

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of	)	
	)	
Good Faith Complaint of	)	MB Docket 15-18
Satview Broadband Ltd.	)	CSR 8901-C
Against Nexstar Broadcasting, Inc.	)	

**OPPOSITION OF NEXSTAR BROADCASTING, INC.  
TO COMPLAINT OF SATVIEW BROADBAND**

Nexstar Broadcasting, Inc. ("Nexstar") hereby submits this Opposition to the Good Faith Complaint pursuant to Section 76.65 submitted by Satview Broadband Ltd. ("Satview") on January 14, 2015 (the "Complaint"). The Complaint alleges that Nexstar violated Federal Communications Commission ("Commission") rules governing good faith negotiations between broadcasters and multichannel video programming distributors ("MVPDs") by providing a single unilateral offer; by failing to respond to an offer from Satview; and by bundling two stations in a single negotiation. Not only does the Complaint include factual misstatements regarding the parties' retransmission consent negotiations, Nexstar did not provide a single unilateral offer, did not fail to respond to Satview, and the Commission's rules do not prohibit the licensee of two commonly-owned television stations from negotiating for retransmission consent for both stations together. Accordingly, the Commission should dismiss the Complaint.

**BACKGROUND**

Nexstar Broadcasting, Inc. is the licensee of 76 full and low-power television broadcast stations located in 56 different Designated Market Areas ("DMA") around the United States. These stations include KTVX, the ABC affiliate, licensed to Salt Lake City, Utah and KUCW, the CW affiliate licensed to Ogden, Utah (the "Stations"), both of which are assigned to the Salt Lake

City DMA. KTVX also broadcasts secondary programming streams affiliated with MeTV and Weather Nation and KUCW also broadcasts secondary programming streams affiliated with Movies! and Zuus Country.

Pursuant to Section 76.64(f) of the Commission's rules, commercial television stations are required to make elections between retransmission consent and must-carry status every three years.<sup>1</sup> In compliance with this requirement, on August 29, 2014, Nexstar provided notice to Satview of its election of retransmission consent for the Stations for the three year period commencing January 1, 2015.<sup>2</sup> This letter further requested Satview to contact Nexstar to initiate retransmission consent negotiations for the Stations.

Despite receiving the election letter, Satview made no outreach to Nexstar. Accordingly, on November 5, 2014, Richard Doure Jones, Vice President and General Manager of the Stations, sent a follow-up certified letter to two different Satview officials notifying Satview that it had an outstanding balance of fees unpaid under its existing agreement for more than 15 months that would need to be paid prior to execution of a new retransmission consent agreement, identifying the programming streams broadcast by the Stations and including a draft agreement for such retransmission.<sup>3</sup> This proposal included an opening rate offer for retransmission of all of the programming streams on the Stations, including one rate offer for the programming streams affiliated with ABC, CBS, FOX and NBC ("Big 4 affiliates") and a separate rate for all other

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<sup>1</sup> See 47 C.F.R. §76.64(f).

<sup>2</sup> A copy of Nexstar's election letter and confirmation of Satview's receipt of the election letter are attached hereto as Exhibit 1.

<sup>3</sup> Copies of these letters and confirmation of receipt are attached hereto as Exhibit 2. Nexstar has submitted this Exhibit with a request for confidential treatment based on the type of material included in the Exhibit.

programming streams. On November 17, Mr. Tariq Ahmad, President of Satview, requested the draft agreement in word format, which Mr. Jones promptly provided.

Not hearing anything further from Satview, on December 1, David Reid, Director of Sales (and former president of Ackerley Television), made outreach to various Salt Lake City DMA MVPDs, including Satview. Mr. Reid and Mr. Ahmad had a short conversation wherein Mr. Ahmad stated he was committed to reaching an agreement prior to expiration of the existing agreement on December 31. Mr. Ahmad stated he would be in touch shortly.

Despite Mr. Ahmad's assurances, Nexstar heard nothing further from Satview. With time growing short, Mr. Doure Jones made outreach to Mr. Ahmad on December 15. The parties finally initiated retransmission consent discussions on December 17.

Mr. Ahmad requested several changes to the agreement and, on December 17, Mr. Doure Jones provided Mr. Ahmad with a revised agreement (making many of the changes requested by Mr. Ahmad and/or explaining why other changes were made or not made). Based on the parties' verbal discussions, the revised agreement included a revised rate offer for Big 4 affiliates (KTVX), a revised rate for CW and Mynetwork affiliates and a different separate for all other programming streams.<sup>4</sup> The parties spoke again by phone on December 18, wherein Mr. Ahmad requested other changes and explanation of a few items. During the last call between the parties on December 18, Mr. Ahmad verbally agreed to rates for retransmission of all of the programming streams broadcast on KTVX and KUCW.

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<sup>4</sup> Copies of the electronic communication between the parties supporting the facts included in this section are included in Exhibit 3 in chronological date order. Nexstar has submitted this Exhibit with a request for confidential treatment based on the type of material included in the Exhibit. Exhibit 4 includes affidavits from Mr. Doure Jones and Mr. Reid in support of the facts set forth herein.

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On December 19, Mr. Doutré Jones provided Mr. Ahmad a further revised agreement (making all the changes Mr. Ahmad had requested), which included the agreed rates, along with instructions for completing the MVPD portion of the agreement. Despite having agreed to rates the previous evening, Mr. Ahmad provided a counter-offer for the CW/Mynetwork rates. Mr. Doutré Jones (with Mr. Reid present) contacted Mr. Ahmad by phone and the parties spent nearly an hour discussing Mr. Ahmad's reversal of agreement on the CW/Mynetwork rates. Mr. Doutré Jones stated that he was not willing to reduce the rates offered for the CW/Mynetwork program streams further than he had already reduced them. Mr. Doutré Jones also stated that Nexstar would not negotiate for retransmission of KTVX and not KUCW.

Mr. Ahmad responded that his offer was his best offer and Nexstar could take it or leave it. The parties subsequently exchanged emails confirming their positions. In addition, because of the parties substantial disagreement on rates Mr. Doutré Jones notified Mr. Ahmad that the Stations would begin notifying viewers on Monday December 22 that Satview subscribers might lose access to KTVX and KUCW after December 31.

On (Sunday) December 21, Mr. Doutré Jones reached out to Mr. Ahmad advising him of his limited availability on December 22, but advising he would be able to respond to emails. The parties exchanged communications, including Mr. Ahmad request for consent to retransmit only KTVX and not KUCW. Mr. Doutré Jones again rejected that request.

Mr. Ahmad subsequently requested Mr. Doutré Jones call him to discuss how Satview can further increase its rates to its customers (which is an internal matter for Satview to work through). Mr. Doutré Jones responded that he did not see how verbal discussions would make a difference, which was confirmed when Mr. Ahmad reconfirmed "[Satview is] not going to raise our rates

[xxx%] and that is still our position. We will drop your channels effective December 31, 2014.”<sup>5</sup> Mr. Doure Jones responded by walking through all of the concessions, including rate concessions, that had been made and reminding Mr. Ahmad that he was the party who said take it or leave.

On December 23, Mr. Ahmad followed up with Mr. Doure Jones disputing that the parties had (notwithstanding rate adjustments in draft contracts pursuant to such discussions) discussed rates. Mr. Doure Jones responded that Mr. Reid could bear witness to the rate discussions and Mr. Ahmad’s prior agreement to rates. He further noted the CW’s high ratings and local programming, reminded Mr. Ahmad that Nexstar still had not received the outstanding and many months past due payments under the expiring agreement, and informed Mr. Ahmad that Nexstar had successfully reached agreement with other in-market MPVDs at higher rates than had been agreed to with Satview. Mr. Reid subsequently confirmed to Mr. Ahmad that he had heard Mr. Ahmad state that other than certain non-rate terms that needed to be reviewed by Nexstar’s general counsel, the parties were in agreement with respect to a new retransmission consent agreement and that he was very surprised that Mr. Ahmad sent a take it or leave it offer at vastly reduced rates after the parties had agreed otherwise.

On December 26, Mr. Ahmad requested that Mr. Doure Jones “give him something . . . .” stating Mr. Doure Jones had refused to discuss CW pricing. Mr. Jones promptly responded recapping the parties price negotiations for all non-Big 4 affiliated programming streams.

On December 29, Mr. Ahmad stated that he was not paying anyone else more than [\$x] for CW programming and that [Nexstar] needed to rethink its CW rate. Mr. Doure Jones again

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<sup>5</sup> Nexstar notes that the rates under the retransmission consent agreement that expired on December 31, 2014 were rates negotiated in 2009 by the previous licensee of the Stations. Satview received the substantial benefit of not repricing its rates during the interim period from January 1, 2012 to December 31, 2014 during a period when rates repriced very dynamically.

provided a recap of not only the strength of the CW programming in the market, but also the significant investment Nexstar had made in local programming on KUCW. Mr. Doutré Jones further noted other reasons as to why [\$x] was not acceptable to Nexstar. Mr. Ahmad again requested to just “drop the CW” and Mr. Doutré Jones again turned down that request. Not having reached agreement, on December 30, Mr. Doutré Jones provided Mr. Ahmad with “official” notice that any retransmission of KTVX and KUCW after December 31 would be in violation of the Communications Act and Copyright Act. Mr. Doutré Jones received no further communication from Mr. Ahmad.<sup>6</sup>

On January 14, 2015, Satview submitted its Complaint to the Commission.

### **DISCUSSION**

Nexstar engaged in good faith negotiations with Satview through its early and repeated attempts to engage Satview in negotiations, and once Satview finally engaged in negotiations, negotiating terms and rates for retransmission of KTVX and KUCW on the Satview system. That the parties were unable to reach an agreement does not mean that any party violated the Commission’s good faith negotiating rules, but if any party did so it was Satview, not Nexstar.

**1. Nexstar fully complied with the Commission’s standards for good faith negotiation of retransmission consent.**

Section 76.65(b) of the Commission’s rules requires broadcasters and MPVDs to, among other things, designate a representative to make binding representations, meet and negotiate at reasonable times in a manner that does not unreasonably delay negotiations, provide more than

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<sup>6</sup> Notwithstanding this reminder, on information and belief, Nexstar believes that Satview continued to retransmit the audio portion of KTVX for several days after January 1, 2015, merely blacking out the picture. Further, Satview has failed to pay its contractually obligated past due payments for retransmission consent fees for the period that ended December 31, 2014. Throughout the negotiations, Nexstar consistently reminded the MVPD that it owed a significant amount to Nexstar and that any new agreement was contingent upon payment of those past due fees. To date, Satview has not made any payment.

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one unilateral offer, respond to the other party (including reasons for rejecting any proposal), and execute a written agreement setting forth the agreed terms.<sup>7</sup> Nexstar did all of these things, including providing a written agreement with respect to what it understood to be the agreed terms.

Nexstar attempted to initiate negotiations with Satview as early as November 5, 2014, but it was not until less than 15 days remained before the expiration of the then existing (but in default) agreement that Satview elected to engage in negotiations. Once Satview actually engaged, Mr. Doure Jones (Nexstar's designated representative) made himself available both via telephone and electronic mail, including engaging in discussions after normal business hours, in an effort to reach an agreement with Satview for its continued retransmission of the Stations.

In addition, Nexstar did not provide a single unilateral proposal for carriage. In fact, Nexstar accommodated virtually all of Satview's requested changes to the draft retransmission consent agreement. The only exception being the parties' disagreement over the value of KUCW's primary (CW) programming stream. Moreover, Nexstar made multiple rate offers for all programming streams, including during the parties' extended discussions on December 18 in which Satview verbally confirmed its agreements to rates for all programming streams.

Satview is the entity that retracted its prior verbal agreement and it also is the party that responded its offer was "take it or leave it." Nonetheless, assuming arguendo that Satview did not verbally agree to rates during the parties December 18 telephone negotiations (or only verbally agreed to a Big 4 rate without clearly stating that its agreement was solely to that rate and not the remainder), Nexstar made significant rate concessions to reach the rates which Satview now characterizes as a unilateral single offer. Because "good faith negotiations does not in any way

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<sup>7</sup> See 47 C.F.R. §76.65(b).

require a broadcaster to reduce the amount of consideration it desires for carriage of its signal,”<sup>8</sup> after having provided numerous rate concessions, there is (and was) no obligation on Nexstar to make additional rate concessions to Satview after Satview backtracked on its agreement on rates.

Satview’s assertion that Nexstar refused to respond to a proposal from Satview is equally unfounded. The Complaint provides only limited excerpts of the parties’ negotiations that occurred in the very short time frame created by Satview’s decision to wait until half-way through December to engage. In response to Satview’s change in position with respect to the agreed CW rates, Mr. Doure Jones responded by reiterating the “agreed” rates and highlighting the value of the CW programming. Only in response Satview’s take it or leave it ultimatum did Mr. Doure Jones note that Satview would lose its rights to retransmit the Stations on December 31 if the parties were not able to reach agreement.<sup>9</sup>

Even after making that observation, Mr. Doure Jones continued his outreach to Satview. However, at no time did Satview retract its take it or leave it ultimatum or make any further rate offer for KUCW. Accordingly, Nexstar fully complied with its obligations to negotiate with Satview in good faith.

**2. Nexstar has the legal right to require that Satview retransmit KUCW in order to obtain the rights to retransmit KTVX.**

Having failed to reach mutual agreement on rates for Satview to retransmit KUCW, Satview revised its position to seek retransmission of only KTVX and not KUCW. Nexstar

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<sup>8</sup> See *Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiations and Exclusivity*, First Report and Order, 15 FCC Rcd 5445 (2000), ¶43 (“Good Faith Order”).

<sup>9</sup> From Satview’s correspondence, as well as the Complaint, it is clear that Mr. Ahmad deems Mr. Doure Jones statements that failure to reach an agreement means Satview will no longer have retransmission consent rights for KTVX and KUCW is a threat. However, it is a legal fact that without a signed agreement, a system cannot retransmit a broadcast station.

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rejected that request. Satview asserts that “this bundling of two independent stations violates the terms of Good Faith Negotiations as each channel must be independent of each other.”<sup>10</sup> Satview’s assertion is simply erroneous. More than fourteen years ago, the Commission expressly stated that requesting an MVPD to carry an affiliated channel, including another broadcast station, is presumptively competitive with marketplace considerations and the good faith negotiation requirements.<sup>11</sup> Accordingly, Nexstar’s position is in full compliance with the Commission’s rules.

**CONCLUSION**

Satview is not entitled to the relief requested:

The Commission’s rules do not require that Nexstar grant retransmission consent for KTVX on an unbundled basis from KUCW.

Nexstar fully complied with Section 76.65(b)’s obligations to (i) meet and negotiate at reasonable times (Mr. Doure Jones made himself fully available during the limited time for negotiations created by Satview’s failure to engage until mid-December), (ii) provide more than one unilateral offer (Nexstar not only made changes to its initial proposal as requested by Satview, but it engaged in extensive rate negotiations providing significant rate concessions to Satview), and (iii) respond to Satview, including negotiating beyond Satview’s take it or leave it offer.

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<sup>10</sup> In the Complaint, although Satview cites to Section 76.65(b)(v) in support of this position, Nexstar believes that Satview meant to reference Section 76.65(b)(viii).

<sup>11</sup> See *Good Faith Order* at ¶ 56. In March 2015, the Commission modified this provision slightly by adopting new Section 76.65(b)(viii). However, this new section relates solely to joint negotiations by two Big 4 affiliated stations that are not under common ownership. In this instance, the negotiation was for an ABC affiliated station and a CW affiliated station (plus assorted digital multicast programming streams) which are both licensed to Nexstar. Nexstar further notes that its joint negotiation for its commonly-owned stations also is consistent with Section 103(a) of the STELA Reauthorization Act of 2014, Pub. Law 113-200 (Dec. 4, 2014).

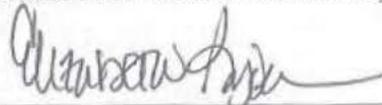
**REDACTED, FOR PUBLIC INSPECTION**

Finally, as the Commission has recognized, it does not have authority to order a station to grant retransmission rights during negotiations.<sup>12</sup>

For the foregoing reasons, Nexstar requests the Commission dismiss the Complaint.

Respectfully submitted,

NEXSTAR BROADCASTING, INC.



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Elizabeth Ryder  
Senior Vice President & General Counsel  
545 E. John Carpenter Freeway  
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Irving, TX 75062  
(972) 373-8800

February 3, 2015

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<sup>12</sup> The Commission has acknowledged that 47 U.S.C. §325(b)(1)(A) does not authorize carriage without a station's consent. *See e.g., Amendment of the Commission's Rules Related to Retransmission Consent*, Notice of Proposed Rulemaking, 26 FCC Rcd 2718 ¶18 ("examination of the Act and its legislative history has convinced us that the Commission lacks authority to order carriage in the absence of a broadcaster's consent due to a retransmission consent dispute.")

**CERTIFICATE OF SERVICE**

I, Elizabeth Ryder, Senior Vice President & General Counsel of Nexstar Broadcasting, Inc., hereby certify on this 3<sup>rd</sup> day of February 2015 that a copy of the foregoing "Opposition of Nexstar Broadcasting, Inc. to Complaint of Satview Broadband" was sent as follows:

Via first class mail, postage prepaid, to:

Mr. Tariq Ahmad  
Satview Broadband Ltd.  
3550 Barron Way  
Suite 13a  
Reno, NV 89511

Via electronic mail to:  
Steven Broeckaert (FCC Media Bureau)

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# **EXHIBIT 1**



August 29, 2014

**Certified Mail – Return Receipt Requested**

Satview Broadband  
3550 Barron Way #13A  
Reno, NV 89511

Re: Notice of Election of Retransmission Consent

Dear Sir/Madam:

This letter is to notify you that Nexstar Broadcasting, Inc. ("Nexstar"), the licensee of broadcast television stations KTVX, Salt Lake City and KUCW, Ogden, Utah (the Stations"), hereby elects retransmission consent with respect to retransmission of the Stations' broadcast signals by Satview Broadband and/or its affiliates ("Operator"). This retransmission consent election is for all systems, communities, headends, franchises within the Stations' Television Market (as defined in 47 CFR Section 76.55(e)) owned or managed by Operator, including but not limited to those communities set forth in Exhibit A.

Accordingly, Nexstar hereby notifies Operator that, pursuant to Section 325(b)(3)(B) of the Communications Act of 1934, as amended (the "Act") and Section 76.64(f) of the Federal Communications Commission rules, the Stations elect to assert their rights under Section 325(b)(1)(A) of the Act and Section 76.64(a) of the rules to require that Operator obtain the Stations' prior express consent before retransmitting its signals for the period January 1, 2015 through December 31, 2017.

We look forward to having the opportunity to discuss with you mutually satisfactory terms under which the Stations' retransmission consent may be extended to your system(s). Please direct any questions concerning this election to the undersigned at:

545 E. John Carpenter Freeway  
Suite 700  
Irving, Texas 75062  
[cryder@nexstar.tv](mailto:cryder@nexstar.tv)

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Ryder", written over a horizontal line.

Elizabeth Ryder  
Senior Vice President & General Counsel

cc: Stations Public Inspection File

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51187  
Parcel  
Number  
310

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Satview Broadband  
 3550 Barron Way #13A  
 Reno, NV 89511

2. Article Number  
(transfer from service)

7014 1200 0002 0867 2136

PS Form 3811, July 2013

Domestic Return Receipt

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X *M. Schultz*  Agent  Addressee

B. Received by (Printed Name)

C. Date of Delivery

*M. Schultz* | *9/2/14*

D. Is delivery address different from item 1?  Yes

If YES, enter delivery address below:  No

3. Service Type

- Certified Mail®  Priority Mail Express™
- Registered  Return Receipt for Merchandise
- Insured Mail  Collect on Delivery

4. Restricted Delivery? (Extra Fee)

Yes

# Exhibit 2

[REDACTED]

# Exhibit 3

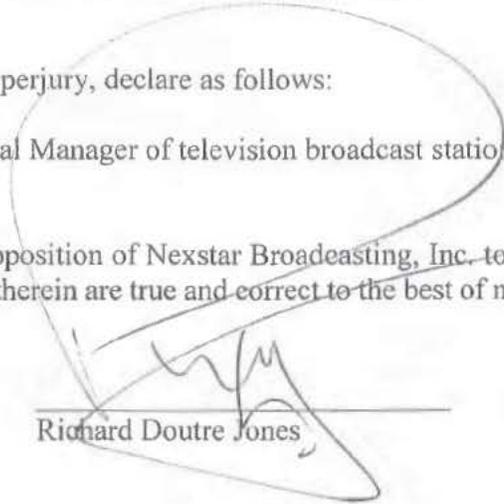
[REDACTED]

# Exhibit 4

**DECLARATION OF RICHARD DOUTRE JONES**

I, Richard Doutre Jones, under penalty of perjury, declare as follows:

1. I am the Vice President and General Manager of television broadcast stations KTVX, Salt Lake City, and KUCW, Ogden, Utah.
2. I have reviewed the foregoing Opposition of Nexstar Broadcasting, Inc. to Complaint of Satview Broadband. The facts contained therein are true and correct to the best of my knowledge, information, and belief.



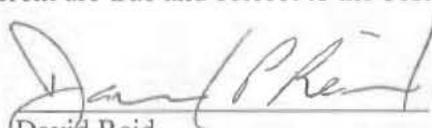
Richard Doutre Jones

February 3, 2015

**DECLARATION OF DAVID REID**

I, David Reid, under penalty of perjury, declare as follows:

1. I am the Director of Sales for television broadcast stations KTVX, Salt Lake City, and KUCW, Ogden, Utah.
2. I have reviewed the foregoing Opposition of Nexstar Broadcasting, Inc. to Complaint of Satview Broadband. The facts contained therein are true and correct to the best of my knowledge, information, and belief.

  
David Reid

February 3, 2015