CINNAMON
MUELLER

1714 Deer Tracks Trail, Suite 230
St. Louis, MO 63131

www.CinnamonMueller.com

MAIN: 314-462-9000

UPDATE
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FCC Denies Cincinnati Bell's Retransmission Consent Complaint Against Nexstar

Last Friday, the FCC's Media Bureau released an Order denying a retransmission consent complaint filed by Cincinnati Bell against Nexstar, holding that Nexstar did not violate its duty to negotiate in good faith.

Background. Cincinnati Bell provides cable service in the Dayton and Cincinnati DMAs. Nexstar owns WDTN, the NBC affiliate in Dayton, OH, and the satellite cable channel NewsNation. During renewal negotiations earlier this year, the parties engaged in negotiations for new agreements covering (i) the retransmission consent of WDTN's signal to Cincinnati Bell's subscribers in the Dayton DMA; and (ii) distribution of NewsNation to Cincinnati Bell subscribers in both the Dayton and Cincinnati DMAs. The parties engaged in negotiations, exchanging multiple proposals for retransmission of WDTN, but they did not reach an agreement.

Subsequently, Cincinnati Bell filed a good faith complaint against Nexstar, alleging that Nexstar failed to negotiate retransmission consent in good faith by: (i) refusing to put forth more than a single, unilateral proposal; and (ii) breaching its duty to negotiate in good faith under the totality of the circumstances test.

Order. The Media Bureau found that Nexstar's conduct did not violate the Commission's per se good faith negotiation standards, nor the totality of circumstances test, and urged the parties to return to the bargaining table. The Order underscores several important points:

- Disagreement over the rates, terms, and conditions of retransmission consent – even fundamental disagreement – does not alone establish a good-faith violation.
- Nexstar did not violate the *per se* good faith negotiation rule prohibiting a "single, unilateral proposal." Instead, Nexstar demonstrated its willingness to consider alternate forms of consideration by offering multiple proposals with different terms and was willing to enter into a stand-alone retransmission consent agreement.
- Nexstar did not violate the requirement to negotiate retransmission consent in good faith under the totality of the circumstances test. Under this standard, the

- FCC explained that specific retransmission consent proposals could be "sufficiently outrageous. . . as to breach [the] good faith negotiation obligation." The FCC found that Nexstar's proposed rates (particularly the rates that would apply to after-acquired stations) and demands for carriage of NewsNation in the Cincinnati DMA were not sufficiently outrageous.
- Proposals for carriage conditioned on carriage of any other programming *in the same or a different market* are presumptively consistent with competitive marketplace conditions and the good faith negotiation requirement.

If you have questions regarding retransmission consent and the good faith negotiation rules, please contact Scott Friedman at (608) 469-3596 or sfriedman@cinnamonmueller.com.

FCC Selects MVPDs for EEO Audits

On December 12, 2025, the FCC's Media Bureau released a Public Notice identifying certain multichannel video programming distributors ("MVPDs") that they had been randomly selected for annual Equal Employment Opportunity ("EEO") audits. Responses are due to the FCC by January 26, 2026, and must be filed electronically through the FCC's Electronic Comment Filing System (http://apps.fcc.gov/ecfs) in Docket Number 25-344.

The FCC annually audits about five percent of MVPD employment units for compliance with cable EEO rules. The audit letter requests certain data from the selected MVPD employment units, including the unit's most recent EEO public file (which is required to be placed on the MVPD's website), information on job openings, pending or resolved complaints filed during the past five years alleging unlawful discrimination in employment practices, and documentation demonstrating performance of the required recruitment initiatives. Moreover, new this year are questions related to a unit's diversity initiatives.

Responses covering unlawful discrimination complaints and a unit's diversity initiatives must be submitted under separate cover via email to the Enforcement Bureau at EB-EEO@fcc.gov. The email should also include a statement indicating the remaining audit data was submitted via ECFS.

All selected MVPD employment units must respond to the audit letter, but employment units with fewer than six full-time employees have more limited response requirements. Failure to timely respond to the audit letter could result in a certification that the employment unit is not in compliance with the FCC's EEO rules, which may put an affected operator in violation of debt covenants or franchise requirements.

If you have any questions about EEO compliance, please contact Scott Friedman at (608) 469-3596 or sfriedman@cinnamonmueller.com.

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