

# Cablefax Daily™

WHAT THE INDUSTRY READS FIRST

## Tit for Tat: Nexstar Says DirecTV CW Streaming Deal Expired in November

DirecTV's recent letter [complaining](#) that Nexstar has forced the blackout of CW Network programming on Sinclair stations for its streaming customers is just part of its "continuing campaign to disparage Nexstar and challenge the Congressionally mandated retransmission consent rights of all broadcasters," the broadcaster told the FCC in comments posted late Thursday.

"DirecTV mischaracterizes the circumstances around its unlawful carriage of CW programming on its streaming platform. As DirecTV is well aware, its agreement with The CW authorizing streaming of CW programming on DirecTV's vMVPD service expired in November 2022," Nexstar wrote. "As a sophisticated industry participant, DirecTV knew that Sinclair could not authorize it to stream CW programs in the absence of a CW network agreement. Nonetheless, **DirecTV Stream** continued to stream CW programming without the appropriate copyright license for the next eight months, until The CW became aware of the infringement and took steps to cause it to stop, as is its legal right."

DirecTV used the CW blackout to argue against applying retransmission consent rules to vMVPDs as broadcasters have been pushing for. "As we stated in the letter, Nexstar's behavior underscores the widely adopted position that the Commission should not extend the retransmission consent regime to online providers. DirecTV was carrying those CWs through our valid agreement with that station group, an agreement that pre-dated Nexstar's acquisition of the national CW

network," a DirecTV spokesperson said Friday.

DirecTV has been without 159 Nexstar stations since July 2 after the two couldn't agree on new retrans terms. DirecTV has been without stations from **White Knight Broadcasting** and **Mission**, which Nexstar has shared service agreements with, since October. It's filed a federal lawsuit claiming Nexstar's arrangements with Mission and White Knight are antitrust violations.

Nexstar asked the FCC to disregard DirecTV's recent CW comments, calling them procedurally inappropriate and an abuse of process. "After taking the position in this docket that copyright issues associated with vMVPDs 'fall outside the Commission's regulatory purview,' DirecTV now makes a specious filing seeking to bootstrap a vMVPD copyright licensing issue into the retransmission consent regime and DirecTV's private disputes with Nexstar because it suits their interests. This is the same tactic DirecTV is employing in other venues, and it constitutes an abuse of process," Nexstar said.

**One Ministries**, an independent broadcaster that has waged a [fight at the FCC](#) to get **Comcast** to carry religious station KQSL in Santa Rosa, CA, also weighed in on DirecTV's vMVPD CW filing, claiming it overlooks the plight of small and minority TV broadcast station owners. "These independent stations rely on must carriage rights to be carried on DirecTV satellite, but because must carriage doesn't apply to DirecTV Stream, then DirecTV doesn't carry them. Unless the rules change to give smaller independent stations a way on to vMVPDs via must carriage, then DirecTV may never add them to their DirecTV Stream service," One Ministries told the agency.



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DECEMBER 6, 2023

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**NOMINATE BEFORE SEPT. 8**

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Bolstered by **Senate Commerce** Chair *Maria Cantwell's* (D-WA) recent [push](#) to get the FCC to refresh a 2014 proceeding on vMVPDs, broadcasters are hoping there will soon be a pathway to extending retrans to virtual MVPDs, such as DirectTV Stream and **fubo**. **NAB** Deputy General Counsel *Erin Dozier* met on the issue this week with Commissioner *Geoffrey Starks'* legal advisor *Hannah Lepow*, citing *Starks'* responses to *Cantwell* expressing interest in refreshing the record. "The top five vMVPDs (none of which existed when this proceeding began), have grown so much in a short time that together they have as many subscribers as **Charter**, the nation's second largest MVPD," **NAB** said in an ex parte. "At the inception of this proceeding, vMVPDs were in their infancy; if the Commission were to solicit additional input today, there would be far more information available about vMVPDs' growth and impact on the video marketplace and on local television viewers."

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## NEXSTAR, HAWAIIAN TELCOM REACH DEAL, BUT NOT PEACE

Even **Nexstar** and **Hawaiian Telcom's** announcement late Thursday that the two have a new retransmission consent deal shows that they haven't completely kissed and made up. **Nexstar's** press release announcing the return of three local television stations serving Hawaii as well as **NewsNation** and the company's digital network, **Rewind TV**, was a mere two paragraphs, with no mention of the FCC complaint HT filed against the broadcaster. The stations had been dark on HT since June 30. **Hawaiian Telcom's** longer press release has one sentence declaring that it's pleased to have reached a deal. The rest of the missive is dedicated to the provider's July 5 **FCC** complaint alleging **Nexstar** didn't negotiate in good faith as well as its amended complaint that claims **Nexstar** initially refused to sign the new retrans deal unless HT withdrew the complaint and agreed not to file future complaints against it. "Although we have reached an agreement with **Nexstar**, we will not drop our complaint at the FCC asserting that **Nexstar** violated federal law with its negotiating tactics, including using our customers as pawns," *Filifotu Vaai*, VP of Consumer Product Sales at **Hawaiian Telcom**, said in the release. Last year, **Comcast** filed an FCC complaint against **Nexstar** and **Mission Broadcasting** claiming the two failed to negotiate in good faith. Even after the companies reached a new agreement, **Comcast** declined to withdraw the complaint. There has been no action in the docket since a confidential filing by **Comcast** on Feb. 2.

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## BOUNTIFUL CITY TO BUILD FIBER AFTER OPPOSITION FAILS

It has been less than two weeks since *Gigi Sohn*, Executive

Director of the **American Association for Public Broadband**, wrote an [op-ed](#) highlighting a dark-money campaign to block the building of a community fiber service in Bountiful City, Utah. The city issued an update that was much a win for *Sohn* Friday with the **Utah Taxpayers Association** being unable to collect enough signatures to move forward with its opposition campaign. "Our residents started this process. They organized a 'Fiber for Bountiful' campaign that led to a thorough consideration of many options," Mayor *Kendalyn Harris* said in a statement. "We now look forward to offering a vital service to residents and businesses in an increasingly digital world." The city will issue approximately \$43 million in revenue bonds to finance the project with subscriber revenue to cover the cost of the service. Participation in Bountiful Fiber will be completely voluntary. "The AAPB is proud to have been one of the voices alerting the people of Bountiful City, and the country, about the dirty tricks that seek to undermine local communities' freedom to choose what broadband network works best for its residents," *Sohn* said in a statement. "The organization will continue to advocate for the community broadband model, and for communities' freedom of choice."

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## WHITE HOUSE SECURES AI COMMITMENTS FROM BIG TECH

The **White House** announced Friday that seven leading AI companies have made voluntary commitments to ensure products in development are safe, secure and trustworthy. The participating companies are **Amazon, Anthropic, Google, Inflection, Meta, Microsoft** and **OpenAI**. Among the commitments made by those tech leaders are to internal and external security testing of AI systems ahead of release and the development of technical mechanisms that will ensure users know when content is AI generated. Additionally, they've agreed to prioritize research on the societal risks that AI systems can pose, including on avoiding harmful bias or discrimination and protecting privacy. The **White House** continues to work with its global allies to establish an international framework to govern the development and use of AI technology.

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## RATINGS

The recently released "Barbie" movie isn't the only Barbie-related program seeing fervor. **HGTV's** "Barbie Dreamhouse Challenge" reeled in nearly 4 million total viewers for its premiere episode. The first episode of the four-part series had a .77 live+3 rating among W25-54 and .55 live+3 for A25-54. The premiere came in as a top-5 cable premiere among W25-54, A25-54, upscale W25-54 and upscale A25-54.

**FIBER FRENZY**

**GCI** completed the next step in its AU-Aleutians Fiber Project, launching its fiber-optic services for schools and clinics in King Cove, Sand Point and Akutan, Alaska. The company is currently working to launch 2.5 gig internet speeds for residents in King Cove and Sand Point, which is scheduled to become available to customers by the end of 2023.

**PROGRAMMING**

“American Dad!” will return with its 18th season Sept. 4 at 10pm on **TBS**. – The Premier League’s preseason festivities have hit the U.S with the Premier League Summer Series. Coverage will begin Saturday at 6pm with “Premier League Live” on **Peacock**, which precedes Chelsea vs Brighton & Hove Albion at 7pm—also on the streamer. Peacock will also have two matches on Sunday: Fulham vs Brentford at 4pm and Newcastle vs Aston Villa at 7pm.

**PEOPLE**

**T-Mobile** SVP, Government Affairs *Kathleen O'Brien Ham* is retiring come October after spending nearly 20 years with the Uncarrier. “After a long career fighting for consumers with @TMobile + the @FCC, it’s been an honor to drive positive change + watch this industry grow. From the first spectrum auctions to exploding demand for mobile, what an extraordinary time it has been helping America lead the [world],” she said in a [tweet](#) announcing her plans to step down. Her T-Mobile career saw her oversee a team that engaged with Congress, the **FCC** and other governmental entities on regulatory and policy issues like spectrum, public safety and competition matters. Before T-Mobile, O’Brien Ham was at the FCC for 14 years, which included time as the first Chief of the FCC’s Spectrum Auctions Program. – *Tony Heaton* was tapped to be President/GM of **Antietam Broadband**. He assumes the role from *Brian Lynch*, SVP, Broadband for Antietam’s parent company **Schurz Communications**. Heaton has been with Antietam since 1989 and was Director, Media Services before his appointment, having developed and implemented strategic plans that resulted revenue growth and community service awards for the company.

**CABLEFAX DASHBOARD**

**Social Media Hits**



**Research**

(Source: [NPAW](#))

- > Services with streaming rights to Wimbledon 2023 experienced a 1.5x surge in the number of plays and overall playtime from 2022.
- > At the same time, the count of unique subscribers to those services grew 26% YOY.
- > The Men’s Singles final drew in the most attention with nearly triple the quantity of plays and unique users compared to the daily average throughout the remainder of the championship.

**Up Ahead**

- JULY 30-AUGUST 2:** [The Independent Show 2023](#); Minneapolis, MN
- AUGUST 7-8:** [C2HRCOn](#), Brooklyn
- AUGUST 20-23:** [Fiber Connect 2023](#); Orlando
- SEPT. 8:** [2023 Cablefax Most Powerful Women Nomination Deadline](#)
- SEPT 18-19:** [The WICT Network Leadership Conference](#); NYC
- SEPT 19-20:** [NAMIC 37th Annual Conference](#); NYC

**Quotable**

“We noted that historically the courts have recognized a few ways in which vertical mergers can be lessening competition... There are a whole set of other ways that these types of mergers can risk lessening competition and the 13 guidelines are intended to really lay that all out very clearly... Another change we recently proposed was update the information that merging parties have to provide us when they are proposing a merger. The goal there is to make sure that our agency is able to conduct these investigations much more efficiently and effectively, so we don’t have to waste time.” – **FTC Chair Lina Khan** on CNBC’s “Squawk on the Street” [speaking](#) to the agency’s draft merger guidelines

