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WHAT THE INDUSTRY READS FIRST

## Nothing to See: Nexstar Defends Itself Against Hawaiian Telcom Complaint

Nexstar has told the **FCC** it did nothing out of the ordinary in its negotiations with **Hawaiian Telcom** over retransmission consent and the agency should dismiss the provider's complaint against it. In an FCC filing last week, Nexstar claimed HT has mischaracterized the facts and didn't meet the burden of proof on its claims of failing to negotiate in good faith.

Hawaiian Telcom lost three Nexstar stations for about 20 days last month after the two failed to reach a new deal before a June 30 contract expiration. HT filed a complaint at the FCC on July 5, alleging that the broadcaster didn't negotiate in good faith. It later said the two had an agreement at hand on July 12 that would restore stations, but it wouldn't sign off because Nexstar was conditioning a deal on it dropping the FCC complaint and waiving the right to file future actions against the broadcaster. The two eventually announced a deal on July 20 that also returned cable network **NewsNation** and digital network **Rewind TV**, but kept the FCC complaint in place.

As for the claims Nexstar tried to force HT to back down from FCC action, the broadcaster told the Commission that Hawaiian Telcom mischaracterized "language proposed by Nexstar that was mutual, narrowly circumscribed, and designed to facilitate a 'clean slate' between the parties." The exact language proposed by Nexstar is redacted in the FCC filing, adding yet another layer of the 'he said/she said' that dominates retrans spats. While HT has likened Nexstar to a schoolyard bully

threatening further harm for seeking the help of an authority figure, Nexstar said such provisions are reasonable and common in the context of resolving retransmission disputes.

It is true that retrans complaints and lawsuits are sometimes dropped once a deal is completed, but not always. **Comcast** filed an FCC complaint against Nexstar and **Mission Broadcasting** late last year 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.

The rest of HT's retrans complaint hinges on its assertion that Nexstar was slow to engage in negotiations and neither party believed negotiations were at an impasse so the contract's terms and conditions should have remained in effect. In its filing asking the FCC to deny the complaint, Nexstar said it initiated renewal negotiations on May 17, 2023, that there were several written exchanges between the two and HT repeatedly declined Nexstar's invitations for a phone conversation. Nexstar argues that Hawaiian Telcom grounds its argument in federal labor law, but said retrans consent negotiations aren't labor negotiations and the FCC concluded in adopting its good faith standards that the law precludes it from requiring broadcasters to extend retransmission consent while renewal negotiations are pending.

Meanwhile, there's still no sign of a deal between **DirecTV** and Nexstar. DirecTV lost 159 Nexstar stations on July 2 af-



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ter the two failed to agree to a new retrans deal. Among the blacked out stations is Fox affiliate KHON in Hawaii, where crews continue to search for more victims of last week's wildfires. DirecTV hasn't had Mission Broadcasting and **White Knight Broadcasting** stations since October. Nexstar has a shared services arrangement with the Mission and White Knight that DirecTV has sued over, alleging the arrangements constitute an antitrust violation.

**MAUI WILDFIRES**

As of 6am ET Monday, 19 of the 21 cell sites serving Kapalua, Napili-Honokowai, Kaanapali, Lahaina, Launiupoko, and Olowalu, Hawaii, were out of service, according to the **FCC** status report. The agency has issued a notice urging entities working to clear debris, repair utility lines and restore services following the deadly Maui wildfires to ensure their activities do not damage critical communications. Cable and wireline companies reported 17,832 subscribers out of service in the disaster area. This may include the loss of telephone, television and/or internet services.

**VERIZON STRIKES UP THE C-BAND**

With **Verizon** gaining access to the C-band spectrum it won at auction in 2021 four months ahead of schedule, it blitzed out dozens of press releases Monday touting additional 5G capacity. With final clearance from satellite incumbents **SES** and **Intelsat**, Verizon said it will be able to use the entirety of its licensed C-band spectrum, an average of 161 MHz coast to coast with some markets accessing a full 200 MHz. Veri-

zon has been deploying equipment that is capable of the full 200MHz of bandwidth, so with a software update, customers should start to see the effects of this increase in bandwidth in the immediate next few days and weeks, it said.

**CNN'S PROGRAMMING MAKEOVER**

It's clear someone is minding the store at **CNN**, with the news net announcing a comprehensive overhaul of its programming lineup that sees political correspondent *Abby Phillip* take over the 10pm slot and legal analyst *Laura Coates* heading up the 11pm hour. The announcement came from CNN's leadership team—*Amy Entelis*, *David Leavy*, *Virginia Moseley* and *Eric Shering*—which have stepped in to lead the network during the search for a new CEO following *Chris Licht's* departure. Other changes include *Kasie Hunt* anchoring the 5am "Early Start" broadcast and *Phil Mattingly* joining *Poppy Harlow* as co-anchor of "CNN This Morning." At 3pm, *Pamela Brown* will anchor a new show out of Washington. Weekend changes include a new weekly program from *Chris Wallace* at 10am, and 11am hour hosted by chief international anchor *Christiane Amanpour* and an 8am show from *Victor Blackwell* with a focus on stories affecting communities of color. "By expanding the range and depth of our programming lineup across multiple dayparts, we are strengthening our reporting excellence throughout the schedule, elevating our ability to tell great stories across platforms, and doubling down on CNN's position as the most trusted name in news," the leadership team said in making the announcement.

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## NBA, NHL LOOM FOR DIAMOND

Much of the talk surrounding **Diamond Sports Group** and the state of its **Bally Sports** RSNs have been tied to **MLB** franchises, but with fall approaching there's more worry on the horizon for DSG. On Friday, a representative for the **NHL** said at a court hearing that while the league has had talks with DSG to strike new deals for the 12 teams Bally Sports has the rights to, the clock is ticking and could end with the NHL asking for emergency relief from the agreements. If that happens, it'd be similar to what's happened with the [San Diego Padres](#) and [Arizona Diamondbacks](#) as MLB stepped in to handle broadcasting their respective games. But it's not just the NHL waiting to see what unfolds. The **NBA** is gearing up for its season beginning in October after renewing its streaming deal with DSG through the 2024-25 season. However, part of that deal includes that if DSG fails to pay any of its affiliates, the NBA can step in and take over the rights for all 16 franchises that have games on Bally Sports RSNs. According to *Sportico* companies including **Amazon**, **Apple** and **Google (YouTube)** have already held discussions with the NBA about what to do if that were to happen. As for what's next for DSG, U.S. bankruptcy judge *Christopher Lopez* signed an order that extended the time for DSG to navigate creditor issues and form a restructuring plan by 80 days. Now, Diamond's filing exclusivity period ends September 30 and its solicitation exclusivity period wraps up November 29. Both of those dates could be extended again.

## ACP HITS 20 MILLION

The future of the **FCC's** Affordable Connectivity Program remains in limbo, but it's breaching milestones in the meantime. The agency announced Monday that the ACP eclipsed 20 million households being enrolled, coming 1.5 years since its inception from the bipartisan Infrastructure and Jobs Act. The Commission has held or participated in more than 1,400 virtual and in-person events, offering informational materials in over 10 languages in what's helped it reach the 20-million mark. The program is set to receive a boost after the FCC [approved an order](#) to provide a monthly subsidy of up to \$75/month for those living in qualifying high-cost areas.

## FUBO REPLACES TOP TIER

**Fubo's** most expensive plan now includes **NFL RedZone** as football season draws near. The vMVPD replaced its \$94.99/month premier plan with a new ultimate plan that costs \$5 more per month, but it comes with the RedZone offering, Showtime, 286 channels and 1,000 hours of Cloud DVR. Those who were on the premier plan will not see any changes as the new ultimate plan comes into effect for new subscribers.

## CURIOSITYSTREAM NUMBERS

**CuriosityStream** posted 2Q23 revenue of \$14.1 million. While that's down from \$22.3 million a year ago, it's in the middle of guidance it had given of \$13-\$15 million for the quarter and up

from 1Q23's \$12.4 million. The streamer's gross profit fell to \$4.2 million from \$9.4 million in 2Q22, but is a sequential improvement over 1Q23's \$3.4 million. "Looking ahead, we expect to continue our path toward positive adjusted free cash flow as we expand our content partnerships globally and as we continue to roll out our pricing increase to new direct subscribers and existing subscribers as they come up for renewal over the next year," President/CEO *Clint Stinchcomb* said in a release. Adjusted free cash flow of negative \$4.3 million was an improvement over the \$6 million loss a year ago. For 3Q23, *CuriosityStream* predicts revenue in the \$13.5-\$15.5 million range, with adjusted FCF of \$(5.5) - \$(3.5) million.

## 2Q BROADBAND ADDS HIT 840K

The U.S.' largest cable and wireline phone providers and fixed wireless services saw 840,000 net additions for broadband internet subscribers in 2Q23, according to data from **Leichtman Research Group**. That's a pro forma gain from around 700,000 subscribers in 2Q22—a 120% increase—and it brings the total to 112.9 million subscribers. The top cable companies added about 10,000 subscribers in the quarter compared to a loss of 60,000 in 2Q22. **Charter** led broadband providers with 77,000 net adds in 2Q23, with **Altice USA**, **Comcast**, **Breezeline** and **Cable One** sustaining losses of 36,600, 19,000, 6,734 and 5,100, respectively. Wireline telcos saw about 450,000 net additions through fiber in the quarter and had about 510,000 non-fiber net losses as well. **Verizon** (34,000 net adds) and **TDS** (8,200) led wireline telcos, but **Lumen** saw 72,000 losses and **AT&T** sustained 41,000 losses. **T-Mobile** led the fixed wireless charge at 509,000 net adds, followed by Verizon with 384,000.

## RATINGS

**TLC** topped the W25-54 and W18-49 demos in all of TV on Aug. 6 thanks to the continued ratings success of "Match Me Abroad." It's renewed the series for a second season. The season finale saw season-high ratings for A25-54 with a .84 L3 rating and for W25-54 with a 1.13 L3 rating. Through the season—which began May 14—Match Me Abroad reached 16.4 million viewers across **TLC**, **Max** and **discovery+**.

## PEOPLE

*Wendy McMahon* will expand her role from co-president of CBS News and become President/CEO of CBS News and Stations and CBS Media Ventures. It's a newly created spot that'll have her head up CBS' broadcast and streaming operations, its 27 local TV stations and the company's domestic syndication business. McMahon will also oversee content licensing to TV stations and the division's national ad sales business. Her new purview includes duties previously held by fellow co-head of CBS News *Neeraj Khemlani* and CBS Media Ventures President *Steven LoCascio*, who will retire at the end of his current contract. Thirty-year CBS News vet *Ingrid Ciprian-Matthews* has been named president of CBS News.