

**Before the
Federal Communications Commission
Washington, D.C. 20554**

HC2 Station Group, Inc.)	
)	
v.)	MB Docket No.
)	
DIRECTV, LLC)	

Complaint for Denial of Mandatory Carriage

HC2 Station Group, Inc. (“HC2”), by counsel, files this Complaint for Denial of Mandatory Carriage against DIRECTV, LLC (“DirecTV”) for its failure, after demand, to carry the signal of Television Station WJFB, Lebanon, Tennessee (Facility ID No. 7651).

Statement of Relief Requested: The relief requested is immediate carriage of WJFB’s broadcast signal by DirecTV on its basic tier of local broadcast channels in the Nashville, Tennessee Designated Market Area.

A declaration of Rebecca Hanson, Executive Vice President and General Counsel of HC2, attesting to the facts supporting this Complaint is attached as Exhibit A.

Factual Allegations

1. Television Station WJFB is a full-power station licensed to Lebanon, Tennessee, and broadcasting on over-the-air channel 44 (and will transition to over-the-air channel 25 in repack phase 6) with a PSIP assignment to channel 66. Lebanon is in the Nashville, Tennessee Designated Market Area (“DMA”).

2. On September 15, 2017, WJFB’s then-licensee, Radiant Life Ministries, Inc. (“TCT”), transmitted to DirecTV a must-carry election for the election period commencing

January 1, 2018. A copy of that election notice is attached as Exhibit B. DirecTV has not contested the validity of this election by WJFB.

3. On information and belief, TCT subsequently may have reached an agreement with DirecTV under which TCT waived its right to carriage of the WJFB signal on the DirecTV local-into-local feed in the Nashville DMA since DirecTV carries the national feed of Radiant Life programming as part of its nationwide programming lineup.

4. On August 23, 2018, TCT agreed to sell WJFB to HC2. The Commission granted TCT's application to assign the WJFB license to HC2 on February 5, 2019. FCC File No. BALCDT-20180905ABI. The assignment to HC2 was consummated on May 3, 2019.

5. Schedule 1.1(c) of the Asset Purchase Agreement between TCT and HC2 listed any contracts entered into by TCT that would be assigned to HC2 at closing. That schedule (a copy of which is attached as Exhibit C) indicated that no TCT contracts would be assumed by HC2, and in particular did not include assignment of any agreement between TCT and DirecTV.

6. During the due diligence process, TCT did not provide HC2 with a copy of any agreement between it and DirecTV relating to the carriage of WJFB, and if such an agreement exists, neither DirecTV nor TCT has ever furnished it to HC2.

7. After consummation, HC2 has continued to broadcast the Radiant Life programming on WJFB until it identified a different programming supplier. On September 23, 2019, HC2 began broadcasting programming from the MeTV Network on WJFB's primary channel, and moved the Radiant Life programming to a subchannel. After reaching an agreement with MeTV, HC2 began discussions with DirecTV concerning carriage of the WJFB signal. DirecTV indicated that it would not carry WJFB as part of its local-into-local feed in the Nashville DMA. DirecTV cited an alleged lack of capacity and a belief that the agreement

waiving carriage of WJFB should have been assigned to HC2 as the reason for not carrying WJFB.

8. On August 15, 2019, HC2 sent DirecTV a formal demand for carriage of WJFB. Exhibit D. On September 12, 2019, AT&T, on behalf of its wholly-owned subsidiary DirecTV, responded to HC2's carriage request (Exhibit E) in which (a) DirecTV claimed that WJFB waived its right to carriage by not complaining within 30 days of TCT's 2017 election of must carry status; and (b) alternatively arguing that TCT was required to assign the alleged agreement between it and DirecTV relating to carriage of WJFB to HC2 as part of the sale to HC2.

9. DirecTV requested in that letter that the parties schedule a telephone call to "discuss which DIRECT documents are part of the Asset Purchase Agreement filed with the FCC." The parties participated in a conference call on September 19, 2019, in which HC2 informed DirecTV that, if there was an agreement between it and TCT relating to carriage of WJFB, (a) it was not assigned to HC2; and (b) TCT's counsel had specifically denied during due diligence that there was any agreement or other fact barring HC2's exercise of its must carry rights for WJFB after the station was sold to HC2. HC2 asked DirecTV for copies of any agreement between it and TCT that waived carriage of WJFB and that was required to be assigned to HC2. DirecTV refused that request but indicated it would consider it further. HC2 asked it to respond within ten days. No such response from DirecTV has been received.

Argument

10. DirecTV provides local-into-local service in the Nashville DMA. Thus, it is, as provided in Section 76.66(b) of the Commission's Rules, 47 CFR § 76.66(b), a "satellite carrier providing, under section 122 of title 17, United States Code, secondary transmissions to subscribers located within the local market of a television broadcast station of a primary

transmission made by” WJFB. That rule goes on to provide that each such satellite carrier “shall carry upon request the signals of all television broadcast stations located within that local market.”

11. DirecTV has not claimed in any communication that WJFB’s September 15, 2017 election of must carry status on DirecTV was defective in any manner; nor has it claimed that WJFB does not provide a good quality signal to DirecTV’s local receive facility in the Nashville DMA or is otherwise not qualified for mandatory carriage.

12. Instead, it has made several different claims as to why it refuses to carry WJFB. It first claimed that it lacked capacity on its satellite feed. Neither the Communications Act nor the Commission’s Rules, however, provide that lack of capacity will be a reason to deny a valid must carry election. It is, of course, DirecTV’s responsibility, once it commenced local-into-local service in the Nashville DMA, to reserve sufficient capacity to fulfill its local carriage obligations. Certainly, its mere unsupported claim of capacity constraints can be given no weight.

13. DirecTV also claimed that WJFB waived its right to carriage by failing to demand carriage within 30 days of the station’s 2017 notice to DirecTV that it was electing must carry for the 2018-20 election cycle. But the Commission has made clear that “broadcast stations may assert their carriage and channel positioning rights *at any time* so long as they have not elected retransmission consent.” *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2976-77 (1993); *see Telefutura Fresno LLC v. Echostar Communications Corp.*, 18 FCC Rcd 22940, 22943 (MB 2003)(“the controlling factor is that the subject station made a timely election”); *Radio Perry, Inc. v. Cox Communications, Inc.*, 26 FCC Rcd 16392, 16393 (MB 2011).

14. Its third argument is that there was an agreement under which TCT waived carriage of WJFB since DirecTV was distributing the same programming on its national satellite feed, and that TCT was required to assign that alleged waiver to any subsequent purchaser. DirecTV has not provided any evidence that such an agreement even exists or provided any details of its terms. But as HC2 informed DirecTV and has shown in the schedule to the Asset Purchase Agreement between TCT and HC2, if such an agreement existed between TCT and DirecTV, it was not assigned to or assumed by HC2.

15. DirecTV appears to be arguing that WJFB lacks carriage rights because it believes TCT was required to assign the alleged agreement to HC2. Acceptance of DirecTV's contention that it is not required to carry WJFB would require the Commission to construe the provisions of whatever agreement TCT and DirecTV may have reached. In *Radio Perry, Inc. v. Cox Communications, Inc.*, 26 FCC Rcd 16392, 16394-95 (MB 2011), the Commission concluded that it would not construe private agreements which parties claimed affected carriage obligations. "In essence, WPGA asks us to interpret the provisions of the Agreement with Cox," a request that the Commission found outside its purview.

16. In *Radio Perry*, the Commission found that, the station having made a binding retransmission consent election, it "can not 'unring the election bell.'" *Id.* at 16395. "The Commission 'will not interject [itself] into specific arguments concerning private agreements between broadcasters and MVPDs.'" *Id.*, quoting *Monroe, Georgia Water Light and Gas Commission v. Morris Network, Inc.*, 19 FCC Rcd 13977 ¶ 10 (MB 2004). Similarly, in *Telefutura*, Echostar argued that an agreement with a previous licensee absolved it of carriage obligations, although – as here – there was no evidence that the agreement had been assumed by the new licensee. The Commission refused to involve itself in the contractual dispute between

the parties, holding that “[c]ontractual issues are to be resolved by the parties or by courts of proper jurisdiction.” 18 FCC Rcd at 22943; *see NBC Subsidiary (NH) v. Echostar Communications Corp.*, 18 FCC Rcd 15238, 15241 (MB 2003). DirecTV thus ignores a long line of established precedent that its contractual arguments are beyond the FCC’s jurisdiction and irrelevant to HC2’s carriage rights and DirecTV’s carriage obligations.

17. To the extent that DirecTV believes TCT was obliged to assign an agreement to HC2, it can assert that claim in court against TCT. But whatever arrangement DirecTV had with respect to TCT has no bearing on whether it is now required to carry WJFB, which is now licensed to HC2.

18. Granting the relief HC2 seeks would serve the public interest because it furthers the intent of Congress reflected in the Satellite Home Viewer Act, which provides that, if a satellite carrier provides local-into-local service in a DMA, it will accord carriage rights to all local stations to ensure the broadest viewing choices for consumers and a competitive market for local stations.

19. WJFB made a valid election of mandatory carriage on DirecTV. DirecTV has refused to honor that election and carry the station on its local Nashville feed. DirecTV cannot, as the Commission has consistently held, ask the Commission instead to apply the provisions of

a supposed subsequent agreement between DirecTV and another party. Instead, the Commission should promptly order DirecTV to begin carriage of WJFB.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jack N. Goodman", written over the typed name.

Jack N. Goodman
Law Offices of Jack N Goodman
1200 New Hampshire Avenue, NW
Suite 600
Washington, DC 20036
202-776-2045

Counsel to HC2 Broadcasting, Inc.


October 7, 2019

Exhibit A

Declaration of Rebecca Hanson

Rebecca Hanson declares as follows:

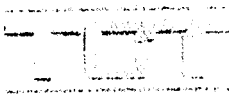
1. I am the Executive Vice President and General Counsel of HC2 Station Group, Inc.
2. In that position, I am responsible for overseeing station acquisitions and carriage issues for HC2 and its stations.
3. I have read the Complaint for Denial of Mandatory Carriage against DirecTV relating to its failure to carry the signal of Television Station WJFB in the Nashville Designated Market Area.
4. Based on my personal knowledge, I confirm that each of the factual allegations contained in the Complaint for Denial of Mandatory Carriage, other than those stated based on information and belief, are to the best of my knowledge true and correct.
5. I declare under penalty of perjury that the above statements are true and correct.



Rebecca Hanson

October 7, 2019

Exhibit B



VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED

September 28, 2017

DIRECTV

Attention: Mandatory Carriage Election Manager
2230 East Imperial Highway
El Segundo, CA 90245

Re: Election of Mandatory Local-Into-Local Channel Carriage:
Radiant Life Ministries, Inc. - WJFB, UHF Channel 44, Lebanon, TN
DMA: Nashville, Tennessee (Market Rank: 29)

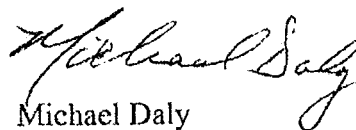
Dear DIRECTV,

In accordance with Section 76.66(d) of the FCC's rules, WJFB hereby elects mandatory carriage on your satellite system serving the Nashville DMA for the 3-year election cycle beginning January 1, 2018 and ending December 31, 2020 for WJFB, licensed to Lebanon, Tennessee. WJFB is assigned to the Nashville DMA. The station's contact person for carriage matters is Michael Daly. The station's address for official correspondence is:

Radiant Life Ministries, Inc. - WJFB
Attention: Legal Department
P.O. Box 1010
Marion, Illinois 62959

Radiant Life Ministries, Inc. appreciates the opportunity to continue providing contemporary, family oriented and inspirational programming to your subscribers. Please feel free to contact me if you have any questions concerning this matter.

Sincerely,


Michael Daly
Secretary

cc: Colby M. May, Esq.

Exhibit C

SCHEDULES
to the
ASSET PURCHASE AGREEMENT
by and among
HC2 STATION GROUP, INC.,
as Buyer,
and
RADIANT LIFE MINISTRIES, INC.,
as Seller
Dated as of August 23, 2018

Schedule 1.1(c)
Assumed Contracts

1. None.

Exhibit D



HC2 Station Group, Inc.
450 Park Avenue, 30th Floor
New York, New York 10022
(212) 339-5800

DIRECTV, LLC
Local-Into-Local
Attention: VP, Content and Programming
2260 East Imperial Highway
El Segundo, CA 90245

August 15, 2019

Re: Demand for Carriage of WJFB Pursuant to Must Carry Election

Dear Sir or Madam:

HC2 Station Group, Inc. purchased Television Station WJFB in Nashville (Fac. ID No. 7651) on May 3, 2018. Prior to this acquisition, the then-owner of WJFB filed a timely must carry election notice for the 2018-2020 cycle (a copy of which is attached). We now understand that DirecTV is not carrying the local broadcast signal of WJFB.

As licensee of WJFB, we hereby assert our right to mandatory carriage of the WJFB local broadcast signal, pursuant to Section 76.66 of the Rules of the Federal Communications Commission. WJFB provides a good quality signal to DirecTV's local receive facility and is otherwise entitled to be carried in HD on the DirecTV system.

Please let us know the date on which you will commence carriage of WJFB.

Sincerely yours,

A handwritten signature in blue ink that reads 'Rebecca Hanson'.

Rebecca Hanson
General Counsel

Cc: Karen Griet, Jack Goodman

Exhibit E



Rob Thun
Senior Vice President
Content & Programming

September 12, 2019

Via FedEx

HC2 Network Inc.
450 Park Avenue, 30th Floor
New York, NY 10022
Attn: Chief Operating Officer

Re: Carriage Demand for Broadcast Station WJFB in the Nashville DMA

Dear Chief Operating Officer:

Reference is made to the Retransmission Consent Agreement dated May 15, 2019 (the "Agreement"), between HC2 Network Inc. ("Station Group"); DIRECTV, LLC ("DIRECTV"); and AT&T Services, Inc., on behalf of itself and its Affiliated Company(ies) other than AT&T Inc. ("AT&T", and together with DIRECTV, individually and collectively (as applicable), "Operator"). Capitalized terms used in this letter but not defined herein will have the meanings given to them in the Agreement.

A. Must Carry Demand

DIRECTV received from Station Group (through an Affiliated Company of Station Group, which for the purposes of this letter will be referred together with Station Group as the "HC2 Entity(ies)") a letter dated August 15, 2019 (the "HC2 Notice"), in which the HC2 Entity(ies) advised that (i) on May 3, 2018 [sic], the HC2 Entity(ies) consummated the purchase of television station WJFB located in the Nashville DMA,¹ and (ii) the HC2 Entity(ies) seek to assert mandatory carriage of WJFB based on the September 28, 2017, must-carry election letter (the "Must Carry Letter") TCT Ministries, Inc. ("TCT"), sent to DIRECTV on behalf of TCT's affiliate Radiant Life Ministries, Inc. ("Radiant Life").

B. DIRECTV's Previous Denial of the Must Carry Demand

Section 76.66(m)(6) of Title 47 of the Code of Federal Regulations provides that the FCC "will not accept any complaint filed later than 60 days after a satellite carrier, either implicitly or explicitly, denies a television station's carriage request." DIRECTV *implicitly* denied TCT/Radiant Life's must-carry request when DIRECTV continued to negotiate renewal of TCT's carriage agreement over the 30-day period following DIRECTV's receipt of the Must Carry Letter, in accordance with page 2 of TCT's Must Carry Letter, which we enclose for your reference (the "Retransmission Letter"). DIRECTV *explicitly* denied TCT/Radiant Life's must-carry request when DIRECTV discontinued retransmission of WJFB's signal on December

¹ For clarity, FCC records show the consummation date as May 3, 2019 (the "Consummation Date").

13, 2017, and the parties nonetheless extended their contractual relationship without mandatory carriage of WJFB. TCT/Radiant Life failed to file a timely complaint and, therefore, waived its right to mandatory carriage of WJFB. Moreover, as the HC2 Entity(ies) should know, TCT/Radiant Life expressly waived must-carry rights for WJFB in the current distribution agreement with DIRECTV (the "Current TCT Agreement") and, as discussed below, the HC2 Entity(ies) assumed the obligations contained in the Current TCT Agreement when the HC2 Entity(ies) acquired WJFB.

C. Asset Purchase Agreement Covers Sale of WJFB to HC2 Entity(ies)

When Station Group entered into the Agreement, at least one of the HC2 Entity(ies) was party to an asset purchase agreement with Radiant Life dated August 23, 2018 (the "Asset Purchase Agreement Effective Date"), regarding the HC2 Entity(ies) purchase of WJFB (the "Asset Purchase Agreement"). In Section 2.3 of the Asset Purchase Agreement, the HC2 Entity(ies) accept obligations related to (a) the assignment of certain contracts to the HC2 Entity(ies) at closing (the "Assumed Contracts"), and (b) equitable assignment of Assumed Contracts that require third-party consent, until such time that Radiant Life secures such third-party consents (the "Equitable Assumed Contracts," and together with the Assumed Contracts, the "Purchased Contract Assets"). After a reasonable passage of time following close of the HC2 Entity(ies)'s WJFB purchase transaction, in accordance with Section 2.3 of the Asset Purchase Agreement, the HC2 Entity(ies) must comply with the terms of such Purchased Contract Assets, including the must-carry waivers and liquidated damages provisions contained in the Purchased Contract Assets.

D. Duty to Disclose the Asset Purchase Agreement

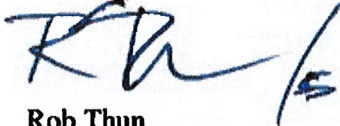
In Section 25 of the Agreement, Station Group represented that it complied "in every material respect with all Laws related or applicable to the negotiation and execution of [the] Agreement." DIRECTV believes Station Group's material compliance with Laws applicable to negotiation and execution of the Agreement required Station Group to: (i) disclose material facts known only to HC2 Entity(ies) (i.e., consummation of the HC2 Entity(ies) purchase of WJFB); (ii) comply with any DIRECTV-related must-carry waivers contained in the Purchased Contract Assets; and (iii) pay liquidated damages in the amount of \$250,000 per year if any HC2 Entity(ies) violate the DIRECTV-related must-carry waivers set forth in the Purchased Contract Assets. To be clear, during negotiation of the Agreement, Station Group and Operator discussed extensively Operator's limitations in carrying the Stations on a must-carry basis, yet at no time during negotiations (or at a reasonable time thereafter) did Station Group disclose to DIRECTV the purchase of WJFB or the intent of the HC2 Entity(ies) to induce DIRECTV's carriage of WJFB. Instead, the HC2 Entity(ies) sent the HC2 Notice nearly 12 months after the Asset Purchase Agreement Effective Date. Additionally, DIRECTV believes that, due to the passage of time, the HC2 Entity(ies) ratified the Asset Purchase Agreement and laches prevents any of the HC2 Entity(ies) from availing themselves of the Must Carry Letter without consideration of the Retransmission Letter.

Chief Operating Officer
HC2 Network Inc. re WJFB
September 12, 2019
Page 3

We propose that all parties schedule a call or meeting to discuss which DIRECTV documents are part of the Asset Purchase Agreement filed with the FCC. This may cure any misunderstanding about TCT/Radiant Life's, Operator's, and the HC2 Entity(ies)'s respective rights. Please let me know when you are available.

This letter is not intended to be a full recitation of the relevant facts. Furthermore, nothing contained in this letter or omitted from it is intended to be a waiver or relinquishment of any of Operator's rights and remedies, whether under contract (including the Agreement and Purchased Contract Assets), in equity, or at law, all of which rights and remedies are hereby expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rob Thun' with a stylized flourish at the end.

Rob Thun

Enclosure

cc: HC2 Broadcast Holdings Inc.
450 Park Ave., 30th Floor
New York, NY 10022
Attn: General Counsel

Jack N. Goodman via e-mail only at jack@jackngoodman.com
Emma Brackett, Vice President, Content & Programming (DIRECTV)
Linda Burakoff, Vice President, Content & Programming (DIRECTV)
Karen Griet, Director, Content & Programming (DIRECTV)
Brooke Mallette, Vice President, Content Legal (DIRECTV)
Lynette M. Jones, Asst. Vice President, Content Legal (DIRECTV)

REC'D OCT - 6 2017

VIA CERTIFIED U.S. MAIL
RETURN RECEIPT REQUESTED

September 28, 2017

DIRECTV

Attention: Yvonne Harmon, Sr. Manager Content & Programming
2230 East Imperial Highway
El Segundo, CA 90245

Re: Renewal of our Retransmission Consent / Local into Local Channel Waiver
Agreement regarding National Public Interest Channel 377

Dear Ms. Harman,

As a follow up to my previous communications with you, and Karen Griet; as I understand it, DIRECTV desires to renew the retransmission consent / local into local channel waiver agreement that our organizations have been party to concerning Public Interest Channel 377 for a number of election cycles. Renewal of this agreement is our desire as well; however, in the interest of properly preserving the underlying carriage rights of the local stations associated with that agreement, so that we may again waive those stations' individualized carriage rights in lieu of a single national public interest channel, I am enclosing carriage election letters for each of those stations under separate cover.

We are also pleased to inform that our group has recently acquired two additional local into local channel allocation stations -- KDMI, Channel 19, Des Moines, IA and WJFB, Channel 44, Lebanon, TN -- from Dove Broadcasting, Inc.; and that we are now able to include these stations into a renewal agreement going forward.

Again, we appreciate DIRECTV's continued desire to work together to provide the best and most efficient delivery of content possible to your customers and our viewers; and I look forward to receiving a draft renewal agreement from you when you return to your office next week.

Best regards,



Michael Daly
Secretary

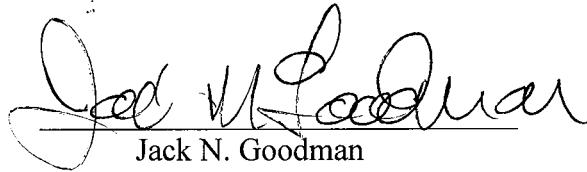
P.O. Box 1010 | Marion, IL 62959
(618) 997-4700 phone | (618) 993-9778 fax | www.tct.tv

Certificate of Service

I, Jack N. Goodman, hereby certify that I have, this 7th day of October 2019, caused to be sent by mail, first-class postage prepaid, copies of the foregoing *Complaint for Denial of Mandatory Carriage* to the following:

Linda Burakoff
Karen Griet
DIRECTV, LLC
2260 East Imperial Highway
El Segundo, CA 90245

Robert D. Thun
Senior Vice President of Content and Programming
AT&T Mobility and Entertainment
2260 East Imperial Highway
El Segundo, CA 90245



Jack N. Goodman