

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

<b>In the Matter of</b>	)	
	)	
<b>Good Faith Complaint of</b>	)	<b>MB Docket 19-60</b>
<b>HolstonConnect, LLC</b>	)	<b>CSR 8974-C</b>
<b>Against Nexstar Media Group, Inc.</b>	)	

**OPPOSITION OF NEXSTAR MEDIA GROUP, INC.  
TO COMPLAINT OF HOLSTONCONNECT, LLC**

Respectfully submitted,

NEXSTAR MEDIA GROUP, INC.  
Elizabeth Ryder  
Executive Vice President & General  
Counsel  
545 E. John Carpenter Freeway  
Suite 700  
Irving, TX 75062  
(972) 373-8800

April 1, 2019

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## Summary

On March 4, 2019, HolstonConnect, LLC (“HolstonConnect”) submitted a complaint alleging Nexstar Media Group, Inc. (“Nexstar”) violated the Commission’s rules governing good faith negotiations between broadcasters and multichannel video programming distributors by providing a single unilateral offer; by failing to provide reasoned explanations for rejecting retransmission consent proposals; and by failing to negotiate an agreement, to meet and negotiate at reasonable times and locations, and to not unreasonably delay negotiations (the “Complaint”). The Complaint also alleges that Nexstar is demanding rates that are outrageous, that HolstonConnect carry multiple unwanted channels at exorbitant rates not reflective of their commercial value amounting to an abusive tying arrangement, and that Nexstar’s actions amount to an abuse of market power, the effect of which is to impair the development of a competitive cable service and broadband services in rural East Tennessee.

The Complaint includes factual misstatements regarding the parties’ communications for retransmission consent, ignoring the fact that it was HolstonConnect’s designated representative who failed to engage with Nexstar for months at a time. In addition, contrary to HolstonConnect’s allegations, Nexstar complied in all respects with its obligations under Section 76.65(b) -- making multiple offers to HolstonConnect, providing explanations for its rejections of HolstonConnect’s proposals, making available negotiating contacts with authority who timely responded to HolstonConnect’s designated point of contact (even making outreach even when HolstonConnect ignored Nexstar’s communications for extended periods).

In addition, Nexstar’s rates are not abusive and its actions in this negotiation have been taken in good faith. The Complaint is nothing more than a commonplace disagreement between Nexstar and HolstonConnect as to whether Nexstar will permit HolstonConnect to carry only a

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only the Big 4 programming stream for one station, and the rates which HolstonConnect will pay for its retransmission consent rights. As the Commission has repeatedly concluded even a fundamental disagreement over the rates, terms, and conditions of retransmission consent is not indicative of a lack of good faith; and proposals are “presumptively legitimate” even if they (1) seek compensation above that agreed to with other MVPDs in the same market, (2) are different from compensation offered by other broadcasters in the same market, or (3) are conditioned on carriage of other programming (e.g., tying agreements).

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 HolstonConnect, not Nexstar. Furthermore, much of HolstonConnect’s demanded relief (i.e., mandating carriage and rates) is not within the Commission’s authority. Accordingly, the Commission should dismiss the Complaint.

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**OPPOSITION OF NEXSTAR MEDIA GROUP, INC.  
TO COMPLAINT OF HOLSTONCONNECT, LLC**

Nexstar Media Group, Inc. (“Nexstar”)<sup>1</sup> hereby submits this Opposition to the Good Faith Complaint submitted by HolstonConnect, LLC (“HolstonConnect”) on March 4, 2019 (the “Complaint”).<sup>2</sup> 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 provide reasoned explanations for rejecting retransmission consent proposals; and by failing to negotiate an agreement, to meet and negotiate at reasonable times and locations, and to not unreasonably delay negotiations. The Complaint also alleges that Nexstar is demanding rates that are outrageous and demanding that HolstonConnect carry multiple unwanted channels at exorbitant rates not reflective of their commercial value amounting to an abusive tying arrangement. HolstonConnect alleges that Nexstar’s actions amount to an abuse of market power,

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<sup>1</sup> Nexstar Broadcasting, Inc. is the FCC licensee and owner of television broadcast stations WATE, Knoxville, Tennessee and WJHL, Johnson City, Tennessee. Nexstar Media Group, Inc. is the parent of Nexstar Broadcasting, Inc.

<sup>2</sup> Nexstar was served with the Complaint on March 5, 2019. Pursuant to Section 76.7(b)(iii), Nexstar’s opposition was due on March 25, 2019. Therefore, Nexstar submits this Opposition with the accompanying Motion For Acceptance of Late-Filed Opposition and requests acceptance for the reasons set forth therein.

the effect of which is to impair the development of a competitive cable service and broadband services in rural East Tennessee.

Preliminarily, Nexstar notes that the Complaint includes factual misstatements regarding the parties' retransmission consent negotiations, which Nexstar addresses below.<sup>3</sup> In addition, contrary to HolstonConnect's allegations, Nexstar complied in all respects with its obligations under Section 76.65(b) -- making multiple offers to HolstonConnect, providing explanations for its rejections of HolstonConnect's proposals, making available negotiating contacts with authority who timely responded to HolstonConnect's designated point of contact (even making outreach even when HolstonConnect ignored Nexstar's communications for extended periods). Finally, Nexstar's rates are not abusive and its actions in this negotiation have been taken in good faith. Moreover, much of HolstonConnect's demanded relief (i.e., mandating carriage and rates) is not within the Commission's authority. Accordingly, the Commission should dismiss the Complaint.

#### **BACKGROUND**

Nexstar Broadcasting, Inc. is the licensee of 138 full-power television broadcast stations located in 100 Designated Market Areas ("DMA") around the United States. These stations include WATE, the ABC affiliate, licensed to Knoxville, Tennessee and WJHL, the CBS/ABC affiliate licensed to Johnson City, Tennessee (the "Stations"). WATE also broadcasts secondary programming streams affiliated with GetTV, Laff, and Cozi; WJHL broadcasts no other programming streams.

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<sup>3</sup> For example, HolstonConnect states that "Defendant has consistently failed to communicate in an effective and timely manner with HolstonConnect, which has caused HolstonConnect to waste extraordinary amounts of time and effort in seeking to elicit responses and conduct meaningful negotiations." *Complaint* at ¶11. Contrary to HolstonConnect's allegations, it is their designated representative that has wasted time by going weeks without responding to Nexstar, as well as repeatedly missing scheduled phone calls.

Upon receipt of notice in early August 2018 from HolstonConnect that it intended to offer a new video service in two of Nexstar's markets, Nexstar provided notice to HolstonConnect of its election of retransmission consent for the Stations on August 6, 2018.<sup>4</sup> This letter further requested HolstonConnect to contact Nexstar to initiate retransmission consent negotiations for the Stations. On August 20, Marisa Elizondo of Nexstar sent Katie King, of Katie King Law, an email asking for information about HolstonConnect in order to prepare a draft retransmission consent agreement to review, which information Ms. King provided on August 20.<sup>5</sup>

On September 7, 2018, Ms. Elizondo sent Ms. King, and James Sandlin of HolstonConnect, a proposal that included an opening rate offer for retransmission of all of the programming streams carried on the Stations, which offer included one rate for all programming streams affiliated with ABC, CBS, FOX and NBC ("Big 4 affiliates"), and one rate for all other programming streams carried by WATE.<sup>6</sup>

Although HolstonConnect had indicated a desire to launch its new service in October 2018, Nexstar received no response from HolstonConnect nor Ms. King until December 2018.<sup>7</sup> Indeed, on October 19, 2018 Ms. Elizondo and Ms. King held an email correspondence regarding another client of Ms. King, and scheduled a call for Monday, October 22, 2018 for 2:30 p.m. CST. That

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<sup>4</sup> See 47 C.F.R §76.64(f). A copy of Nexstar's election letter and confirmation of HolstonConnect's receipt of the election letter are attached hereto as Exhibit 1.

<sup>5</sup> Copies of these communications are included in Exhibit 1.

<sup>6</sup> Nexstar's form of agreement also includes rates for the other national affiliates (e.g., CW, MyNetTV and Telemundo) as well as what Nexstar terms a local news station (a station that was once affiliated with a Big 4 network that carries a large amount of local news). That is, Nexstar negotiates for all programming streams that any of its stations carries, regardless of whether the particular station(s) targeted in the negotiation carry such programming streams. It is Nexstar's preference to negotiate with each MVPD once for all of its stations and programming streams, rather than renegotiate with a MVPD each time it or the MVPD enters a new market or a station has affiliation changes.

<sup>7</sup> Contrary to HolstonConnect's claims (*Complaint* at ¶22), Nexstar received no communications whatsoever from Ms. King – no emails and no voicemails. If Ms. King reached out by phone during that period, she did not leave a message. Of course, Nexstar is not privy to what Ms. King conveyed to her client during this time period.

correspondence did not mention HolstonConnect or that negotiation. When Ms. Elizondo reached out at the appointed time Ms. King did not answer the call. Ms. Elizondo heard nothing further from Ms. King or HolstonConnect for the remainder of October and all of November despite Ms. Elizondo reaching out to Ms. King on November 14, 2018 by email, and again November 18, 2018, leaving a voicemail that did not generate a response.<sup>8</sup>

Between the dates of December 3, 2018 and December 14, 2018, the communications between the parties were substantially as provided in the Complaint. On December 3, 2018, the parties exchanged emails and agreed to speak on December 4<sup>th</sup> to review the rates and overall offer. Ms. King failed to answer Ms. Elizondo's call at the agreed upon 3 p.m. CST call-time, and failed again to answer at 3:20 p.m. CST, when Ms. Elizondo tried again. On Ms. Elizondo's third attempt to reach Ms. King, at 4 p.m. CST, Ms. Elizondo finally connected with her.

On December 5, nearly 90 days after Nexstar provided its initial proposal, Ms. King provided a counterproposal to Nexstar.<sup>9</sup> Nexstar promptly, that same day (December 5), provided a counteroffer to Ms. King. After receipt of Nexstar's counteroffer, and later, on December 5, 2018, Ms. King provided a further rate offer to Nexstar for Big 4 affiliates for a single year, as well as a rate for select other programming streams, also only for a single year. Ms. King did not indicate in any way that HolstonConnect wanted to negotiate an agreement for only a single year or explain why she was providing only a single year proposal, when the agreement retained a three-year term. Nor did Ms. King provide any color on the new HolstonConnect offer, which failed to

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<sup>8</sup> Copies of Ms. Elizondo's emails to Ms. King on October 19 and November 14, 2018 are attached hereto as Exhibit 2. These emails have been redacted to remove references to Ms. King's other client, who is uninvolved in this matter.

<sup>9</sup> HolstonConnect's December 5 counterproposal addressed only rates. To date, HolstonConnect has provided no comment to any other term of the parties' agreement. Nexstar, therefore, assumes HolstonConnect has no issues with any other term of the agreement.



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address rates for any of the other programming streams included in the agreement. Based on the lack of explanation from Ms. King and the significant missing information (the remaining years and rates), on December 14, 2018, Ms. Elizondo restated the counteroffer made on December 5, 2018 with a three year term and rates for three years.<sup>10</sup>

Nexstar heard nothing further from Ms. King or HolstonConnect for the remainder of December 2018 and all of January 2019.<sup>11</sup> Finally, on February 13, 2019, Ms. King reached out to Nexstar to provide a draft good faith complaint against Nexstar. Ms. Elizondo and Ms. King then spoke on February 15, 2019 wherein Ms. Elizondo explained why the HolstonConnect offer on December 5 was not accepted, with further communications by email on February 18, 2019.

During the email communications, Ms. Elizondo stated, "...I haven't seen a counteroffer from the Holston team since my counteroffer on 12/14/18. Was there another set of rates you would like me to take under consideration?" Ms. King's response on February 19, 2019 stated that Nexstar's offer, "is not feasible for Holston," and did not provide a counteroffer. Mr. Sandlin of HolstonConnect then responded to Ms. King's email, "I would call her to speed up this process." Despite Ms. King's client's direction, no call (or email) was received by Ms. Elizondo. However, notwithstanding that Nexstar was negotiating against itself, Ms. Elizondo, in an effort to move negotiations along, submitted another counterproposal on February 19, 2019.

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<sup>10</sup> The delay in Ms. Elizondo's response between December 5 and 14 was primarily due to the fact that Ms. Elizondo was negotiating with numerous other MVPDs whose agreements were expiring between December 15 and 31, 2018. In addition, not once during this period did Ms. King reach out to Ms. Elizondo to inquire as to when to expect a response.

<sup>11</sup> HolstonConnect seems to blame these "months of silence" on Nexstar. As is clearly shown herein, Nexstar has been promptly responsive to all outreach from Ms. King – even going so far as to try repeatedly to contact her when Ms. King ignored scheduled call appointment times. Indeed, even when Ms. King finally responded on February 13, 2019, it was not to engage in meaningful discussion but rather to inform Nexstar that HolstonConnect was going to file a good faith complaint with the FCC.

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HolstonConnect did not respond, waiting until March 11, 2019 to respond to Nexstar's December 14 and February 19 offers. Yet, despite ignoring Nexstar for months at a time and only having made at most two proposal to Nexstar, on March 4, 2019, HolstonConnect submitted the Complaint.

Although Nexstar became aware that HolstonConnect had filed a complaint, and despite the fact that Ms. King had yet again ceased all communications with Nexstar, from March 5<sup>th</sup> to March 8<sup>th</sup>, Ms. Elizondo made outreach to Ms. King every morning via email, and from March 6<sup>th</sup> through March 8<sup>th</sup>, Ms. Elizondo reached out by phone, leaving Ms. King voicemails.<sup>12</sup> Again, receiving no response, or even acknowledgment, from Ms. King.

On March 11, 2019, nearly one month after the parties' last communication, Ms. King finally responded to Ms. Elizondo, sending a regressive offer to Ms. Elizondo with rates that were approximately 12% lower than the last HolstonConnect offer, which had been received on December 5, 2018. Notwithstanding HolstonConnect's regressive negotiating tactics, in an attempt to reach an agreement with HolstonConnect, Nexstar reviewed this offer and provided a counteroffer to Ms. King on March 12, 2019, to which Ms. King replied on the same day that she would review with HolstonConnect, and, "get back ASAP." Again, Ms. King went radio silent and finally responded on March 26 with a counterproposal. Ms. King and Ms. Elizondo corresponded by email and, on March 27, Nexstar provided its counterproposal. As of April 1, Nexstar has not received any further communications from HolstonConnect.

### **DISCUSSION**

Nexstar has engaged in good faith negotiations with HolstonConnect through its early and repeated attempts to engage HolstonConnect in negotiations, and when HolstonConnect engaged

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<sup>12</sup> Copies of Ms. Elizondo's emails are included in Exhibit 2 attached hereto.

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in negotiations, Nexstar reasonably negotiated for retransmission of WATE and WJHL on the HolstonConnect system.<sup>13</sup> 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 HolstonConnect, not Nexstar.<sup>14</sup>

**1. Nexstar Fully Complied With The Commission's 76.65(b) Standards For Good Faith Negotiation Of Retransmission Consent.**

Section 76.65(b) of the Commission's rules requires broadcasters and MVPDs 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 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>15</sup> Nexstar met all of the 76.65(b) obligations, other than execute a written agreement, which Nexstar stands ready to do immediately upon competition of negotiations of a mutually acceptable agreement between the parties.

Nexstar initiated negotiations with HolstonConnect on September 7, 2018, but it was not until eighty-seven (87) days later that Ms. King (HolstonConnect's designated representative) elected to engage in negotiations, despite Ms. Elizondo's outreach to do so in both October and November 2018. Once HolstonConnect engaged, Ms. Elizondo (Nexstar's designated

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<sup>13</sup> In the six months of intermittent negotiations, HolstonConnect has not sought to negotiate any terms other than rates, and Nexstar assumes that HolstonConnect has no comments on any other terms.

<sup>14</sup> MVPDs are equally required to negotiate retransmission consent in good faith. *See Implementation of Section 207 of the Satellite Home Viewer Extension and Reauthorization Act of 2004; Reciprocal Bargaining Obligation*, Report and Order, 20 FCC Rcd 10339 (2005). HolstonConnect's decision to ignore Nexstar's proposals for months at a time, coupled with its decision to submit a Good Faith Complaint after making at best two proposals to Nexstar, is hardly bargaining in good faith. Nexstar further believes that HolstonConnect's election to submit its complaint without submitting the rates under confidentiality is nothing more than a naked political aggrandizement for its own purposes and is not good faith.

<sup>15</sup> *See* 47 C.F.R. §76.65(b).

representative) made herself available both via telephone and electronic mail, including attempting to contact Ms. King at what were thought to be agreed-upon times, oftentimes not receiving responses, in an effort to reach an agreement with HolstonConnect for its retransmission of the Stations.

In addition, contrary to HolstonConnect's allegations, Nexstar did not provide a single unilateral proposal for carriage. Nexstar responded to each HolstonConnect counteroffer with its own counteroffer, making progressive changes to the proposed rates despite HolstonConnect's regressive negotiating tactics.<sup>16</sup> These attempts were rarely reciprocated, even when Ms. King's client specifically recommended her to, "Call [Ms. Elizondo] to speed up this process." HolstonConnect's allegation that Nexstar "has flatly refused to work with HolstonConnect to craft a mutually acceptable agreement" is flat wrong. As documented above, Nexstar made and continues to make outreach, that HolstonConnect ignores, going so far as to negotiate against itself in order to provide HolstonConnect with a new proposal on one occasion.

With respect to HolstonConnect's allegations that Nexstar provided "little or no explanation of the reason for rejection" of HolstonConnect's rate proposals, Nexstar is not sure what HolstonConnect required for an explanation other than Nexstar was not willing to accept those rates. Further, if the Commission finds Nexstar guilty of failing to provide sufficient explanation here as to rejection of rates offered by HolstonConnect, it must equally find HolstonConnect guilty here as HolstonConnect provided no explanation of why it should be treated

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<sup>16</sup> As demonstrated by Nexstar's further proposals, its December 14 proposal was not a "single, unilateral proposal," it was a restatement of its 3-year proposal in response to Holston's single year proposal. Moreover, since HolstonConnect's proposal did not address all rate categories, Nexstar desired to be clear on the rates for all rate categories. This is not a violation of the regulations. See e.g., *HITV License Subsidiary, Inc. v. DIRECTV, LLC*, Memorandum Opinion and Order, 33 FCC Rcd 1137, ¶¶ 8-9 (MB 2018) ("*HITV License Sub.*")

differently from all other MVPD whose agreements were being negotiated contemporaneously.<sup>17</sup> Finally, HolstonConnect's demand that Nexstar conform to rates provided by other broadcast stations in the applicable markets is counter to the Commission's acknowledgment that proposals that are different from other broadcasters are presumptively legitimate.<sup>18</sup>

## **2. The Commission Does Not Interfere In The Negotiation Of Substantive Agreement Terms.**

The Commission's role is not to engage in substantive oversight of any particular negotiation; rather it is to ensure that the marketplace negotiations are competitive and that, under the totality of the circumstances, the parties engaged in good faith negotiations. As the Commission has repeatedly concluded "absent other factors, disagreement over the rates, terms, and conditions of retransmission consent – even fundamental disagreement – is not indicative of a lack of good faith."<sup>19</sup> Indeed, proposals are "presumptively legitimate" even if they (1) seek compensation above that agreed to with other MVPDs in the same market, (2) are different from compensation offered by other broadcasters in the same market, or (3) are conditioned on carriage of other programming (e.g., tying agreements).<sup>20</sup> The rates provided to

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<sup>17</sup> Being a new entrant to the market is not a sufficient reason for Nexstar to treat HolstonConnect any differently than any other MVPD with whom it negotiates.

<sup>18</sup> HolstonConnect repeatedly states that the rates Nexstar is seeking are higher than other broadcasters in the applicable DMAs (*Complaint* at ¶¶ 21, 36 and 42). Broadcasters are specifically prohibited, both by antitrust and FCC regulations, for negotiating together or comparing rates. Accordingly, what one broadcaster accepts in negotiations has no bearing on what any other broadcaster may deem acceptable.

<sup>19</sup> See *Coastal Television Broadcasting Company LLC v. MTA Communications, LLC*, Memorandum Opinion and Order, (MB Nov 2, 2018, DA 18-1126); *HITV License Sub*, 33 FCC Rcd 1137, 1140 (MB 2018); *Mediacom Community Corp. v. Sinclair Broadcast Group, Inc.*, Memorandum Opinion and Order, 22 FCC Rcd 47, 50 (MB 2007). Setting aside all of HolstonConnect's rhetoric, its essential complaint is that it fundamentally disagrees with the rates Nexstar is seeking in compensation for retransmission consent.

<sup>20</sup> *Implementation of the Satellite Home Viewer Improvement Act of 1999: Retransmission Consent Issues*, First Report and Order, 15 FCC Rcd 5445, 5459-70 (2000) ("*Good Faith Order*"), recon. granted in part, 16 FCC Rcd 15599 (2001).

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HolstonConnect with both Nexstar's initial proposal and subsequent counterproposals are commensurate with rates initially offered to, and being paid by, similarly situated MVPDs for Nexstar's stations. There is nothing "outrageous" or "abusive" with respect to Nexstar's desire to achieve the best rates possible for carriage of its stations by MVPDs.

Nonetheless, HolstonConnect alleges that Nexstar's proposed rates "were significantly higher than Nexstar's proposed rates from deals Ms. King had closed earlier in (2018) in the Knoxville DMA."<sup>21</sup> Nexstar notes that Ms. King negotiated a retransmission consent agreement with Nexstar earlier in 2018. As is customary for Nexstar, it adjusts its pricing multiple times per year and, in preparation for its year end negotiations had adjusted its opening rate offers since the prior negotiation had concluded. Moreover, why would Nexstar offer HolstonConnect expect to be offered opening rates that were the same as ending rates for a previous client of Ms. King? Since HolstonConnect had barely negotiated with Nexstar – providing at most two counteroffers and then simply stating "these rates don't work" and filing a complaint with the Commission – perhaps it too might achieve ending rates in the neighborhood of those ending rates of Ms. King's other client. But it would have to actually engage in meaningful negotiation, which it has yet to do. Further, Nexstar's opening rate proposal to every MVPD with whom it was engaged in year-end negotiations was exactly the same as its opening proposal to HolstonConnect. However, rather than spend weeks at a time ignoring Nexstar and/or making statements like Nexstar's offer, "is not feasible for Holston," Nexstar and those other MVPDs engaged in substantive and productive negotiations to reach agreements for continued carriage of Nexstar's stations.

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<sup>21</sup> Nexstar notes that it is not uncommon for one consultant to represent more than one MVPD or that such consultants frequently use knowledge gained on behalf of one client for the benefit of other clients. Unlike broadcast television stations, which are prohibited from engaging in joint negotiations pursuant to Section 76.65(b)(viii), MVPDs are free to essentially engage in joint negotiations by choosing to work with the same consultant.

HolstonConnect further claims that “the rates that Defendant is demanding [are] substantially higher than the rates for Big 4 and other stations owned by Nexstar in other markets.” Nexstar does not negotiate market-by-market or affiliation-by-affiliation rates – every Big 4 affiliate, regardless of market, is priced at the same rate (with the same for each other rate category). Therefore, unless HolstonConnect and other MVPDs have engaged in joint discussions regarding Nexstar’s retransmission rates, HolstonConnect has no way of knowing what the Big 4 rates are for Nexstar’s stations in other markets. And again, the Commission has held that proposals are legitimate even if they seek compensation above that agreed to with other MVPDs in the same market or are different from compensation offered by other broadcasters in the same market. Therefore, even if Nexstar does offer different Big 4 rates in other markets, Nexstar presumes that it is equally permissible for it to offer rates that are different than what it offers for its stations in other markets.

HolstonConnect also asserts that Nexstar’s “demand that HolstonConnect carry multiple unwanted channels, at exorbitant rates not reflective of their commercial value, amounts to an abusive tying arrangement.” HolstonConnect’s assertion is simply erroneous. More than eighteen years ago, the Commission expressly stated that requesting a MVPD to carry an affiliated channel, including another broadcast station, is presumptively competitive with marketplace considerations and the good faith negotiation requirements.<sup>22</sup> Moreover, Nexstar is not requiring HolstonConnect to carry unrelated channels. Nexstar is only requiring that HolstonConnect carry all of the programming streams broadcast by a single station (i.e., all of WATE’s programming). Accordingly, Nexstar’s position is in full compliance with the Commission’s rules.

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<sup>22</sup> See *Good Faith Order* at ¶56.

## CONCLUSION

Nexstar fully complied with Section 76.65(b)'s obligations to (i) meet and negotiate at reasonable times (Ms. Elizondo made herself fully available during the time for negotiations), (ii) provide more than one unilateral offer (Nexstar not only made changes to its initial proposal as requested by HolstonConnect, but it consistently attempted to engage in verbal rate negotiations with HolstonConnect), and (iii) respond to HolstonConnect, including negotiating beyond HolstonConnect's refusal to provide an offer other than stating Nexstar's offer "is not feasible for Holston."

This Complaint is nothing more than a commonplace disagreement between Nexstar and HolstonConnect as to whether Nexstar will permit HolstonConnect to carry only a portion of WATE's signal (i.e., only the Big 4 programming stream), and the rates which HolstonConnect will pay for its retransmission consent rights. There is nothing abusive or outrageous over Nexstar's desire to have the entire WATE signal, including the station's multicast programming, carried, and there is nothing abusive or outrageous regarding Nexstar's desire to obtain the highest rates it is able to obtain in a good faith negotiation – which by definition requires the actual, on-going participation of HolstonConnect. Something that to-date, HolstonConnect has avoided in doing.

Finally, as the Commission has recognized, it does not have authority to order a station to grant retransmission rights during negotiations, nor does it have authority to establish rates between the parties.<sup>23</sup>

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<sup>23</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.")

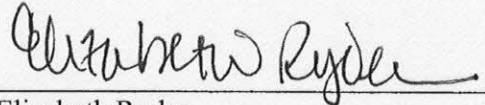


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For the foregoing reasons, Nexstar requests the Commission dismiss the Complaint.

Respectfully submitted,

NEXSTAR MEDIA GROUP, INC.



Elizabeth Ryder  
Executive Vice President & General  
Counsel  
545 E. John Carpenter Freeway  
Suite 700  
Irving, TX 75062  
(972) 373-8800

April 1, 2019

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**CERTIFICATE OF SERVICE**

I, Elizabeth Ryder, Executive Vice President & General Counsel of Nexstar Media Group, Inc., hereby certify on this 1<sup>st</sup> day of April, 2019 that a copy of the foregoing "Opposition of Nexstar Media Group, Inc. to Complaint of HolstonConnect, LLC" was sent as follows:

Via Federal Express to:

Jim Baller  
Casey Lide  
Baller Stokes & Lide, P.C.  
2014 P Street NW  
Suite 200  
Washington, DC 20036

Mr. James Sandlin  
HolstonConnect, LLC  
1220 W. Main Street  
Rogersville, TN 37857

Via first class mail, postage prepaid and electronic mail to:

Katie King  
Katie King Law, PLLC  
PO Box 6007  
Chattanooga, TN 37401

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**EXHIBIT 1**



August 6, 2018

*Via Certified Mail – Return Receipt Requested*

HolstonConnect  
Attn: Katie King  
1220 West Main Street  
Rogersville, TN 37857

Re: Retransmission Consent Election

Dear Ms. King:

We are in receipt of HolstonConnect's letter, dated August 2, 2018, stating its intent to initiate a video service in the Knoxville and Tri-Cities Designated Market Areas. Nexstar Broadcasting, Inc. ("Nexstar") is the licensee of television broadcast stations WATE-TV and WJHL-TV, which are assigned to the Knoxville and Tri-Cities DMAs respectively.

Please be advised that Nexstar hereby invokes its rights pursuant to Section 325(b) of the Communications Act of 1934, as amended, and Section 76.64(a) of the FCC's rules, to bar retransmission of the station's signal by HolstonConnect on its referenced systems except pursuant to our express written authority granted pursuant to a retransmission consent agreement between you and us. This election is a continuing election from January 1, 2018 through December 31, 2020. In addition, this election is made for each and every community or video service that HolstonConnect intends to serve in the Knoxville and Tri-Cities DMAs.

We look forward to negotiating a retransmission consent agreement with you for HolstonConnect's retransmission of WATE-TV and WJHL-TV on its new system(s). Please contact the undersigned at [KHopkins@Nexstar.tv](mailto:KHopkins@Nexstar.tv) when you are ready to commence retransmission negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith P. Hopkins", written over a white background.

Keith P. Hopkins  
Senior Vice President, Distribution

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- 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:

Holston Connect  
Katie King  
1200 West main ST  
Robardsville TN 37857



9590 9402 4012 8079 6256 75

2. Article Number (Transfer from service label)

7018 0680 0001 1684 7931

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X Pat Hawk

- Agent
- Addressee

B. Received by (Printed Name) C. Date of Delivery

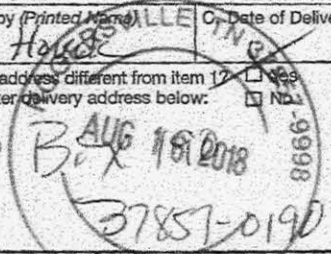
PAT HAWK

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

PO Box 181 2018  
37857-0190

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery



USPS TRACKING #



9590 9402 4012 8079 6256 75

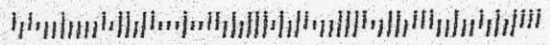


First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

United States  
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

Adrienne Bays  
338 E. main ST.  
Johnson city, TN 37604



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**Elizabeth Ryder**

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**From:** Marisa Elizondo  
**Sent:** Monday, August 20, 2018 7:57 PM  
**To:** Katie King  
**Cc:** James Sandlin  
**Subject:** RE: New Affiliate Launch - HolstonConnect, LLC

Hi Katie,

I am following up on Keith's below email to see if you are ready to engage in a new retransmission consent agreement. HolstonConnect should have received our election letter already. In order to draft an agreement, I will need the following information for HolstonConnect:

Official company name  
Address  
Phone Number  
Email  
Contact for official notifications  
Main Technical Contact  
Signatory

Once I receive this information, I can begin to draft an agreement and send it over to you for review. Thank you.  
Marisa

-----Original Message-----

**From:** Keith Hopkins  
**Sent:** Thursday, August 2, 2018 6:14 PM  
**To:** Katie King <katie@katiekinglaw.com>  
**Cc:** James Sandlin <jsandlin@holstonelectric.com>; Marisa Elizondo <melizondo@nexstar.tv>  
**Subject:** RE: New Affiliate Launch - HolstonConnect, LLC

Hi Katie - Of course I remember you! We'll get over an election letter in the next day or so, then we can work on a carriage agreement with Holston.

Thank you, and we'll talk soon,  
-Keith

-----Original Message-----

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Thursday, August 2, 2018 1:41 PM  
**To:** Keith Hopkins <khopkins@nexstar.tv>  
**Cc:** James Sandlin <jsandlin@holstonelectric.com>  
**Subject:** New Affiliate Launch - HolstonConnect, LLC

Hi Keith. I hope this email finds you doing well. I am working with HolstonConnect, LLC, a wholly owned subsidiary of Holston Electric Cooperative. HolstonConnect is launching a new cable system

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in Rogersville, Tennessee, and portions of its service territory will cover the Knoxville DMA & Tri Cities DMA. Attached for your convenient reference is our launch letter.

HolstonConnect is interested in carrying your broadcast networks in the 2 DMAs. I am hoping you will remember me from when you and I worked together on a launch for another one of my client's earlier this year. Please feel free to email me here or call me at (423) 509-7045 so that we can discuss and finalize any necessary details prior to launch. I look forward to working with you again.

Katie King



## Elizabeth Ryder

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**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Monday, August 20, 2018 8:03 PM  
**To:** Marisa Elizondo  
**Cc:** James Sandlin  
**Subject:** Re: New Affiliate Launch - HolstonConnect, LLC

Great, Marisa. We are definitely interested. Here's the information you requested.

HolstonConnect, LLC, a wholly owned subsidiary of Holston Electric Cooperative

Address: 1220 W. Main Street, Rogersville, TN 37857

Phone: (423) 272-8821

Email: [jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com) and [rlawson@holstonelectric.com](mailto:rlawson@holstonelectric.com)

Contact for Official Notifications & Signatory: James Sandlin, General Manager

Main Technical Contact: Jeffrey Gunter, [JGunter@holstonelectric.com](mailto:JGunter@holstonelectric.com) 423-272-1097

Please send the contract to me for review.

On Aug 20, 2018, at 8:56 PM, Marisa Elizondo <[melizondo@nexstar.tv](mailto:melizondo@nexstar.tv)> wrote:

Hi Katie,

I am following up on Keith's below email to see if you are ready to engage in a new retransmission consent agreement. HolstonConnect should have received our election letter already. In order to draft an agreement, I will need the following information for HolstonConnect:

Official company name  
Address  
Phone Number  
Email  
Contact for official notifications  
Main Technical Contact  
Signatory

Once I receive this information, I can begin to draft an agreement and send it over to you for review.

Thank you.

Marisa

-----Original Message-----

From: Keith Hopkins  
Sent: Thursday, August 2, 2018 6:14 PM  
To: Katie King <[katie@katiekinglaw.com](mailto:katie@katiekinglaw.com)>  
Cc: James Sandlin <[jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com)>; Marisa Elizondo <[melizondo@nexstar.tv](mailto:melizondo@nexstar.tv)>  
Subject: RE: New Affiliate Launch - HolstonConnect, LLC

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Hi Katie - Of course I remember you! We'll get over an election letter in the next day or so, then we can work on a carriage agreement with Holston.

Thank you, and we'll talk soon,  
-Keith

-----Original Message-----

From: Katie King <[katie@katiekinglaw.com](mailto:katie@katiekinglaw.com)>  
Sent: Thursday, August 2, 2018 1:41 PM  
To: Keith Hopkins <[khopkins@nexstar.tv](mailto:khopkins@nexstar.tv)>  
Cc: James Sandlin <[jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com)>  
Subject: New Affiliate Launch - HolstonConnect, LLC

Hi Keith. I hope this email finds you doing well. I am working with HolstonConnect, LLC, a wholly owned subsidiary of Holston Electric Cooperative. HolstonConnect is launching a new cable system in Rogersville, Tennessee, and portions of its service territory will cover the Knoxville DMA & Tri Cities DMA. Attached for your convenient reference is our launch letter.

HolstonConnect is interested in carrying your broadcast networks in the 2 DMAs. I am hoping you will remember me from when you and I worked together on a launch for another one of my client's earlier this year. Please feel free to email me here or call me at (423) 509-7045 so that we can discuss and finalize any necessary details prior to launch. I look forward to working with you again.

Katie King

## Elizabeth Ryder

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**From:** Marisa Elizondo  
**Sent:** Tuesday, August 21, 2018 4:56 PM  
**To:** 'Katie King'  
**Cc:** James Sandlin  
**Subject:** RE: New Affiliate Launch - HolstonConnect, LLC

Thanks Katie. I will prep this and have it back to you at end of the week or early next.

Marisa

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Monday, August 20, 2018 8:03 PM  
**To:** Marisa Elizondo <melizondo@nexstar.tv>  
**Cc:** James Sandlin <jsandlin@holstonelectric.com>  
**Subject:** Re: New Affiliate Launch - HolstonConnect, LLC

Great, Marisa. We are definitely interested. Here's the information you requested.

HolstonConnect, LLC, a wholly owned subsidiary of Holston Electric Cooperative

Address: 1220 W. Main Street, Rogersville, TN 37857

Phone: (423) 272-8821

Email: [jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com) and [rlawson@holstonelectric.com](mailto:rlawson@holstonelectric.com)

Contact for Official Notifications & Signatory: James Sandlin, General Manager

Main Technical Contact: Jeffrey Gunter, [JGunter@holstonelectric.com](mailto:JGunter@holstonelectric.com) 423-272-1097

Please send the contract to me for review.

On Aug 20, 2018, at 8:56 PM, Marisa Elizondo <[melizondo@nexstar.tv](mailto:melizondo@nexstar.tv)> wrote:

Hi Katie,

I am following up on Keith's below email to see if you are ready to engage in a new retransmission consent agreement. HolstonConnect should have received our election letter already. In order to draft an agreement, I will need the following information for HolstonConnect:

Official company name  
Address  
Phone Number  
Email  
Contact for official notifications  
Main Technical Contact  
Signatory

---

Once I receive this information, I can begin to draft an agreement and send it over to you for review.  
Thank you.  
Marisa

-----Original Message-----

From: Keith Hopkins  
Sent: Thursday, August 2, 2018 6:14 PM  
To: Katie King <[katie@katiekinglaw.com](mailto:katie@katiekinglaw.com)>  
Cc: James Sandlin <[jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com)>; Marisa Elizondo <[melizondo@nexstar.tv](mailto:melizondo@nexstar.tv)>  
Subject: RE: New Affiliate Launch - HolstonConnect, LLC

Hi Katie - Of course I remember you! We'll get over an election letter in the next day or so, then we can work on a carriage agreement with Holston.

Thank you, and we'll talk soon,  
-Keith

-----Original Message-----

From: Katie King <[katie@katiekinglaw.com](mailto:katie@katiekinglaw.com)>  
Sent: Thursday, August 2, 2018 1:41 PM  
To: Keith Hopkins <[khopkins@nexstar.tv](mailto:khopkins@nexstar.tv)>  
Cc: James Sandlin <[jsandlin@holstonelectric.com](mailto:jsandlin@holstonelectric.com)>  
Subject: New Affiliate Launch - HolstonConnect, LLC

Hi Keith. I hope this email finds you doing well. I am working with HolstonConnect, LLC, a wholly owned subsidiary of Holston Electric Cooperative. HolstonConnect is launching a new cable system in Rogersville, Tennessee, and portions of its service territory will cover the Knoxville DMA & Tri Cities DMA. Attached for your convenient reference is our launch letter.

HolstonConnect is interested in carrying your broadcast networks in the 2 DMAs. I am hoping you will remember me from when you and I worked together on a launch for another one of my client's earlier this year. Please feel free to email me here or call me at (423) 509-7045 so that we can discuss and finalize any necessary details prior to launch. I look forward to working with you again.

Katie King

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**EXHIBIT 2**

**Elizabeth Ryder**

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**From:** Marisa Elizondo  
**Sent:** Monday, October 22, 2018 11:42 AM  
**To:** Katie King  
**Subject:** RE: [REDACTED]

Hi Katie,

2:30 CST works for me. Let me know what the best number to reach you on is.

Thank you.  
Marisa

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Friday, October 19, 2018 5:35 PM  
**To:** Marisa Elizondo <melizondo@nexstar.tv>  
**Subject:** Re: [REDACTED]

Sure. 2:30?

Sent from my iPhone

On Oct 19, 2018, at 4:37 PM, Marisa Elizondo <melizondo@nexstar.tv> wrote:

Hi Katie,

Let me know if you have time on Monday afternoon to chat about this for a few minutes.

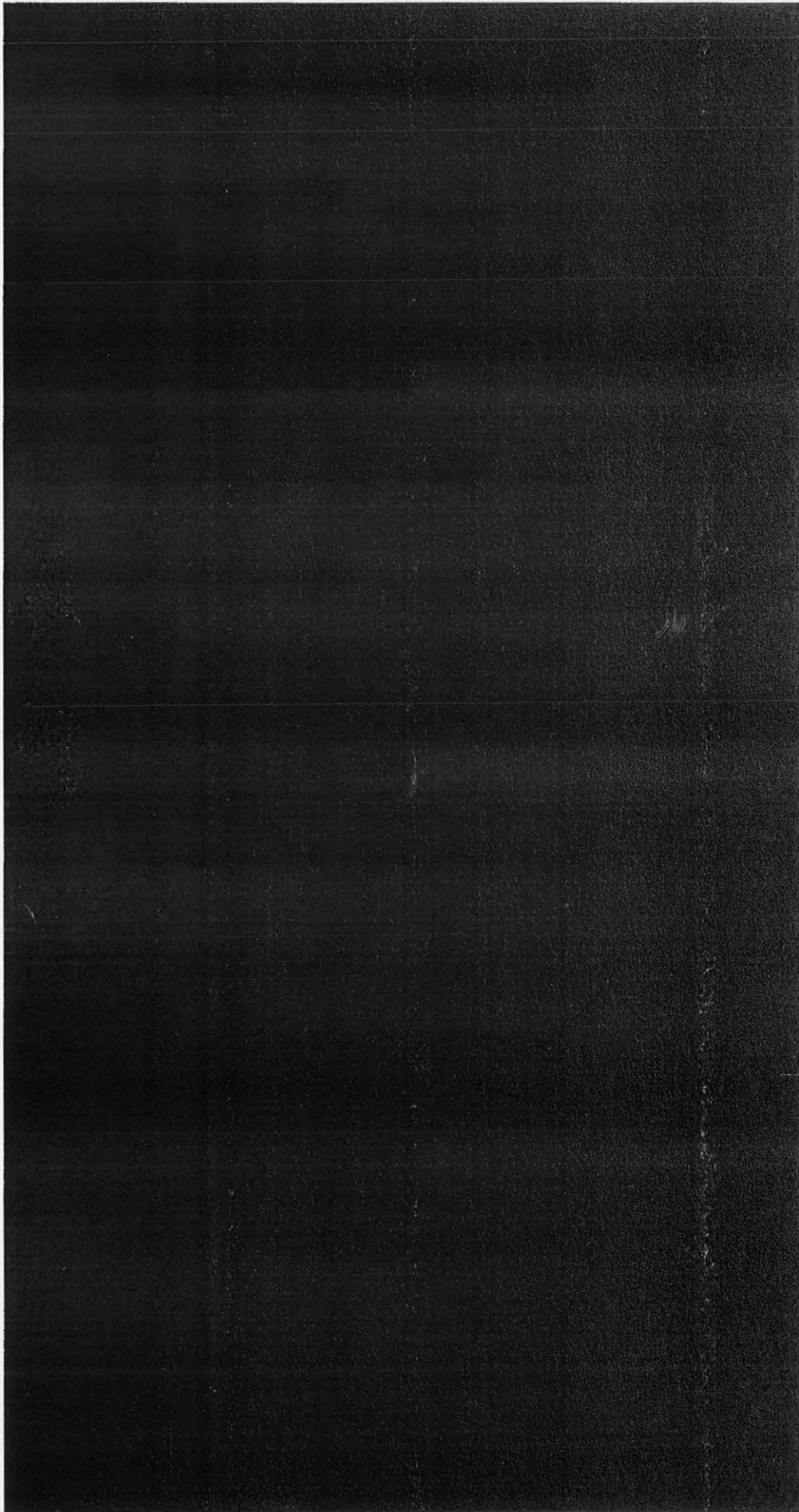
Thank you.  
Marisa

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Tuesday, October 16, 2018 5:13 AM  
**To:** [REDACTED]  
**Cc:** Marisa Elizondo <melizondo@nexstar.tv> [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



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[REDACTED]

[REDACTED]

[REDACTED]



**Elizabeth Ryder**

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**From:** Marisa Elizondo  
**Sent:** Wednesday, November 14, 2018 4:52 PM  
**To:** Katie King  
**Subject:** FW: [REDACTED]

Hi Katie,

Let me know if you have time on Monday to connect on [REDACTED] and HolstenConnect. I would like to align on next steps for both accounts.

Thank you.  
Marisa

**From:** Marisa Elizondo  
**Sent:** Monday, October 22, 2018 11:42 AM  
**To:** 'Katie King' <katie@katiekinglaw.com>  
**Subject:** RE: [REDACTED]

Hi Katie,

2:30 CST works for me. Let me know what the best number to reach you on is.

Thank you.  
Marisa

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Friday, October 19, 2018 5:35 PM  
**To:** Marisa Elizondo <melizondo@nexstar.tv>  
**Subject:** Re: [REDACTED]

Sure. 2:30?

Sent from my iPhone

On Oct 19, 2018, at 4:37 PM, Marisa Elizondo <melizondo@nexstar.tv> wrote:

Hi Katie,

Let me know if you have time on Monday afternoon to chat about this for a few minutes.

Thank you.  
Marisa

**From:** Katie King <katie@katiekinglaw.com>  
**Sent:** Tuesday, October 16, 2018 5:13 AM  
**To:** [REDACTED]

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**Elizabeth Ryder**

---

**From:** Marisa Elizondo  
**Sent:** Friday, March 8, 2019 4:03 PM  
**To:** Katie King  
**Subject:** FW: HolstonConnect  
**Attachments:** HolstonConnect Nexstar RTC Agreement 2.19.19.doc

Hi Katie,

I have not heard back from you despite my attempts this week to connect. I am available early next week if you would like to schedule a call to further discuss.

Thank you.  
Marisa

-----Original Message-----

**From:** Marisa Elizondo  
**Sent:** Thursday, March 7, 2019 2:23 PM  
**To:** 'Katie King' <katie@katiekinglaw.com>  
**Subject:** FW: HolstonConnect

Hi Katie,

I am following up on my email and voicemail from yesterday. Let me know if you have spoken with the HolstonConnect team and if they are ready to provide a counteroffer to move our discussions forward.

Thank you.  
Marisa

-----Original Message-----

**From:** Marisa Elizondo  
**Sent:** Wednesday, March 6, 2019 2:08 PM  
**To:** Katie King <katie@katiekinglaw.com>  
**Subject:** FW: HolstonConnect

Hi Katie,

I am following up on the below. I have not received a formal response to my updated proposal from you or the HolstonConnect team since my email a few weeks ago. If it is easier to discuss over the phone, I am available today at 4:30 CST or tomorrow between 10-11:30am CST to discuss.

Thank you.  
Marisa

-----Original Message-----

**From:** Marisa Elizondo  
**Sent:** Tuesday, February 19, 2019 4:34 PM

To: 'Katie King' <katie@katiekinglaw.com>  
Subject: RE: HolstonConnect

Hi Katie,

In an effort to move these discussions forward, please see the attached updated proposal. Please review with the HolstonConnect team and let me know if they have any questions or want to review any specific provisions.

Thank you.  
Marisa

-----Original Message-----

From: Katie King <katie@katiekinglaw.com>  
Sent: Tuesday, February 19, 2019 7:54 AM  
To: Marisa Elizondo <melizondo@nexstar.tv>  
Subject: Re: HolstonConnect

Perhaps I am confused, but the communication I received from you on 12/14/18 was a rejection of Holston's 12/5 counter-offer. You already know [REDACTED] is not feasible for Holston. If you do not have a counter-offer to make, please just let me know.

Sent from my iPhone

> On Feb 18, 2019, at 5:43 PM, Marisa Elizondo <melizondo@nexstar.tv> wrote:

>  
> Hi Katie,

>  
> It was nice re-connecting with you as well. I haven't seen a counteroffer from the Holston team since my counteroffer on 12/14/18. Was there another set of rates you would like me to take under consideration?

>  
> Thank you.  
> Marisa

>  
> -----Original Message-----

> From: Katie King <katie@katiekinglaw.com>  
> Sent: Monday, February 18, 2019 2:03 PM  
> To: Marisa Elizondo <melizondo@nexstar.tv>  
> Subject: HolstonConnect

>  
> Hi Marisa. It was nice talking with you on Friday. Upon further reflection and after speaking with the folks at Holston, we are open to entertain a meaningful counter offer from Nexstar but are not going to negotiate against ourselves.

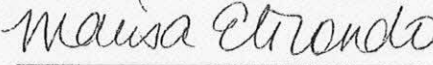
>  
> I am confident we can make a deal work if Nexstar can keep rates in the neighborhood of deals it has done for similar size and type operators in Tennessee within the last year. Please let me know quickly if you think this is something we can work out.

>  
> Sent from my iPhone

**DECLARATION OF MARISA ELIZONDO**

I, Marisa Elizondo, under penalty of perjury, declare as follows:

1. I am a Sr. Director of Distribution for Nexstar Broadcasting, Inc.
2. I have reviewed the foregoing Opposition of Nexstar Media Group, Inc. to Complaint of HoltsonConnect, LLC. The facts contained therein are true and correct to the best of my knowledge, information, and belief.

  
Marisa Elizondo

April 1, 2019