations, including WPIX, but these activities do not further Mission's claim of station control for WPIX in particular.[112] While we do not take issue with Mission's representations that its recordkeeping for Mission employees is separate from that of Nexstar,[113] we note that these accounting and other practices are not dispositive. Moreover, irrespective of whether Mission centralizes certain administrative functions, it stretches credulity to believe that a station in the number one market in the country can be meaningfully operated based on two part-time employees.

37. Setting aside Mission's claims of maintaining its own minimal employee presence, the record is clear that Nexstar holds itself out to the public as hiring, promoting, and supervising WPIX employees. For example, Nexstar puts out press releases celebrating the hiring and promotion of Nexstar employees to oversee newsgathering operations of WPIX, or to lead WPIX's broadcast operations, with these employees reporting to other Nexstar managers or executives.[114] This includes the Vice President and General Manager for the station, as well as the News Director, two of the most pivotal roles at the station, and both of which are staffed by and overseen by Nexstar, not Mission, employees. While it is not unusual for a programmer's employees to be present at the brokered station,[115] such an expectation does not entail misleading the public that the *station* has hired the employees. In addition, the "PIX11 Careers" drop-down page on the WPIX website, PIX11.com, features a map with all of the 100 markets in which Nexstar operates, and under the "Our Company" heading, describes Nexstar's operations as a national company.[116] Mission is not referenced at all under this page. {[ ]}.[117]

---

[112] The only two other senior Mission employees asserted to be involved in the Station's operation are Mr. Thatcher and Sharon Moser, Mission's Senior Vice President and Controller. Mission LOI Response at 4. Ms. Moser is a former Nexstar employee, a relationship that the Commission has previously found to be potentially problematic with regard to establishing independent control. *See*, *e.g.*, *Applications of Tribune Media Company (Transferor) and Sinclair Broadcast Group, Inc. (Transferee)*, Hearing Designation Order, 33 FCC Rcd 6830, 6836, para. 19 (2018) (identifying a question of independence based upon the employee relationship of prospective CEO of purportedly independent licensee from Sinclair, where employee worked for company in which Sinclair's executive chairman had a controlling interest). Mission's {[ ]} corporate employees who participate in WPIX activities work off-site from WPIX. Mission LOI Response at 8. With regard to WPIX, Mission asserts that Ms. Moser's accounting and other responsibilities include approval and oversight of payment of station expenses, including rent, utilities, the salaries of Mission's employees, music licensing fees and maintenance; the maintenance of the company's overall financial records; and presenting WPIX expenses for reimbursement pursuant to the LPMA. Mission LOI Response at 4.

[113] *See, e.g.,* Mission LOI Response at 4 ("Mission is also required to provide all personnel necessary for the broadcast transmission of the programming and is responsible for the salaries, taxes, insurance, and other costs related to those employees."); *id.* ("When Nexstar's employees are on Mission's premises, they are subject to the direction and control of Mission's management."); Mission LOI Response at 5 ("Nexstar does not make hiring or promotion decisions with respect to Mission's employees at the station. Mission exercises ultimate control over the operations of WPIX and over Nexstar's employees while they are on WPIX's premises pursuant to the LPMA . . . .").

[114] Press Release, Nexstar, WPIX-TV Names Nicole Tindiglia as News Director (May 24, 2021), https://www.nexstar.tv/wpix-tv-names-nicole-tindiglia-as-news-director/; Press Release, Nexstar, Nexstar Inc. Promotes KRON-TV's Chris McDonnell to Vice President and General Manager of its New York City Operations (Feb. 17, 2021), https://www.nexstar.tv/chris_mcdonnell_wpix_vp_gm_nexstar_2021/.

[115] *See, e.g., WGPR, Inc.*, 10 FCC Rcd at 8143, para. 17 ("We have acknowledged that a local marketing arrangement, which entails the broker's provision of programming and the sale of advertising to be aired on the station, by its very nature necessitates the presence of the broker's staff at the licensee's studio.").

[116] *See* WPIX, *PIX11 Careers*, https://pix11.com/about-us/work-for-us/ (last visited Mar. 11, 2024).

[117] Mission LOI Response at 4.

38. The fact that WPIX's website elsewhere identifies Mission as the owner of the Station and Nexstar as the operator does not insulate Nexstar from a finding that Nexstar is presenting itself as the employer for WPIX, nor does any boilerplate language in the LPMA that "[Mission] shall have full authority, power and control over the operation of the Station and over all persons working at the Station during the Term."[118] Where Nexstar: (1) handles the postings for and front-end hiring of almost all Station personnel, {[ ]}; (2) sets out the press releases for the Station hires; and (3) directly supervises almost all the Station employees, and even for the two it does not, {[ ]} the Parties cannot hide behind some savings language in the LPMA or corner of the website to confer personnel responsibility upon Mission.

(iii) Finances

39. In determining abdication of financial control, the Commission looks to determine whether a party other than the licensee has exerted actual control over the station, and not simply whether a third-party holds the ability to potentially influence the licensee's actions. Thus, the standard, and the Commission's calculation, is different from whether a party is simply attributable, which is a measure of the *potential* degree of influence, rather than a finding of actual control.[119] The Commission has determined that a licensee's retention of the economic incentive to control programming aired over its station is a key element of retaining control.[120] Despite more recent Commission precedent that could be read to caution against overreliance on this element, or a rigid application of it, we find that a licensee's economic incentives to control programming remain relevant to evaluating its financial control.[121]

[118] LPMA § 5(a); *see also id* § 7 ("Licensee will provide all personnel necessary for the broadcast transmission of the Programs (once received at its transmitter site) and will be responsible for the salaries, taxes, insurance and related costs for all such personnel."); § 9(b) ("When on Licensee's premises, Programmer's personnel shall be subject to the direction and control of Licensee's management personnel and shall not act contrary to the terms of any lease for such premises."). The Commission has determined that its inquiry into the actual control of a licensee goes beyond the four corners of the contract even where the language was "clear and unequivocal" that certain licensee executives were purportedly in control. *Stereo Broadcasters*, 55 FCC 2d at 821-23, paras. 7-9. *See also SNR Wireless Licenseco, LLC v. FCC*, 868 F.3d 1021, 1033 (D.C. Cir. 2017) (upholding Commission's finding of *de facto* control despite the fact that parties "wrote into their contracts general terms that formally spoke to" control factors established in Commission precedent; stating that "[w]hat mattered, in the Commission's analysis, was the substance of the terms of [] control, not the formal recitations of compliance" with control factors set forth in Commission precedent).

[119] Attribution of an ownership interest to an individual or entity represents the Commission's best judgment concerning when an interest is sufficient to confer on the owner a potential degree of influence over a licensee that should be cognizable for purposes of applying the Commission's broadcast ownership rules. *See*, *e.g.*, *2014 Quadrennial Regulatory Review*, MB Docket No. 14-50, Report on Ownership of Commercial Broadcast Stations, 29 FCC Rcd 7835, 7836, para. 1 n.1 (MB 2014). The Commission initially employed an economic incentive standard in 2002. *Shareholders of the Ackerley Group, Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 10828, 10841, paras. 32-33 (2002) (*Ackerley*) (finding that a series of agreements, including a Joint Sales Agreement, in combination with a Local Marketing Agreement, resulted in attribution because it did not provide the licensee with the "economic incentive" to control the programming provided by the broker). As a general matter, the Commission for decades has deemed officers and directors of licensee entities, as well as holders of 5% or more voting interests, to be attributable owners. *See*, *e.g.*, *Amendment of Part 73 to Authorize the use of Multiple, Synchronous Transmitters by AM Broadcast Stations*, Notice of Inquiry, 2 FCC Rcd 1389, 1395 n.13 (1987) (citing 1985 version of 47 C.F.R. Section 73.3555, Notes 1 and 2 (1985)); *see also Sixth Report on Ownership of Broadcast Stations*, DA 23-35 (MB & OEA Jan. 2023) at 2.

[120] *See Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (finding no economic incentive to control programming where broker programmed 15% of weekly broadcast hours and retained 100% of revenue under JSA); *Applications for Consent to Transfer Control from Shareholders of Belo Corp. to Gannett Co., Inc.,* Memorandum Opinion and Order, 28 FCC Rcd 16867, 16878, para. 28 (MB 2013) (*Gannett-Belo*).

Accordingly, we do not over-rely on this element—we include it as one factor to be weighed along with others in assessing the greater totality of the circumstances in assessing financial control. Nor do we apply this factor rigidly to suggest there is a formula to apply or a precise line of revenue share below which the licensee has ceded financial control. We need not undertake such an assessment here because Mission receives no share of the revenue at all.

40. As further described below, the record before us demonstrates overwhelmingly that Mission has no economic incentive to control either the programming or the day-to-day operations of the station. Mission has no profit-making potential pursuant to the LPMA, Option, or unwritten and undisclosed retransmission consent practices. Accordingly, without an upside in the success of the Station, in combination with its abdication to Nexstar of all key aspects of management of the Station's business affairs, we conclude that Nexstar has apparent *de facto* control of the Station's finances.[122]

41. Pursuant to the terms of the LPMA, Nexstar is entitled to all revenues of the Station, including revenues from the sale of advertising time on the Station's five programming channels and the Station's website, from the lease of space on the Station's towers, and from retransmission consent fees obtained for the Station's programming.[123] Notably, and as discussed throughout this decision, Nexstar, not Mission, is the party responsible for marketing, promoting, and selling the station's programming, advertising time, tower space, data transmission capabilities, and any other revenue-generating venture at the Station. Furthermore, Nexstar collects all revenue generated by the Station as a result of those efforts. The LPMA requires Mission to pay for maintenance of all studio and transmitter equipment and all other operating costs, where Mission would interact with vendors as the nominal face of the Station, but Nexstar must reimburse Mission for the reasonable operating and maintenance expenses of the Station.[124] In no way does the LPMA afford Mission any opportunity to actually profit from the operation of WPIX, nor any incentive to remain engaged and in control of the Station's operations. Thus, Nexstar operates the station, reaps the revenue, and reimburses Mission for the cost of the electricity, tower rent, and other

(Continued from previous page)
[121] When it comes to station finances, the Commission has expressly disagreed with the Bureau's attempt to establish a specific revenue-sharing formula to determine whether the licensee retains *de facto* control. *See*, *e.g.*, *KHNL/KGMB License Subsidiary*, 33 FCC Rcd at 12791-92, para. 15 ("In *Ackerley*, the Commission concluded that a series of agreements, including a [JSA] and [LMA] had the combined effect of depriving the licensee of the economic incentive to control its programming and determined that the agreements therefore created an attributable interest for purposes of the multiple ownership rules. The Commission does not apply this principle as a means of determining whether an entity exercises *de facto* control, and we overrule the Bureau Order to the extent it could be read as doing so. To the extent that Media Council reads the Bureau's decisions in other cases as establishing a specific revenue-sharing formula that is necessary in order to ensure that the licensee retains *de facto* control, we disagree with this interpretation."). It is illogical to extend this precedent into creating a total bar on examining whether the licensee has any economic incentive to control programming as an aspect of *de facto* control. Clearly, a licensee retaining the technical right on paper to make certain programming decisions is effectively meaningless if such decisions are of no consequence to the licensee. Indeed, even in rejecting the Bureau's approach (which appeared to elevate economic incentive over all other elements), the Commission affirmed its "longstanding practice of examining the totality of the circumstances in each case to determine whether a licensee retains operational control of the station." *Id.* Nothing in our decision today, disturbs the *KHNL/KGMB License Subsidiary* precedent, and we do not establish as a basis for demonstrating retention of licensee control any numerical revenue-sharing requirements. Furthermore, our consideration of the totality of the circumstances is consistent with *KHNL/KGMB License Subsidiary*'s rejection of any formulaic approach.

[122] Although we undertake this analysis of economic incentives as part of our evaluation of whether Nexstar has exercised *de facto* control, economic incentives are also relevant to a determination regarding attribution, and Nexstar's assumption of all financial upside and downside for WPIX would independently qualify the Station as attributable to Nexstar for the purposes of our ownership rules. *See Ackerley*, 17 FCC Rcd at 10841, paras. 32-33 (considering economic incentive as an aspect of attribution).

[123] LPMA § 3.

[124] *Id*. § 7, Sch. A.

operating expenses that Mission pays out directly, perhaps to maintain the facade that it has indicia of control. If the programming performs well, and revenues increase, all of the additional profit goes to Nexstar. By contrast, if the programming performs poorly, and revenues drop, Mission still receives exactly the same amount of compensation (reimbursement for operating expenses). Accordingly, the agreements put in place by Nexstar prevent Mission from ever seeing any financial upside to owning the Station, making its ownership of the Station a fiction, and effectively transforming the licensee into merely a facilities operator.[125]

42. Mission seeks in its responses to create the appearance that, if WPIX had a poor financial showing, this might impact future financing.[126] Yet, as discussed in detail below in Section III.A.2**,** and in Section II above, the intertwined financial arrangement between Nexstar and Mission highlights the degree to which Nexstar's financial support underlies Mission's transactions. The collateral and loan arrangement utilized by Nexstar and Mission obviates the need for Mission to seek financing as an independent entity. Moreover, Mission relies on Nexstar for both investment and station services at all its stations, not just at WPIX. Hence, Mission's purported concerns about lack of future funds in the event of poor financial performance of WPIX appear speculative.

43. Not only is Mission unable to earn any profits from the operation of its own station, it also is unable to benefit from any increased value of WPIX over the long-term, due to the terms of the Option held by Nexstar. That is, Mission will similarly not see any potential profit from improved performance upon any eventual sale of the Station. In fact, the terms of the Option guarantee that Mission will incur a *loss* on the sale of WPIX to Nexstar. Mission, with financial assistance from Nexstar,[127] paid $82.6 million to acquire WPIX in 2020.[128] However, the Option establishes that Nexstar has the right to purchase WPIX for a base price of $75 million, with an "Additional Purchase Price" of $7.5 million, which totals a maximum of $82.5 million.[129] This option presents a marked contrast in critical contract terms compared to the arms-length Scripps Option Agreement that Scripps negotiated with Nexstar.[130] Specifically, Scripps contracted the Additional Purchase Price at an interest rate of 6.5 percent during the first year and jumping up to 13 percent in subsequent years, with a cap of $12.5 million the first year and $25 million thereafter, in contrast to the constant 3.5 percent interest rate that Nexstar enjoys in its Option with Mission.[131] Unlike Mission's current situation, Scripps had the potential and incentive to make a

[125] This is consistent with Nexstar's statement in its annual reports regarding companies like Mission: "[i]n return for the services we provide, we receive substantially all of the consolidated VIEs' available cash, after satisfaction of their operating costs and any debt obligations." Nexstar 10-K at 23.

[126] Mission asserts {[

]}. Mission LOI Response at 11.

[127] *See infra* Section III.A.2.

[128] *See supra* note 46 and accompanying text**.**

[129] *See* "Option Agreement Between Mission Broadcasting Inc. and Nexstar Broadcasting, Inc.," File No. BALCDT – 20200901AAB, Att. 17, at § 1.3(b) (Nexstar-Mission Option Agreement).

[130] While we traditionally do not evaluate the purchase price, we do so in making *de facto* determinations "where it appears from other facts that the arrangement may not have been an arms-length transaction between the parties." *Edwin L. Edwards, Sr. (Transferor) and Carolyn C. Smith (Transferee) for Consent to the Transfer of Control of Glencairn, Ltd., parent entity of Baltimore (WNUV-TV) Licensee, Inc. Licensee of Television Station WNUV-TV, Baltimore, Maryland, et al.*, Memorandum Opinion and Order and Notice of Apparent Liability, 16 FCC Rcd 22236, 22250, para. 26 (2001) (*Sinclair/Glencairn*). In making a finding of *de facto* control, the Commission found probative that Sinclair, the broker and programmer, bought stations under the option agreement it had with the licensee of the stations (now Cunningham Broadcasting, then known as Glencairn). *Id.* at 22249-50, paras 23-27.

[131] *See* "Option Agreement Between Scripps Media, Inc. and Nexstar Broadcasting, Inc.," File No. BALCDT – 20200901AAB, Att. 13, at § 1.3(b) (Nexstar-Scripps Option Agreement). Nexstar explains that {[

(continued….)

profit by ultimately selling at a higher rate than its purchase price, even if Nexstar were to exercise its option. Moreover, the Scripps Option Agreement had an exercise period of less than two years; Nexstar's option with Mission has an initial eight-year term,[132] with an expectation of renewal,[133] giving Nexstar an even longer upside potential.

44. In its LOI Response, in answer to a question about the risk of loss and potential for profit, if any, that Mission holds for WPIX, Nexstar does not assert that Mission has any direct risk of loss or profit potential. Rather, Nexstar claims that Mission {

}[134] {[

]}[135] {[

]}.[136] Mission further speculates that if the value of the Station were to increase, it could conceivably sell to a third party, but that could only happen if Nexstar chose not to exercise its then below-market option to purchase the Station, which has an initial eight-year term.[137] In fact, Nexstar appears to hold the right to assign the Option to any party of its choosing without Mission's consent or approval.[138] This means that Nexstar could sell its favorable-rate option to a third party for a significant price, further benefiting itself and leaving Mission unable to prevent the sale of its own station or to receive the benefit of the station's increased value.

(Continued from previous page)

}] Nexstar LOI Response at 28. Mission evidently {[ ]}. Mission LOI Response at 14 ({[

]}).

[132] The Nexstar-Mission Option Agreement establishes the option expiration date to be the date on which the LPMA terminates or expires. Nexstar-Mission Option Agreement § 1.4. The LPMA has a term of eight years. LPMA § 1.

[133] Nexstar 10-K at 43 ("These option agreements (which expire on various dates between 2023 and 2033) are freely exercisable or assignable by [Nexstar] without consent or approval by Mission or its shareholders. [Nexstar] expect[s] these option agreements to be renewed upon expiration"). However, in its LOI Response, Nexstar characterizes the option slightly differently: {[

]} Nexstar LOI Response at 10.

[134] Nexstar LOI Response at 10.

[135] *Id.*

[136] Mission LOI Response at 15.

[137] *Id.* at 11. Mission does recognize the opportunity to lose money upon ultimate sale of the station (unlike the inability to lose money during its operation of the Station). *Id.* ("Conversely, were WPIX to perform poorly from a financial perspective, that would reduce the value of Mission's station assets in its hands and upon any third-party sale. . . . Mission has a strong interest in preserving and enhancing its reputation in the broadcast community, which would be harmed if it permitted WPIX to perform poorly.").

[138] Nexstar 10-K at F-25 (stating: "In consideration of Nexstar's guarantee of the Mission senior secured credit facility, Mission has granted Nexstar purchase options to acquire the assets and assume the liabilities of each Mission station, subject to FCC consent. These option agreements, which expire on various dates between 2023 and 2033, are freely exercisable or assignable by Nexstar without consent or approval by Mission. The Company expects these option agreements to be renewed upon expiration.").

45. In sum, we disagree that Mission has sufficient economic incentives tied to WPIX's operation to establish financial control. Nexstar cannot have it both ways—to simultaneously occupy the exclusive role as programmer and employer of the programming personnel, as described above, and yet somehow claim that Mission will reap the credit and public recognition for successfully running WPIX. Upon these facts, we are not persuaded that the success of WPIX will accrue to Mission's benefit either in the short or long term. Instead, the existing operation of WPIX ensures that any goodwill or other value generated by the successful operation of the Station will go to Nexstar. Furthermore, given that Nexstar holds itself out as the owner, operator, and programmer of WPIX, it is simply not credible to assert that Mission somehow receives value from {[

]}.[139] In reality, any value either being built over time or extracted year-to-year from the operation of WPIX redounds exclusively to the benefit of Nexstar, which holds the Station out as the flagship of its commonly owned The CW Network.[140]

46. Nexstar argues that the Option and the LPMA were included as attachments to the WPIX Application, and the Commission therefore approved these agreements when it approved the Application.[141] Nexstar asserts that a party operating in good faith based upon Commission action should not be subject to an enforcement proceeding due to its reliance on that approval.[142] We recognize the importance of this reliance, but stress that such reliance is based upon the Commission's full understanding of the transaction before it, based upon the full disclosure of the relevant agreements. We conclude that when put into practice—and especially in tandem with the previously undisclosed retransmission consent practices—the full set of circumstances in this particular case leads us to find that Nexstar has exercised *de facto* control of the Station and, consequently, that Mission has abdicated control of its station.

47. In particular, we find Mission's unwritten delegation to Nexstar of the power to serve as the exclusive decisionmaker with regard to retransmission consent authority[143]—which was not revealed in the Application nor any other filing, much less ever approved explicitly or tacitly by the Commission—as indicative of the usurpation by Nexstar of the financial and business affairs of WPIX. We emphasize that Nexstar's contractual right to retransmission consent revenues in no way implicitly confers a right to negotiate on Mission's behalf. Retransmission consent negotiation confers authority to resolve or not resolve often critical issues, such as rejecting a MVPD offer and, at impasse, imposing a blackout; designation as a primary channel or multicast; determination of the length of the retransmission consent contract; and right to renewal. The fact that the parties revealed to the Commission that the way in which incoming revenues would flow in no way indicated that Nexstar would be sole decisionmaker on these key issues. As Nexstar, Mission and the MVPDs acknowledge, {[

---

[139] Nexstar LOI Response at 10.

[140] In addition to WPIX now serving as the flagship station for the Nexstar-owned The CW Network, WPIX shares a building with the New York studios for Nexstar-owned cable news network NewsNation, which host operations for both WPIX and NewsNation. *See* tvtech, *NewsNation, WPIX Open New Manhattan Studios* (Apr. 26, 2023), https://www.tvtechnology.com/news/newsnation-wpix-open-new-manhattan-studios.

[141] Nexstar LOI Response at 10, 24. Similarly, in response to the Comcast Petition for Declaratory Ruling, Nexstar argues that Comcast's critique of the LPMA is a collateral attack on a final Commission order approving the WPIX transaction. Nexstar July 26, 2021 Letter at 4-5.

[142] Nexstar LOI Response at 5.

[143] *See*, *e.g.*, Mission LOI Response at 17; Nexstar LOI Response at 2, 16.

}.[144]

48. As described above,[145] Nexstar's relationship with WPIX is different than the types of sharing agreements that have been approved in the past, which exist between two stations in the same market, and are subject to limitations in the Commission's Rules designed to balance the efficiencies of such agreements against the need for licensees to remain independent and maintain control of their stations.[146] Our discussion herein does nothing to change the existing limits for same-market stations, which remain the relevant standards for evaluating the compliance of same-market arrangements.

49. Moreover, while the Commission has approved of sharing agreements between same-market licensees, such agreements do not release licensees from the requirement that they control their stations. The Commission has held that a licensee involved in a local marketing relationship is not relieved of its overarching duty to retain ultimate control, that is, to mandate basic policies pertaining to the fundamental station operations of programming, personnel, and finances.[147] To this end, a licensee engaged in time brokerage or other sharing agreements must operate as a stand-alone entity discrete from the broker providing programming or services to its station. This means that the licensee should be ready and able to operate independently from the programmer at any time it believes the arrangement does not fulfill its public interest responsibilities.[148] The record provides no indicia that Mission has ever issued any policy directives to Nexstar in this regard, nor communicated any other form of oversight. Rather, the record shows that Mission has unequivocally surrendered the ability to exercise control over the Station's retransmission consent negotiations, which are critical to the well-being and survival of this broadcast station in the nation's biggest market.

50. Mission's delegation (or intent to delegate) to Nexstar every aspect of its retransmission consent affairs was not a fact that was apparent or disclosed to the Commission at the time Mission applied to acquire WPIX. The fact that Mission and Nexstar never memorialized Nexstar's apparent assumption of Mission's retransmission consent rights[149]—that Mission never sought to put in writing any limitation of scope or duration of such rights— is probative of the degree of control that Nexstar enjoys over WPIX's business affairs, and the lack of involvement exhibited by Mission. Indeed, Mission is so far removed that it not only concedes that it is {[

]}[150] {[

[144] *See, e.g.*, Mission Second LOI Response at 4 ("Mission has authorized Nexstar to negotiate retransmission consent for WPIX (but only WPIX) {

]}.").

[145] *See supra* para. 10.

[146] For example, while Nexstar programs 100% of the broadcast time on WPIX, the Commission considers anything beyond 15% attributable between same-market stations. *See* 47 CFR § 73.3555, Note 2(j). In addition, while Nexstar handles all of the retransmission consent negotiations for WPIX, the Commission, at the direction of Congress, prohibits coordination or joint negotiation between stations in the same market unless those stations are under common *de jure* control. *See* 47 CFR § 73.3555, Note 2(k).

[147] *See WGPR, Inc.,* 10 FCC Rcd at 8142-46.

[148] *Id*. at 8145.

[149] Mission Second LOI Response at 4. Nexstar explains that because the LPMA entitles Nexstar to {[

]} Nexstar Second LOI Response at 16-17. Neither party explains why such an important "delegation" would not be included in the LPMA or elsewhere.

[150] Mission LOI Response at 17.

]}.[151] When asked to explain whether Mission has transferred or assigned to Nexstar the right to grant retransmission consent on behalf of the Station, Mission demurs and attempts instead to defend what it purports to be a delegation of negotiating authority as being consistent with the Commission's Rules.[152] The limits the Commission has established on the negotiation of retransmission consent are intended to ensure parties on both sides negotiate in "good faith." The strict adherence (or not) to such rules— i.e., whether or not a licensee engages in good faith negotiation—is not determinative of whether or not a licensee does or does not maintain control of its station.

51. The apparent delegation of all retransmission consent rights goes far beyond that of any principal-agent relationship or delegation of authority to negotiate.[153] In this instance Mission has not simply engaged a third-party to negotiate retransmission consent terms with MVPDs on its behalf, which Mission then approved and executed in its own name. Rather, it has abdicated this key financial aspect of the Station's operations to the entity that helped finance the purchase of the station and now controls 100% of the programming and revenue of the Station. Based on the totality of the circumstances present in this case, we find that Nexstar dominates the management of the business affairs of Mission with regard to WPIX.[154] Specifically, Nexstar reaps all of the revenue and potential profit from the Station, sets and controls the programming, and engages in contracts for carriage of the Station in its own name. As a result, Mission does not and cannot operate its WPIX-related business affairs independently from Nexstar and fails to exercise ultimate financial control over the Station that it ostensibly owns.

52. We stress that the decision we reach today is limited to the facts before us and the relationship between Nexstar, Mission, and WPIX. In particular, we are not concluding that assigning the right to negotiate retransmission consent for a station to a third party on its own constitutes control,[155] nor does it under previously-approved relationships where the facts do not indicate that the licensee has abdicated control of its station. In other instances, the Bureau has found more limited financial arrangements involving a combination of joint sales agreements, other types of shared services agreements, options, and guarantees of debt do not result in the broker's *de facto* control of the licensee,[156] and our decision today does nothing to disturb that precedent. While sharing agreements

[151] Mission Good Faith Negotiation LOI Response at 3.

[152] Mission LOI Response at 17 (citing 47 CFR § 76.65(b)). In fact, Mission's attempt in its responses to imply that having Nexstar negotiate the retransmission consent fees is a benefit that ultimately accrues to WPIX, as Nexstar has the leverage to negotiate higher retransmission fees, only further highlights the degree to which Mission has abdicated control of the Station to Nexstar because all the revenues from the retransmission consent agreements are going to Nexstar per the LPMA. It is up to Nexstar, not Mission, whether to reinvest any of the retransmission consent fees into WPIX or use the money for other purposes.

[153] To be clear, while the rules bar a negotiating entity from refusing to designate a representative with authority to make binding representations on retransmission consent, 47 CFR § 76.65(b)(ii), the specifics of the apparent designation of Nexstar as a negotiating representative are indicative of an abdication of control based on the record before us, where Mission has not set any policies or parameters for the negotiation; does not receive any potential profits; and remains unaware of the terms contracted even after the agreement is executed.

[154] *See Terrier Media*, Declaratory Ruling, 34 FCC Rcd 10544, 10549-50, para. 14 (MB 2019) (citing *Univision Holdings, Inc.*, Memorandum Opinion and Order, 7 FCC Rcd 6672, 6675, para. 15 (1992)).

[155] *See* Nexstar July 26, 2021 Letter at 3-4; Nexstar LOI Response at 5.

[156] *See, e.g., Gannett-Belo*, 28 FCC Rcd at 16867 (approving various acquisitions that include Option, SSA, Lease Agreement, JSA, and loan guarantee)*; SagamoreHill of Corpus Christi Licenses, LLC*, Letter, 25 FCC Rcd 2809 (MB 2010) (SSA with programming not to exceed 15% of weekly broadcast hours, JSA with 30 % of revenues going to broker, Option, Studio Lease, Guarantee); *Piedmont Television of Springfield License LLC*, Memorandum Opinion and Order, 22 FCC Rcd 13910 (MB 2007) (SSA with programming not to exceed 15% of weekly broadcast hours, JSA, Option, Studio Lease, Guarantee and sale of non-license assets to broker); *Chelsey Broadcasting Company of Youngstown, LLC*, Letter Order, 22 FCC Rcd 13905 (VD 2007) (SSA with programming not to exceed 15% of weekly broadcast hours, Option and Guarantee).

themselves are not prohibited, there can be a slippery slope between sharing and control. We therefore expect parties to sharing agreements to note the importance of fully disclosing their relationships to ensure the Commission can properly evaluate the transaction before it, and to take care in ensuring each licensee maintains control of its station.

b. National Ownership Cap Violation

53. The National Ownership Cap prohibits a party from acquiring a television station license where it results in that party "having a cognizable interest in television stations which have an aggregate national audience reach exceeding thirty-nine (39) percent."[157] Given our finding above of an unauthorized transfer of control, Commission precedent requires that we next assess whether that transfer necessarily violates any multiple ownership rules.[158] We find that by assuming *de facto* control over WPIX, the Station therefore must be counted toward Nexstar's aggregate national audience reach. Given Nexstar's other holdings, we find it apparently violated the National Ownership Cap.

54. Prior to acquiring an attributable interest in WPIX, Nielsen reported that Nexstar had an aggregate national audience reach of approximately 39.0%.[159] For purposes of calculating the audience reach of WPIX, we use the percentage of the total national television households that are in the DMA in which the station is located, which for WPIX is the New York DMA.[160] According to information from Nielsen for the 2020-2021 television season, the New York DMA, to which WPIX is licensed, constituted a reach of 6.163% of television households in the nation.[161] With WPIX added, then, Nexstar's national reach apparently exceeded 45%, well in excess of the 39% limit set by the National Ownership Cap.

55. The fact that ownership of WPIX would cause Nexstar to exceed the National Ownership Cap was precisely the reason the Commission required Nexstar to divest WPIX in conjunction with Nexstar's acquisition of Tribune.[162] As described above, following the divestiture of WPIX to Scripps, Nexstar retained an option to re-acquire WPIX, presumably in case circumstances changed such that Nexstar could eventually do so in a manner compliant with the National Ownership Cap.[163] When that possibility appeared unlikely to occur within the term of the option, Nexstar apparently resorted to a different course of action by backing Mission with the financial wherewithal to acquire WPIX and setting up an arrangement whereby Nexstar could control and profit exclusively from the station.

[157] 47 CFR § 73.3555€(1).

[158] *See*, *e.g.*, *Roy M. Speer*, Memorandum Opinion and Order and Notice of Apparent Liability, 11 FCC Rcd 18393, 18419, paras. 65-66 (1996) (*Roy M. Speer*) ("In light of our finding that Silver King assumed unauthorized control of Urban's WTMW(TV) during the three and one-half year construction of that station, we must determine whether that control placed Silver King in violation of any of our multiple ownership rules. . . . Thus, because we find that Silver King assumed control of WTMW(TV) without waiver of the rule during the years 1990 to 1993, we find also that it violated the television duopoly rule during that period.").

[159] Justin Nielson, S&P Global Market Intelligence, *Top 50 U.S. TV Station Groups: E.W. Scripps Takes Top Spot in Deal for ION* (Oct. 30, 2020) (based on data reported in Excel format, and using Nielsen television household estimates, Nexstar reached 39.0% of US TV households, after accounting for the UHF discount.).

[160] 47 CFR § 73.3555(e)(2)(i).

[161] Nielsen, Local Television Market Estimates (used beginning Sept. 26, 2020).

[162] *Nexstar-Tribune Order*, 34 FCC Rcd at 8441, para 8.

[163] *See, e.g., Amendment of Section 73.3555(e) of the Commission's Rules, National Television Multiple Ownership Rule*, MB Docket No. 17-138, Letter from Perry Sook, Chairman, President & CEO, Nexstar Broadcasting, Inc., et al., to Ajit Pai, Chairman, FCC, et al. (filed Mar. 11, 2019) (*ex parte* letter advocating setting the national ownership cap at 78% of television households in the country); *see also* Harry A. Jessell, *Nexstar's Sook To FCC: Set Cap At 78% ASAP* (Apr. 23, 2019), https://tvnewscheck.com/business/article/nexstars-sook-to-fcc-set-cap-at-78-asap.

2. EDP Attribution/National Ownership Cap Violation

56. We further find that Nexstar apparently violated the National Ownership Cap by virtue of holding an attributable interest in WPIX under the Commission's EDP rule, which thereby caused Nexstar to have a cognizable interest in television stations with an aggregate national audience reach exceeding the Commission's 39% limit.[164]

57. *EDP Analysis.* The Commission's attribution rules, which include the EDP rule, serve to determine which stations will be counted toward the calculation of a licensee's National Ownership Cap compliance by identifying "those interests in or relationships to licensees that confer on their holders a degree of influence or control such that the holders have a realistic potential to affect the programming decisions of licensees or other core operating functions."[165] As discussed above, under the EDP rule, an entity that holds an interest greater than 33% of the total assets of the licensee (aggregating both debt and equity holdings) and is also a major program supplier to the station will be deemed to hold an attributable interest in the licensee.[166] For purposes of the EDP rule, an interest holder is considered a "major programming supplier" if it "supplies over fifteen percent of the total weekly broadcast programming hours of the station in which the interest is held."[167] In other words, attribution results where the financial interest exceeds 33% of the equity plus debt of the licensee *and* the interest holder is a major program supplier to the station.

58. Applying this EDP analysis to the instant matter, we first look at whether Nexstar supplies more than 15% of the programming to WPIX, thereby satisfying the "major program supplier" prong of the rule. Pursuant to the WPIX LPMA between Mission and Nexstar, Nexstar programs effectively all of WPIX's airtime.[168] As it provides 100% of the programming time on the Station, Nexstar far exceeds the 15% threshold necessary to be considered a major program supplier under the rule.

59. With Nexstar defined as a major programming supplier to WPIX, the next step in the analysis is to determine whether the financial structure of Nexstar's interest in Mission is attributable for EDP purposes. Nexstar's interest is attributable under the EDP rule if the equity and debt interests "in the aggregate, exceed 33 percent of the total asset value, defined as the aggregate of all equity plus debt, of that broadcast licensee."[169]

60. Nexstar both guaranteed the borrowing Mission used to buy WPIX and provided assets to secure repayment, as collateral, for Mission's loans. Commission precedent has made clear that, although loan guarantees alone are not ordinarily attributable under our rules, the Commission will "include any security deposit or financial contribution made by a guarantor for the guarantee of a loan in determining

[164] 47 CFR § 73.3555(e). Absent record evidence, we do not address herein whether Nexstar acquired an attributable interest with respect to any station besides WPIX based on EDP, and we find that attribution of WPIX alone was more than sufficient to cause Nexstar to exceed the National Ownership Cap.

[165] *1999 Attribution Order*, 14 FCC Rcd at 12560.

[166] *See supra* para. 4*;* 47 CFR § 73.3555, Note 2(i). The EDP rule also contains a second prong by which an entity can trigger the attribution rules, namely, if the party holding a 33% or greater EDP interest in a licensee also holds an attributable interest in another broadcast licensee in the same market. Because Nexstar is not the licensee of another station in the market, that prong is not relevant to this proceeding.

[167] *Id.*

[168] LPMA, at para. 2 ("Licensee shall make available to Programmer all of the airtime on the Station (including the primary and all secondary program streams and ancillary uses) for programming provided by Programmer (the 'Programs') for broadcast on the Station twenty-four (24) hours per day, seven (7) days per week.").

[169] 47 CFR § 73.3555, Note 2(i).

whether the guarantor's interest is attributable under the EDP rule."[170] While Mission acknowledges that "consideration paid for the guarantee would be considered as part of the calculation under the EDP Rule,"[171] the Commission has explained that it "will include any financial contributions made by a guarantor, including amounts placed into escrow as *security for a loan guarantee* or amounts otherwise made in connection with the guarantee, to any other equity or debt investments the guarantor has in a licensee."[172]

61. Collateral is, by definition, something that is pledged as security for a loan.[173] It has financial worth[174] and, therefore, represents "a financial contribution made by a guarantor,"[175] in the course of guaranteeing the loan making Mission's WPIX acquisition possible. Accordingly, as a matter of logic and plain English construction, loan collateral is a form of security that is counted under EDP.[176] The Parties note that the Commission has specifically mentioned other types of financial contributions as relevant to EDP enforcement (e.g., "*will include amounts placed into escrow* as security for a loan guarantee"), apparently implying that only expressly identified financial vehicles should trigger concerns. If this is their argument, it is specious. The use of the term "including" at the beginning of the Commission's list of examples signals plainly that the list is not exhaustive.[177] Moreover, it is illogical as a policy matter to believe that "security for a loan guarantee" is problematic only when it is held in "escrow" as opposed to being held pursuant to other arrangements mutually agreeable to the parties. In keeping with that understanding, Media Bureau guidance indicates that collateral used to secure a guaranteed loan is a relevant financial contribution for EDP purposes.[178]

62. The evidence in this case shows that Nexstar provided collateral as security for Mission's borrowing, and such collateral made possible Mission's acquisition of WPIX. As noted above, the credit facility used by Mission to acquire WPIX was a revolving line of credit guaranteed by Nexstar and backed by its collateral assets.[179] Mission acknowledges that when a Revolver draw occurs, "all then-existing and after-acquired assets of Mission and Nexstar (excluding their FCC licenses, consistent with

[170] *Review of Commission's Regulations Governing Attribution,* MM Docket No. 94-150, Report and Order on Reconsideration, 16 FCC Rcd 1097, 1112-13 (2001) (*2001 Order on Recon*). *See also Radio Monroe, LLC*, Letter Order, 26 FCC Rcd 392, 394 (AD 2011) (*Radio Monroe*) (stating that "loan guarantees will trigger the EDP rule only to the extent that the guarantor provides security for the loan").

[171] Mission Response to Further LOI at 11 (internal citations omitted).

[172] *2001 Order on Recon*, 16 FCC Rcd at 1112-13, para. 32 (emphasis added). *See also Radio Monroe,* 26 FCC Rcd at 394 ("loan guarantees will trigger the EDP rule only to the extent that the guarantor provides security for the loan.").

[173] *See* 9 *Corbin on Contracts* § 47.8 (2023) and Uniform Commercial Code § 9-102.

[174] *See Rubin v. United States*, 449 U.S. 424, 429 (1981) ("Obtaining a loan secured by a pledge of shares of stock unmistakably involves a "disposition of [an] interest in a security, for value.") (internal citations omitted).

[175] *2001 Order on Recon*, 16 FCC Rcd at 1112-13, para. 32.

[176] *Radio Monroe*, 26 FCC Rcd at 394 (providing that if a "loan guarantee will not be secured by any collateral, there would be no post-transaction attribution").

[177] *See Federal Land Bank v. Bismarck Lumber Co.,* 314 U.S. 95, 100 (1941) ("the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle.") (citing *Phelps Dodge Corp. v NLRB*, 313 U.S. 177, 189 (1941)).

[178] *See, e.g., Radio Monroe*, 26 FCC Rcd at 392 (recognizing that assignment was granted in FCC File No. BALH-20091006ACZ after application amended to eliminate collateral tied to loan guarantee that was the focus of petition to deny).

[179] Mission Response to Further LOI at 4.

the FCC's policy against permitting security interests in such licenses) serve as collateral for the companies' respective loan obligations."[180]

63. Functionally, then, the Revolver gives Mission and Nexstar, respectively, borrowing rights from a jointly secured pool of money under which each party is assigned an individual cross-collateralized credit limit. When one party, such as Mission, needs a higher credit limit, the parties can arrange to transfer available borrowing capacity through a joint request, known as "Reallocation."[181]

64. In December 2020, when Mission {[},[182] the Parties arranged a Reallocation allowing Mission to tap into another $80 million in Revolver financing.[183] That Reallocation from Nexstar gave Mission the wherewithal to make its approximately $82.6 million[184] closing payment for WPIX on December 30, 2020 (WPIX Closing Day).[185]

65. Under the Revolver, both parties' assets (except for station licenses, which under Commission precedent cannot be used as collateral) provide collateral securing any draw by either party from the Revolver loan facility. The amount of collateral is key. Given this blanket collateralization, no specific assets have been given priority for seizure or otherwise segregated to first make lenders whole, in case of default.[186] Rather, if Mission defaults, the clear legal implication is that any collateralized Nexstar asset is subject to seizure to satisfy Mission's debt. Thus, the entirety of Mission's Revolver balance on WPIX Closing Day was secured by Nexstar collateral and, therefore, counted as a Nexstar financial contribution to Mission under EDP.

66. The EDP rule sets a 33% threshold at which financial contributions can become attributable ownership interests in a licensee.[187] Thus, if Nexstar collateral or other financial contributions equal 33% or more of Mission's total value, Nexstar would hold an attributable ownership interest in Mission. If the total amount of its financial interests, including collateral, is below the 33% threshold, Nexstar would not be an attributable owner of Mission under the EDP rubric.

67. The arithmetic showing that Nexstar apparently became attributable in Mission via EDP just after WPIX Closing Day is as follows:

(a) The total amount of Mission's Revolver debt for which Nexstar assets served as security was $327 million, the day after the WPIX transaction closed.[188]

(b) Mission's value on December 31, 2020 was ${[ ]}.[189]

[180] *Id.*

[181] Reallocation rights are established in the Revolver Credit Agreement, dated Jan 17, 2017 at Sec. 206(d), and amendments thereto, as submitted at Exh. A to Mission Response to Further LOI.

[182] *See* E-mail from Sharon Moser, Mission's Comptroller, to Yili Shi {[ ]} (Jan. 20, 2021) at Exh. C to Mission Response to Further LOI.

[183] Reallocation request documentation is attached to Mission Response to Further LOI, at Exh. C.

[184] Mission Response to Further LOI at n.10.

[185] The parties requested Reallocation on December 3, 2020. The lenders approved on December 14, 2020. Mission drew $80 million from the Revolver on December 29, 2020 (the day before the WPIX transaction closed).

[186] Mission Response to Further LOI at 3 ("given the nature of its Credit Agreement, Mission does not have a list that includes the specific assets that are collateral . . . and creating such a list would be unduly burdensome").

[187] *See* 47 CFR § 73.3555, Note 2(i).

[188] Nexstar 2020 10-K at F-55.

[189] Mission Response to Further LOI at 1.

(c) The Revolver debt collateralized by Nexstar assets = {[ ]}% of Mission's enterprise value the day after the WPIX transaction closed (i.e., 327 million divided by {[ ]}).

(d) Nexstar thus held a {[ ]}% EDP-attributable stake in Mission the day after the WPIX transaction closed. As {[ ]}% is far greater than the 33% EDP attribution threshold, Nexstar apparently became an attributable owner of Mission at the time the WPIX transaction closed.[190]

68. *National Ownership Cap Violation.* By becoming an attributable interest holder in the Station, WPIX would then be added to Nexstar's aggregate national audience reach under the National Ownership Cap. With WPIX properly included, Nexstar apparently violated the National Ownership Cap. As described above, Nexstar had an aggregate national audience reach of approximately 39.0% without WPIX. Once attributed with an additional reach of 6.163% for WPIX, Nexstar's national reach apparently exceeded 45%, well in excess of the 39% limit set by the National Ownership Cap.

B. Forfeitures and Remedies

69. For each of the apparent violations set forth below, we establish the appropriate proposed forfeiture tailored to the violation. In addition, longstanding Commission precedent requires licensees to correct their non-compliant behavior. Accordingly, after setting forth the proposed forfeitures, we then identify the remedies the relevant party or parties must undertake to come into compliance with our rules.

1. Violations/Forfeitures

a. *De Facto* Control and National Ownership Cap

70. Both Nexstar and Mission were parties to an apparent unauthorized *de facto* transfer of control in violation of section 310(d) of the Act, and it is incumbent upon both parties to take the steps necessary to correct the unauthorized transfer of control as discussed further below. Further, by usurping control of WPIX, Nexstar holds a combination of television stations that exceeds the National Ownership Cap. The Commission has imposed a wide array of penalties for unauthorized transfers of control, from small forfeitures up to license revocation.[191] Because mere remediation of their serious breach of this statute does not adequately penalize this transgression, we find it necessary to impose forfeitures upon both parties as follows.

71. We find that Nexstar and Mission each apparently willfully and repeatedly violated section 310(d) of the Act and section 73.3540 of the Commission's Rules by transferring *de facto* control

---

[190] Although we divide by total asset value of the *licensee* for purposes of our calculation here, we note that at least one Commission decision has suggested the proper value is set by the total asset value of the *station*. *See 2001 Order on Recon*, 16 FCC Rcd at 1099, para. 3 ("Any interest the major program supplier has in a station, to which it supplies programming, will be attributable under the EDP rule if the interest, aggregating both equity and debt, exceeds 33 percent of the total asset value of the *station*.") (emphasis added); *see also id.* at 1111, para.28. We use the approach consistent with the language of section 73.5555, Note 2 of our rules, which states that the aggregate equity and debt interests are divided by the total asset value of the "broadcast licensee." Under either test, an EDP violation is clear. If Nexstar's attributable interest was instead calculated with reference to the amount of collateralized debt tapped to buy WPIX, Nexstar would similarly have violated both EDP and National Ownership Cap rules. The total collateralized debt used to purchase WPIX was $80 million. The total asset value of WPIX when Mission acquired it was ${[ ]}. Those numbers put Nexstar's attributable interest in the station at about {[ ]}%, which is well in excess of the 33% EDP attribution threshold.

[191] *See*, *e.g.*, *Radio Moultrie, Inc.,* Order of Revocation, 18 FCC Rcd 22950, 22957 (EB 2003) (revoking license for violating section 310(d) by engaging in an unauthorized transfer of control and failure to comply with Commission directives); *Birach Broadcasting Corp.*, 25 FCC Rcd 2643, 2647, 2648, paras. 10, 13 (EB 2010) (proposing an $8,000 forfeiture, after recognizing that Birach took substantial steps to remedy the situation after receiving a letter of inquiry).

of WPIX from Mission to Nexstar without Commission consent.[192] This transfer of control was "conscious and deliberate," and thus willful, on behalf of both parties, as evidenced by the actions undertaken by both parties without prior Commission approval. Furthermore, we find that as a result of its apparent *de facto* control of WPIX, Nexstar apparently willfully and repeatedly violated section 73.3555(e) of the Commission's Rules. Given the duration of the violation and other relevant criteria, we propose a forfeiture on each company in the amount of $612,395 for the violations.

72. Section 503(b) of the Act authorizes the Commission to impose a forfeiture against any entity that "willfully or repeatedly fail[s] to comply with . . . any rule, regulation, or order issued by the Commission . . . ."[193] Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.[194] This definition of willful applies to section 503(b) of the Act, as the Commission has previously established.[195] Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."[196]

73. Section 503(b)(2)(A) of the Act authorizes us to assess a forfeiture against a broadcast licensee of up to $61,238 per violation or day of a continuing violation, up to a statutory maximum of $612,395 for a single act or failure to act.[197] In exercising our forfeiture authority, we consider the nature,

---

[192] Previously, the Commission has found it appropriate to hold both the licensee and the party that overstepped and asserted control of the station without prior Commission approval accountable and subject to monetary forfeiture for an unauthorized transfer of control in violation of 310(d). *See, e.g., Roy M. Speer*, 11 FCC Rcd at 18414, para. 53 (addressing an unauthorized transfer of control of a television station license and holding both parties accountable, the licensee for its abdication and the usurper for its assumption of control, and imposing a monetary forfeiture and remediation); *see also CanXus Broadcasting Corp.*, Memorandum Opinion and Order, 7 FCC Rcd 3874, para. 3 (MMB 1992), *recon. granted in part*, 8 FCC Rcd 4323 (MMB 1993) (rejecting argument that the imposition of a forfeiture against the third party usurping control rather than the licensee was inappropriate, and stating that sanctions could be imposed against either party, or against both, as both the licensee and the third party were involved in the unauthorized conduct), *aff'd*, 10 FCC Rcd 9950 (1995) (denying application for review and affirming the imposition of a forfeiture for the unauthorized transfer of control).

[193] 47 U.S.C. § 503(b).

[194] 47 U.S.C. § 312(f)(1). The legislative history to section 312(f)(1) of the Act clarifies that this definition of willful applies to both sections 312 and 503(b) of the Act, *see* H.R. Rep. No. 97-765, 97th Cong. 2d Sess. 51 (1982), and the Commission has so interpreted the term in the section 503(b) context. *See Southern California Broad. Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388, para. 5 (1991), *recon. denied*, Memorandum Opinion and Order, 7 FCC Rcd 3454 (1992).

[195] *Id.*

[196] 47 U.S.C. § 312(f)(2).

[197] 47 U.S.C. § 503(b)(2)(A). These amounts reflect inflation adjustments of the forfeitures specified in section 503(b)(2)(A) of the Act. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015 Inflation Adjustment Act) requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15. 47 CFR § 1.80(b)(11). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (4). The Commission's Enforcement Bureau released the order making the 2024 annual adjustment on December 22, 2023. *See Amendment of Section 1.80(b) of the Commission's Rules; Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, DA 23-1198, 2023 WL 8889597, at *1 (EB Dec. 22, 2023); *see also Annual Adjustment of Civil Monetary Penalties to Reflect Inflation*, 89 Fed. Reg. 2148 (Jan. 12, 2024) (setting January 15, 2024 as the effective date for the increases). The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, "including [penalties] whose associated violation predated such increase." *See* 28 U.S.C. § 2461 note, citing Inflation Adjustment Act, as amended § 6. To the extent the Commission issues a Forfeiture Order in this proceeding after a subsequent increase in the statutory maximum forfeiture amount due to an

(continued….)

circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, substantial economic gain, and such other matters as justice may require.[198] As required by the Act, the Commission will apply these statutory factors to determine a forfeiture based on the Commission's evaluation of each individual case on its own merits.[199] We may also adjust the base forfeiture upward or downward, taking into account the particular facts of each individual case.[200]

74. Here, we apply the base forfeiture of $8,000 for "unauthorized substantial transfer of control" to both Nexstar and Mission. The Commission treats an unauthorized transfer of control as a continuing violation that does not end until the Commission grants a transfer of control application.[201] Typically, in assessing a continuing violation, the Commission would multiply the base forfeiture amount by the number of days a violator was out of compliance with our rules.[202] The record before us does not identify a precise date that the Parties committed the *de facto* control violation; rather, our finding of this apparent violation is based on the Parties' cumulative actions and inactions, and our totality-of-the-circumstances analysis does not identify a single action as the demarcation point at which Mission abdicated control to Nexstar. Nevertheless, given that the Parties filed their responses to the *First LOI* with the Commission on January 14, 2022 and memorialized Nexstar's and Mission's activities as of that date (which demonstrated *de facto* control), and the record does not indicate that Mission has subsequently exerted control over WPIX at any point in time since then up through the present day, clearly well more than 75 days of non-compliance have elapsed. Accordingly, our base forfeiture reaches

(Continued from previous page)
inflation adjustment, the Commission reserves the right to assess a higher forfeiture amount to reflect the inflation-adjusted statutory maximum in effect at the time of a Forfeiture Order.

[198] 47 U.S.C. § 503(b)(2)(E); 47 CFR § 1.80(b)(10), Note 2.

[199] 47 U.S.C. § 503(b).

[200] *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17098-99, para. 22 (1997) (*Forfeiture Policy Statement*) (noting that "[a]lthough [the Commission has] adopted the base forfeiture amounts as guidelines to provide a measure of predictability to the forfeiture process, [the Commission] retain[s the] discretion to depart from the guidelines and issue forfeitures on a case-by-case basis, under [the] general forfeiture authority contained in Section 503 of the Act"), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999); *see also* 47 CFR § 1.80(b)(10), Table 3:

Upward Adjustment Criteria

(1) Egregious misconduct.
(2) Ability to pay/relative disincentive.
(3) Intentional violation.
(4) Substantial harm.
(5) Prior violations of any FCC requirements.
(6) Substantial economic gain.
(7) Repeated or continuous violation.

Downward Adjustment Criteria

(1) Minor violation.
(2) Good faith or voluntary disclosure.
(3) History of overall compliance.
(4) Inability to pay.

[201] *See, e.g.*, *Enserch Corporation*, Forfeiture Order, 15 FCC Rcd 13551, 13554, para. 10 (2000).

[202] *See, e.g.*, *Gray Television, Inc.*, Forfeiture Order, 37 FCC Rcd 13475, 13486, para. 27 (2022), *appeal pending sub nom. Gray Television, Inc. v. FCC*, No. 22-14274 (11th Cir.) (*Gray Television, Inc.*).

the statutory maximum penalty for each party, and we hereby impose a forfeiture on Nexstar of $612,395, as well as a forfeiture for Mission of $612,395.[203]

75. While the Commission is barred from imposing higher forfeiture amounts given that we are assessing fines at the statutory cap, we recognize that there would be a number of bases upon which to adjust a forfeiture upwards in this case. Namely, the "[a]bility to pay/relative disincentive" criterion would support an upward adjustment for these parties with their significantly higher-than-usual ability to pay and the need to establish a deterrent to such transgressions in the future.[204] In particular, the Parties' actions here circumvented our National Ownership Cap and allowed Nexstar to achieve control of a station that Nexstar is otherwise prohibited from acquiring, absent significant station divestitures. After passing on the chance to acquire the Station as part of the Nexstar-Tribune transaction and failing to secure an increase in the Commission's National Ownership Cap that could have allowed it to exercise the Option and purchase the Station from Scripps, Nexstar instead transferred its Option to Mission and ensured that Mission had the funds necessary to acquire the Station. Thereafter, Mission ceded control of the station to Nexstar, which effectively operated the Station as its own, controlling 100% of the programming, receiving all of the revenue, negotiating retransmission consent, and earning the potential financial benefit, or harm, of the Station's operations. In addition, at least with regard to Nexstar, the violation resulted in apparent substantial economic gain from superior retransmission consent revenues.

76. We have also reviewed all possible grounds for a downward adjustment, and do not consider them sufficiently compelling in this instance. Downward adjustment criteria are not present here, including a minor violation, voluntary disclosure, history of compliance, and inability to pay. We emphasize that all possible grounds for a downward adjustment are outweighed by the egregiousness of the Parties' misconduct, their ability to pay, and the need for a relative disincentive, as well as the substantial economic gain for Nexstar created by the transaction.

77. Finally, as discussed in Section III.A.1.b. above, Nexstar's assumption of *de facto* control of WPIX also resulted in its apparent violation of the National Ownership Cap contained in section 73.3555(e) of the Rules. Because we propose a forfeiture below for Nexstar's apparent violation of the National Ownership Cap by virtue of its cognizable attributable EDP interest in the Station, we decline to propose a separate forfeiture for Nexstar's apparent violation of the National Ownership Cap by virtue of its *de facto* control of WPIX.

b. EDP Attribution/National Ownership Cap

78. In addition to apparently engaging in an unauthorized transfer of control by assuming *de facto* control of the Station, Nexstar also apparently violated the National Ownership Cap by virtue of its attributable EDP interest in the Station. In light of our finding that Nexstar apparently violated the National Ownership Cap as a result of its attributable interest in WPIX by virtue of Nexstar collaterally securing Mission's borrowing from the Revolver loan, we impose a forfeiture against Nexstar as follows. Further, as detailed below, Nexstar must also take steps to come into compliance with the National Ownership Cap.

79. We propose the maximum forfeiture of $612,395 for Nexstar pursuant to section 1.180 Note 1(b)(1) of the Commission's Rules for violating the National Ownership Cap on the basis of its

[203] The Commission has employed a similar methodology in other cases where a specific violation date is not verifiable but the statutory maximum is met. *See*, *e.g.*, *DIRECTV, LLC et al v. Deerfield Media et al*, Memorandum Opinion and Order and Notice of Apparent Liability for Forfeiture, 35 FCC Rcd 10695,10719, para. 20 (2020).

[204] For 2023, Nexstar reports that it had revenues of $4.9 billion. *See* Nexstar 10-K at 4. We note that as a VIE, Mission's revenues and assets are consolidated with Nexstar's financial accounting and annual reporting. Hence, Mission and Nexstar are effectively treated as a single entity for financial purposes in the Nexstar 10-K.

attributable ownership interest in WPIX resulting from its attributable EDP interest at the time Mission acquired the Station.[205]

80. The Commission has not previously proposed a forfeiture for a violation of the National Ownership Cap set forth set forth in section 73.3555(e). Where no base forfeiture amount exists, the Commission looks at forfeitures established or issued in analogous cases for guidance. In this instance, we find that the base forfeiture of $8,000 for "unauthorized substantial transfer of control" cases is sufficiently analogous to the violation at hand in this case.[206] We also find that the violation of the Local Television Ownership Rule and Note 11 to section 73.3555 of the Rules through the acquisition of a second top-four affiliation, which also has a base forfeiture of $8,000, is sufficiently analogous, as it similarly seeks to prevent evasion of Commission ownership limits.[207] Nexstar's apparent violation began on December 31, 2020, when Nexstar's attributable EDP interest in WPIX put it in violation of the National Ownership Cap. Its cognizable interest in WPIX in combination with its other station holdings raised its aggregate national audience reach well above 39% from that date until the present. As a result, clearly well more than 75 days of non-compliance have elapsed.

81. Accordingly, our base forfeiture reaches the statutory maximum penalty for Nexstar of $612,395. Again, while the Commission is barred from imposing higher forfeiture amounts given that we are assessing fines at the statutory cap, we recognize that there would be a number of bases upon which to upwardly adjust a forfeiture in this case. Namely, the "[a]bility to pay/relative disincentive" criterion would support an upward adjustment for Nexstar's significantly higher-than-usual ability to pay and establish a deterrent to such transgressions in the future.[208] In addition, the violation resulted in apparent substantial economic gain from superior retransmission consent revenues. We have also reviewed all possible grounds for a downward adjustment, as discussed above, and do not consider them sufficiently compelling to warrant a downward adjustment in this instance. We emphasize that all possible grounds for a downward adjustment are outweighed by the egregiousness of Nexstar's misconduct, its ability to pay, and the need for a relative disincentive, as well as the substantial economic gain for Nexstar created by the transaction.

2. Remedying Non-Compliance

82. Simply effecting a formal transfer of control of WPIX from Mission to Nexstar would not place the Parties in full compliance with all of the Commission's Rules, as Nexstar's holdings would still exceed the National Ownership Cap. Accordingly, our remedy here seeks to ensure that Nexstar comes into compliance with the National Ownership Cap. Further, we note that even absent the apparent violation of the National Ownership Cap, the same remedy would be warranted based on the apparent unauthorized transfer of control of WPIX.

83. We are aware, however, that there is more than one way for the Parties to come into compliance with the statute and our rules. In the interest of minimizing disruption to the market we will allow the Parties some flexibility to remedy their regulatory non-compliance.[209] Specifically, as set forth

---

[205] As discussed in Sections III.A.1.b. and III.A.2., respectively, we find that Nexstar violated the National Ownership Cap both as a result of its obtaining unauthorized *de facto* control of WPIX, and separately and independently as a result of the cognizable attributable EDP interest it held in WPIX in connection with the Revolver loan at and after the time of the acquisition of WPIX. As discussed in this section, we find it appropriate to assess a forfeiture against Nexstar for its violation of 73.3555(e) arising from these separate acts and on the legal basis discussed in Section III.A.2.

[206] 47 CFR § 1.80(b)(10), Table 1.

[207] *See Gray Television Inc.*, 37 FCC Rcd at 13486, para. 27.

[208] For 2023, Nexstar reports that it had revenues of $4.9 billion. *See* Nexstar 10-K at 4).

[209] The Bureau has, in certain situations, afforded licensees in violation of our rules several options to come into compliance. *See*, *e.g.*, *Nat'l Ass'n of Broadcasters*, Declaratory Ruling and Order, 17 FCC Rcd 6065, 6082, para. 31

(continued….)

in more detail below, Nexstar and Mission must undertake one of two options within twelve months of the issuance of any forfeiture order or payment of the forfeiture proposed in this NAL, whichever comes first, whereby either (1) Mission divests WPIX to an unrelated third party, or (2) Mission formally sells WPIX to Nexstar and the Parties file an application seeking Commission consent to the assignment of license, with Nexstar divesting a sufficient number of other stations to reduce its national coverage footprint consistent with the National Ownership Cap.

84. Under the first remedial option, Mission must sell both the license and station assets of WPIX to a third party that is unrelated to, and unaffiliated with, either Nexstar or Mission and without either Nexstar or Mission retaining any sharing arrangement or contingent financial interest. Further, under this approach, Nexstar may not exercise its prior Option; rather, *de jure* control of WPIX must pass directly to the third party either by assignment or transfer of control from Mission. To ensure the Station is divested cleanly to an unrelated third party, none of the attributable interest holders of the proposed third-party assignee or transferee, including owners, officers, or directors, may be the same as, or related to, any owners or officer of Mission or hold an attributable interest in either Mission or Nexstar.[210] Additionally, neither Nexstar nor Mission may enter into any LMA, JSA, or other sharing arrangement with the third party assignee or transferee for the Station for a period of eight years. Further, we emphasize that such a divestiture of the Station may not include any option for Nexstar or Mission to re-acquire the Station, nor any other similar, or even partial, contingent financial interest in the Station, and that neither Nexstar nor Mission may serve as a guarantor of the third party's financing. Lastly, we condition any such divestiture with a requirement that neither Nexstar nor Mission may re-acquire the Station for a period of eight years. We find that such additional prophylactic measures are necessary to ensure compliance with the Commission's Rules, and a clear break in Nexstar's influence and control of WPIX.

85. Under the second option, Nexstar would formally acquire the license for WPIX and file an application seeking Commission consent to the assignment. Simultaneously, Nexstar must divest a sufficient number of stations in other markets as necessary to clear space under the National Ownership Cap in order to maintain the company's nationwide footprint at 39% or less.[211] In divesting stations in other markets to come into compliance with the National Ownership Cap, Nexstar may not engage in an LMA, JSA, or other sharing arrangement with any of the divested stations for a period of eight years. Similarly, Nexstar may not retain an option to re-acquire a divested station nor hold any other contingent financial interest in those divested stations. Further, Nexstar may not divest those stations to Mission, or any other entity in which Nexstar or Mission has a cognizable interest under our attribution rules, also for a period of eight years. To ensure the stations are divested cleanly to an unrelated third party, none of the attributable interest holders of the proposed third-party assignee or transferee, including owners, officers, or directors, may be the same as or related to any owners or officers of either Mission or Nexstar or hold an attributable interest in either Mission or Nexstar.

(Continued from previous page)
(MB 2002), *vacated in part*, Memorandum Opinion and Order, 22 FCC Rcd 16074 (MB 2007) (implementing changes to the relevant statute enacted by Congress in the Satellite Home Viewer Extension and Reauthorization Act of 2004).

[210] In imposing these conditions, we rely in part on past measures that the Commission has adopted for the selection of a divestiture trustee to protect against undue influence. *See, e.g.*, *Clear Channel Broadcasting Licenses, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 21196, 21294, para. 21 n.47 (2007) ("The trustee shall have no family relationships with the principals of either PEP, the post-merger Newport, or Clear Channel, and no past business relationship with either PEP, Newport, or Clear Channel, their affiliates or principals, except to the extent required to establish the trust."). Our conditions necessarily deviate from those adopted for divestiture trusts in part because such cases typically contemplate an individual being the trustee.

[211] Because WPIX is in the New York DMA, the largest market in the country with a footprint of more than 6%, Nexstar would need to sell stations in more than one market to operate within the Cap.

86. We also impose the following additional requirements that apply under either option. In seeking Commission approval for any transaction(s) under either option, Nexstar must file a certified showing of compliance with the National Ownership Cap, broken down by market and with a cumulative footprint under 39%. In selecting 12 months as the deadline for compliance, we rely on other decisions that afforded divesting licensees a similar 12-month period to file an application to come into compliance with our rules.[212] Upon Commission approval, the acquisition(s) must be consummated within 30 days.[213]

IV. ORDERING CLAUSES

87. Accordingly, **IT IS ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[214] and sections 1.80 of the Commission's Rules,[215] that Nexstar Media Group, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of one million, two hundred twenty-four thousand, seven hundred and ninety dollars ($1,224,790)** for its apparent willful violation of sections 73.3540 and 73.3555(e) of the Commission's Rules and section 310(d) of the Act.[216]

88. **IT IS FURTHER ORDERED**, pursuant to section 503(b) of the Communications Act of 1934, as amended,[217] and sections 1.80 of the Commission's Rules,[218] that Mission Broadcasting, Inc. is hereby **NOTIFIED** of its **APPARENT LIABILITY FOR FORFEITURE in the amount of six hundred twelve thousand, three hundred and ninety-five dollars ($612,395)** for its apparent willful violation of section 73.3540 of the Commission's Rules and section 310(d) of the Act.[219]

89. **IT IS FURTHER ORDERED** that, within 12 months of the date of the issuance of any forfeiture order issued in this proceeding or the payment of the forfeiture proposed in this *NAL*, whichever comes first, Nexstar Media Group, Inc. and Mission Broadcasting, Inc. **SHALL FILE** the divestiture application(s) consistent with the requirements set forth in paragraphs 82-85 above.

---

[212] *See*, *e.g.*, *Application of Shareholders of CBS Corp.*, Memorandum Opinion and Order, 15 FCC Rcd 8230, 8236, paras. 19-22 (2000) (allowing applicants 12 months to file applications to divest television broadcast stations in order to comply with National Ownership Cap as part of the approval of applications for consent to transfer control of broadcast stations); *AT&T/MediaOne*, Memorandum Opinion and Order, 15 FCC Rcd 9816 (2000) (Commission grants slightly under 12 months for company to divest assets to comply with the cable horizontal ownership cap).

[213] To provide parties with more flexibility to set closing dates in accordance with business accounting procedures, the Commission's Form 732 and processing guidance allow the parties 90 days from approval to consummate or submit a request to extend the consummation period. *See Mass Media Bureau Announces Revised Procedure Regarding Assignment and Transfer Consummation Deadlines*, Public Notice, DA 97-600 (MMB Mar. 21, 1997). However, parties who are out of compliance with the Commission's Rules have previously been subject to shorter consummation deadlines, and due to the potential for the Parties to gain an extended financial advantage to delay consummation, we impose a similar one here. *See, e.g., David D. Oxenford, et al.*, Letter Order, 36 FCC Rcd 16778, 16785 (MB 2021) (requiring divestiture assignments to be consummated within 15 days of Commission approval of the assignments); *Jeffrey D. Southmayd*, Letter, 31 FCC Rcd 10912, 10926 (AD 2016) (requiring consummation within 60 days of any relevant divestiture assignment); *WZJD, Inc.*, Letter Notice of Apparent Liability, 20 FCC Rcd 9941, 9949 (AD 2005) (ordering that where a licensee is and remains out of compliance with the Commission's main studio rule, if the assignment is not consummated within 30 days, the licensee must notify commission staff that it has otherwise brought the station into compliance with the Commission's Rules).

[214] 47 U.S.C. § 503(b).

[215] 47 CFR § 1.80.

[216] 47 U.S.C. § 310(d); 47 CFR §§ 73.3540, 73.3555(e).

[217] 47 U.S.C. § 503(b).

[218] 47 CFR § 1.80.

[219] 47 U.S.C. § 310(d); 47 CFR § 73.3540.

90. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[220] within thirty (30) days of the release date of this *NAL*, Nexstar Media Group, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

91. **IT IS FURTHER ORDERED** that, pursuant to section 1.80 of the Commission's Rules,[221] within thirty (30) days of the release date of this *NAL*, Mission Broadcasting, Inc. **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

92. Payment of the forfeiture must be made by credit card, ACH (Automated Clearing House) debit from a bank account using CORES (the Commission's online payment system),[222] or by wire transfer. Payments by check or money order to pay a forfeiture are no longer accepted. **Upon payment, Licensee must send notice that payment has been made by e-mail to** Ty.Bream@fcc.gov, Jeremy.Miller@fcc.gov, and Michael.Richards@fcc.gov. Below are instructions that payors should follow based on the form of payment selected:[223]

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. A completed Form 159 must be faxed to the Federal Communications Commission at 202-418-2843 or e-mailed to RROGWireFaxes@fcc.gov on the same business day the wire transfer is initiated. Failure to provide all required information in Form 159 may result in payment not being recognized as having been received. When completing FCC Form 159, enter the Account Number in block number 23A (call sign/other ID), enter the letters "FORF" in block number 24A (payment type code), and enter in block number 11 the FRN(s) captioned above (Payor FRN).[224] For additional detail and wire transfer instructions, go to https://www.fcc.gov/licensing-databases/fees/wire-transfer.

- Payment by credit card must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/userLogin.do. To pay by credit card, log-in using the FCC Username associated to the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" from the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill number is the NAL Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). After selecting the bill for payment, choose the "Pay by Credit Card" option. Please note that there is a $24,999.99 limit on credit card transactions.

- Payment by ACH must be made by using the Commission's Registration System (CORES) at https://apps.fcc.gov/cores/paymentFrnLogin.do. To pay by ACH, log in using the FRN captioned above. If payment must be split across FRNs, complete this process for each FRN. Next, select "Manage Existing FRNs | FRN Financial | Bills & Fees" on the CORES Menu, then select FRN Financial and the view/make payments option next to the FRN. Select the "Open Bills" tab and find the bill number associated with the NAL/Acct. No. The bill

[220] 47 CFR § 1.80.

[221] *Id.*.

[222] Payments made using CORES do not require the submission of an FCC Form 159.

[223] For questions regarding payment procedures, please contact the Financial Operations Group Help Desk by phone at 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

[224] Instructions for completing the form may be obtained at https://www.fcc.gov/Forms/Form159/159.pdf.

number is the NAL/Acct. No. (*e.g.*, NAL/Acct. No. 1912345678 would be associated with FCC Bill Number 1912345678). Finally, choose the "Pay from Bank Account" option. Please contact the appropriate financial institution to confirm the correct Routing Number and the correct account number from which payment will be made and verify with that financial institution that the designated account has authorization to accept ACH transactions.

93. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director-Financial Operations, 45 L Street, NE, Washington, DC 20554.[225] Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201 (option #6), or by e-mail at ARINQUIRIES@fcc.gov.

94. The written response seeking reduction or cancellation of the proposed forfeiture, if any, must include a detailed factual statement supported by appropriate documentation and affidavits pursuant to sections 1.16 and 1.80(g)(3) of the Rules.[226] The written response must be filed with the Office of the Secretary, Federal Communications Commission, 45 L Street, NE, Washington, DC 20554, ATTN: Radhika Karmarkar, Chief, Industry Analysis Division, Media Bureau, and **MUST INCLUDE** the NAL/Acct. No. referenced above. A complete copy of any response must also be sent by e-mail to Ty.Bream@fcc.gov, Jeremy.Miller@fcc.gov, and Michael.Richards@fcc.gov to assist in processing the response.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
    - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701.
    - Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street, NE, Washington, DC 20554.

95. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (GAAP); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted. Inability to pay, however, is only one of several factors that the Commission will consider in determining the appropriate forfeiture, and we have discretion to not reduce or cancel the forfeiture if other prongs of section 503(b)(2)(E) of the act support that result.[227]

96. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Jason Roberts, Nexstar Media Group, Inc., 545 E. Carpenter Freeway, Irving, TX 75062. A copy shall also be sent to Nexstar's counsel, Jennifer A. Johnson, by e-mail to jjohnson@covington.com.

97. **IT IS FURTHER ORDERED**, that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Mission Broadcasting, Inc., 4822 Kemp Blvd. Suite 300,

[225] *See* 47 CFR § 1.1914.

[226] *Id.* §§ 1.16 and 1.80(g)(3).

[227] 47 U.S.C. § 503(b)(2)(E). *See, e.g.*, *Adrian Abramovich*, Forfeiture Order, 33 FCC Rcd 4663, 4678-79, paras. 44-45 (2018).

Wichita Falls, TX 76308. A copy shall also be sent to Mission's counsel, Gregory L. Masters, Esq., by e-mail to gmasters@wiley.law.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

STATEMENT OF
CHAIRWOMAN JESSICA ROSENWORCEL

Re: *In the Matter of Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY; Nexstar Media Group, Inc.*, Notice of Apparent Liability for Forfeiture.

Under the Communications Act, as amended by Congress in the Consolidated Appropriations Act of 2004, the Federal Communications Commission is prohibited from allowing a company to own or control broadcast stations that in total reach more than 39 percent of the national television audience. The record here reflects a situation where a company exceeds this threshold. Unless and until Congress changes this law, it is the responsibility of this agency to enforce it.

CONCURRING STATEMENT OF COMMISSIONER BRENDAN CARR

Re: In the Matter of Mission Broadcasting, Inc., Licensee of Station WPIX, New York, NY; Nexstar Media Group, Inc., Notice of Apparent Liability for Forfeiture.

In 2019 and 2020, Nexstar and Mission sought FCC approval for transactions that involve TV station WPIX. In the course of those FCC reviews, the parties provided the FCC with express and detailed information about their relationship. In particular, the parties disclosed to the FCC that Nexstar would provide all of the programming for WPIX, that Nexstar would collect all of the revenue from the station (including retransmission consent revenues), and that Nexstar had entered into an option to purchase WPIX, among other specifics. After reviewing those disclosures, the FCC approved the relevant transactions, finding that it would serve the public interest.

Flash forward to today, and in this Notice of Apparent Liability (NAL) the FCC cites to those previously disclosed and reviewed features of the Nexstar – WPIX relationship as indicia that Nexstar may be exercising too much control over WPIX. To be sure, the NAL cites additional features of the relationship, as well as facts that apparently emerged after the relevant FCC approvals. Those FCC allegations will require careful review. But it is concerning to me that the FCC cites as evidence of control those features of the relationship that the FCC previously signed off on. We need to be careful that we do not undermine reasonable reliance on prior FCC decisions.

NALs are not final decisions on the merits. And I will keep an open mind as the FCC reviews the record in response to this document. Part of that will require the FCC to ensure that any remedies the agency finds necessary are ones that are appropriate given the procedural posture of this enforcement action.