

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)	
)	
HITV License Subsidiary, Inc.)	
)	
Complainant)	MB Docket No. _____
)	CSR-_____
v.)	
)	
DIRECTV, LLC)	
)	
Defendant)	
)	

To: Office of the Secretary
Attn: Chief, Media Bureau

GOOD FAITH NEGOTIATION COMPLAINT

HITV License Subsidiary, Inc. (“HITV”), pursuant to Section 325(b)(3)(C) of the Communications Act of 1934, as amended, and Sections 76.7 and 76.65 of the Commission’s Rules, hereby files this Complaint against DIRECTV, LLC (“DIRECTV”). HITV brings this complaint because DIRECTV has breached its obligation to negotiate in good faith for the terms of retransmission of the signal of HITV’s broadcast television station KFVE, Honolulu, Hawaii. As detailed herein, DIRECTV has put forth only a single, unilateral proposal, and has failed to provide HITV with justification for its refusal to even consider alternative terms for carriage. In doing so, DIRECTV has clearly committed *per se* violations of the Commission’s rules requiring it to negotiate in good faith with HITV. To the extent DIRECTV’s actions can even be considered “negotiation,” DIRECTV has clearly violated its duty to negotiate in good faith under the totality of the circumstances test as well.

I. JURISDICTION

The Commission has jurisdiction to consider and resolve this Complaint pursuant to the Communications Act of 1934, as amended, and Sections 76.65 and 76.7 of the Commission's rules, 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. §§ 76.65, 76.7.

II. THE COMPLAINANT

HITV is the licensee of full service television broadcast station KFVE, licensed to Honolulu, Hawaii and assigned to the Honolulu, Hawaii Designated Market Area ("DMA"). HITV is also licensee of two satellite stations that provide service throughout the Hawaiian islands – KGMD-TV, Hilo, Hawaii, and KGMV, Wailuku, Hawaii. HITV does not hold any other broadcast licenses. KFVE, in addition to MyNetworkTV programming, carries an extensive slate of locally-produced and focused programs, including local news and non-news programming. KFVE's local news programs are competitive with those of the DMA's "Big 4" network affiliates, and its slate of non-news local programming is unmatched by any other station in the DMA.

III. THE DEFENDANT

DIRECTV provides a direct broadcast satellite ("DBS") service throughout the United States, including in the Honolulu DMA. This service delivers multiple channels of video programming to DIRECTV subscribers. DIRECTV therefore is a multichannel video programming distributor ("MVPD") as defined in the Communications Act and the Commission's Rules. Since 2015, DIRECTV has been a wholly-owned subsidiary of AT&T Inc. The combined company is one of the largest in the United States, with annual 2016 revenues of more than \$163 Billion, placing it at number 9 on the Fortune 500 list.¹ Both DIRECTV and HITV are "Negotiating Entities" for purposes of Section 76.65 of the Commission's Rules.

¹ See <http://fortune.com/fortune500/list/>.

IV. STATEMENT OF FACTS

HITV and DIRECTV are parties to an existing retransmission consent agreement which, by its original terms, would have expired on August 31, 2017 (the “Existing Agreement”). That agreement was extended through October 19, 2017, as detailed below. Pursuant to the Existing Agreement and previous agreements for carriage of KFVE, DIRECTV agreed as early as 2003 to pay cash compensation for carriage of KFVE, although the station was not in fact carried until DIRECTV launched local-into-local service in Hawaii in late 2005. The Existing Agreement and the prior agreements were negotiated for KFVE between DIRECTV and Raycom Media, Inc. pursuant to agreements between the licensee of KFVE and Raycom. After the Commission’s 2015 modification to its good faith negotiation rules to establish joint negotiation by any same-market licensees as *per se* bad faith, HITV now negotiates with DIRECTV without any coordination with Raycom or any other television station licensed to the Honolulu market.

Anticipating the August 31, 2017 expiration of the Existing Agreement, HITV, through counsel, first reached out to DIRECTV on August 9 to begin negotiations, indicating its willingness to negotiate fair terms for continued carriage, and its openness to extending the existing agreement.² DIRECTV responded on August 11, and the parties and counsel, at DIRECTV’s request, agreed on August 15 to certain non-disclosure terms to govern during negotiation of a new agreement.³ On August 17, HITV counsel confirmed that DIRECTV was planning to send an initial proposal to HITV.⁴ On August 24, DIRECTV provided that proposal, which would have provided that

² See e-mail from Daniel Kirkpatrick (“Kirkpatrick”) to Julia Hongfeng Dai (“Dai”) dated August 9, 2017, attached as Exhibit 1 hereto.

³ See e-mails between John Fink, General Manager of KFVE, and Dai dated August 15, 2017, and e-mail between Dai and Kirkpatrick dated August 16, 2017, attached as Exhibit 2 hereto. To ensure that it did not violate the terms of those agreements, HITV waited until the Existing Agreement, and the obligations under the non-disclosure agreements, terminated before filing this Complaint.

⁴ See e-mails between Kirkpatrick and Dai dated August 17, 2017, attached as Exhibit 3 hereto.

DIRECTV would carry the signal of KFVE only as if the station had elected mandatory carriage under the “Must Carry Rules,” which DIRECTV defined as:

the statutory provisions of 47 U.S.C. § 338 and 17 U.S.C. §§ 122 and 501; the regulations adopted by the United States Federal Communications Commission implementing these statutory provisions, currently codified at 47 C.F.R. 76.66 et seq., as those regulations may be amended from time to time; and the requirements of applicable decisions of the Federal Communications Commission or federal courts interpreting such statutory provisions or regulations.⁵

On August 26, HITV responded, explaining that, while it was willing to negotiate the amount and form of compensation, and other terms related to carriage, it was not willing to go backwards and receive no compensation for carriage of the station’s signal.⁶

DIRECTV responded in turn on August 28, stating that it was “not in a position to offer a fee for carriage,” and restating its initial offer of carriage on must-carry terms.⁷ On August 30, HITV responded, indicating that it was surprised and disappointed at DIRECTV’s unwillingness to negotiate for any fee payment. HITV did, however, offer an extension of the existing agreement through September 14.⁸ Under the terms of that extension, no fees would be paid during the extension period, but any fee payment ultimately agreed to would be applied retroactively.⁹ DIRECTV accepted that extension on August 30. On September 12, HITV reached out to DIRECTV, reiterating its interest in reaching an agreement, but again expressing its surprise with DIRECTV’s single proposal and difficulty in understanding how DIRECTV had reached the conclusion that KFVE’s programming was no longer worth any compensation.¹⁰ HITV provided DIRECTV with information on some of the extensive local programming broadcast by the station,

⁵ See e-mail from Dai to Kirkpatrick dated August 24, including attached letter agreement, attached as Exhibit 4 hereto.

⁶ See e-mail from Kirkpatrick to Dai dated August 26, 2017, attached as Exhibit 5 hereto.

⁷ See e-mail from Dai to Kirkpatrick dated August 28, 2017, attached as Exhibit 6 hereto.

⁸ See e-mail from Kirkpatrick to Dai dated August 30, 2017 attached as Exhibit 7 hereto.

⁹ *Id.*

¹⁰ See e-mail from Kirkpatrick to Dai dated September 12, 2017, attached as Exhibit 8 hereto.

as well as ratings information for certain of that programming, including the station's local news, which was shown to be competitive with the local news programs of certain Big 4 Network affiliates in the market.¹¹ HITV also proposed an additional two-week extension to allow for further discussion. On September 13, DIRECTV responded, agreeing to an extension through September 28, and acknowledging its receipt of KFVE's programming information, but again indicating that it was unwilling to negotiate its single proposal for carriage of the station.¹²

Having received no further response from DIRECTV, HITV reached out again on September 26, reiterating its willingness to negotiate, and again asking why DIRECTV had determined that KFVE's programming was no longer deserving of any compensation.¹³ HITV offered an additional extension through October 12.¹⁴ DIRECTV confirmed that extension on September 26, but offered no other substantive response.¹⁵ On October 5, HITV again reached out to DIRECTV, asking if DIRECTV was willing to negotiate for any terms other than those in the single, unilateral proposal it had made for carriage on must-carry terms.¹⁶ DIRECTV responded on October 9 indicating that it would not negotiate for any other terms.¹⁷ HITV nonetheless offered an additional extension through October 19, which DIRECTV confirmed.¹⁸ DIRECTV sent an e-mail to HITV's counsel on October 18 asking for confirmation of the expiration of the current extension,

¹¹ *Id.*

¹² See e-mail from Dai to Kirkpatrick dated September 13, 2017, attached hereto as Exhibit 9.

¹³ See e-mail from Kirkpatrick to Dai dated September 26, 2017, attached hereto as Exhibit 10.

¹⁴ *Id.*

¹⁵ See e-mail from Dai to Kirkpatrick dated September 27, 2017, attached hereto as Exhibit 11.

¹⁶ See e-mail from Kirkpatrick to Dai dated October 5, 2017, attached hereto as Exhibit 12.

¹⁷ See e-mail from Dai to Kirkpatrick dated October 9, 2017 attached hereto as Exhibit 13.

¹⁸ See e-mails between Dai and Kirkpatrick dated October 9-10, attached hereto as Exhibit 14. While HITV's initial e-mail had erroneously offered a one week extension through October 18, this was later clarified to confirm the extension through October 19.

and asking how HITV wished to proceed after that expiration.¹⁹ HITV responded on October 18 confirming the extension through 11:59pm (Eastern) on October 19, and reiterating its desire to negotiate carriage, but indicating that if DIRECTV was not willing to negotiate, HITV did not believe further extension to be warranted.²⁰ DIRECTV responded, again showing no willingness to consider any other terms than those set forth in its initial proposal.²¹ At midnight eastern, the KFVE signal was removed from DIRECTV's service.

V. COUNT I

Under the Communications Act and the Commission's Rules, an MVPD is required to negotiate retransmission consent in good faith with television broadcast stations.²² As demonstrated above, both HITV and DIRECTV are Negotiating Entities under the Commission's Rules. The Commission's Rules set forth a series of practices that are considered *per se* violations of the requirement to negotiate in good faith.²³ Section 76.65(b)(1)(iv) of the Commission's Rules establishes that it is bad faith for a Negotiating Entity to refuse to "put forth more than a single, unilateral proposal." DIRECTV's behavior here is a textbook example of just this prohibited behavior. As demonstrated above, DIRECTV has put forth exactly one, unilateral proposal – to carry KFVE as if it were a must-carry station. As also demonstrated above, HITV has repeatedly expressed to DIRECTV that, while it is not willing to agree to that unilateral proposal, it is willing to negotiate for carriage on reasonable terms. DIRECTV has steadfastly refused to demonstrate any willingness to negotiate at all, instead standing by its "single, unilateral proposal." When asked if it

¹⁹ See e-mail from Dai to Kirkpatrick dated October 18, 2017, attached hereto as Exhibit 15.

²⁰ See e-mail from Kirkpatrick to Dai dated October 18, 2017, attached hereto as Exhibit 16.

²¹ See e-mail from Dai to Kirkpatrick dated October 18 2017, attached hereto as Exhibit 17.

²² 47 U.S.C. § 325(b)(3)(C)(ii); 47 C.F.R. § 76.65.

²³ 47 C.F.R. § 76.65(b)(1).

would consider or negotiate for any other terms, DIRECTV demurred.²⁴ For these reasons, the Commission should conclude that DIRECTV has failed to negotiate in good faith by failing to put forth more than a single, unilateral proposal, in violation of the Communications Act and the Commission's Rules.²⁵

VI. COUNT II

Section 76.65(b)(1)(v) requires any Negotiating Entity that rejects the other party's proposal to provide the reasons for such rejection. As demonstrated above, DIRECTV has refused to even consider any proposal from HITV, and has repeatedly made clear that it will only agree to carriage on the terms set forth in its own single, unilateral proposal. The only reason DIRECTV has provided is a statement that it was "not in a position to offer a fee for carriage."²⁶ DIRECTV has offered no clear explanation for this position, or any explanation why it is no longer willing to agree to provide any compensation for carriage of KFVE, something it has done for all of the almost 12 years it has provided local service in Hawaii. HITV, on the other hand, has on multiple occasions expressed the reasons why it is not willing to accept DIRECTV's single unilateral proposal. HITV has, for example, emphasized that DIRECTV has paid cash compensation for carriage of KFVE for as long as it has carried Hawaii stations, and has documented the station's competitive viewership numbers and extensive local programming. HITV has also expressed a broad willingness to discuss terms for carriage of KFVE, and has offered to make a specific proposal if DIRECTV were willing to consider it.²⁷ Thus far, DIRECTV has refused to do so.

²⁴ See, e.g., Exhibits 6, 9, 13.

²⁵ 47 U.S.C. § 325(b)(3)(C)(ii), 47 C.F.R. § 76.65. HITV notes that DIRECTV's behavior may also constitute a violation of Section 76.65(b)(1)(i)'s prohibition on a Negotiating Entity's refusal to negotiate.

²⁶ See Exhibit 6.

²⁷ See, e.g., Exhibit 12.

VII. COUNT III – TOTALITY OF THE CIRCUMSTANCES

In addition to the list of actions constituting *per se* violations of the duty to negotiate in good faith, Section 76.65(b)(2) establishes a “totality of the circumstances” test, pursuant to which actions that may not constitute a violation of one of the *per se* standards may still demonstrate a failure to negotiate in good faith. As demonstrated above, DIRECTV has clearly violated the *per se* standards prohibiting Negotiating Entities from making only a single, unilateral proposal, and requiring that they provide the reasons for rejection of any proposal. In the event that the Commission somehow is unable to find that DIRECTV has committed a *per se* violation of the good faith negotiation requirements, however, DIRECTV’s continued refusal to negotiate for terms, or even to substantively engage HITV on the reasons for such refusal, must be found to constitute a violation of the good faith negotiation requirements under the totality of the circumstances test.

VIII. REQUEST FOR RELIEF

HITV respectfully requests that the Commission order DIRECTV to negotiate in good faith for the carriage of the broadcast signal of KFVE on DIRECTV's DBS system in the Honolulu DMA. Specifically, HITV requests that the Commission order DIRECTV to provide the reasons for its rejections of HITV's requests to negotiate compensation for carriage, including the reasons why it no longer believes HITV is entitled to such compensation as it has received for the past 12 years. HITV also requests that the Commission order DIRECTV to consider more than the single unilateral proposal it has thus far provided, and to otherwise negotiate in good faith. HITV further requests that the Commission impose, pursuant to Section 1.80 of the Commission's Rules, any forfeitures as the Commission deems appropriate, and grant such other and further relief as it deems just and proper.

Respectfully submitted,

HITV License Subsidiary, Inc.

By: 
Daniel A. Kirkpatrick

Its Counsel

FLETCHER, HEALD & HILDRETH, PLC
1300 North 17th Street, Suite 1100
Arlington, VA 22209
(703) 812-0400

October 20, 2017

Date: 10/20/17

EXHIBIT 1

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Wednesday, August 09, 2017 5:14 PM
To: 'DAI, HONGFENG'
Cc: 'MALLETTE, BROOKE E (Legal)'
Subject: KFVE, Honolulu

Sensitivity: Confidential

Julia:

I don't know that you are the right person to work with on this, but if not, hopefully you can point me in the right direction. I have been asked to assist television station KFVE, Honolulu, Hawaii in negotiating a new retransmission consent agreement with DIRECTV. The station has, until now, been covered under Raycom's agreement, but as you know Raycom can no longer negotiate for KFVE because of its other stations in Hawaii. I apologize for the late contact, but the existing agreement expires on July 31, 2017. Hopefully we can agree on renewal/replacement terms relatively quickly, but my client would in any event be open to extension of the current agreement to prevent any blackout. Please just let me know what we need to do (or who to talk to) to get the ball rolling on this one.

Thanks

Dan

Daniel A. Kirkpatrick



Fletcher, Heald & Hildreth

1300 N. 17th Street, Suite 1100 | Arlington, VA 22209

Tel: 703.812.0432 | Fax: 703.812.0486 | Mobile: 703.967.1927

✉ kirkpatrick@fhhlaw.com | www.fhhlaw.com | www.commlawblog.com

EXHIBIT 2

Dan Kirkpatrick

From: Fink, John <JFink@kfve.com>
Sent: Tuesday, August 15, 2017 7:28 PM
To: DAI, HONGFENG
Cc: Dan Kirkpatrick; MALLETTE, BROOKE E (Legal); Kim Kelly; Terence Clerkin (Clerkin@pennantpark.com)
Subject: RE: NDA email confirmation re. KFVE

Agreed.

From: DAI, HONGFENG [mailto:hd619r@att.com]
Sent: Tuesday, August 15, 2017 9:34 AM
To: Fink, John <JFink@kfve.com>
Cc: kirkpatrick@fhhlaw.com; MALLETTE, BROOKE E (Legal) <bm5370@att.com>
Subject: RE: NDA email confirmation re. KFVE

Thanks John.

Reference is hereby made to that certain Revival Agreement and Amendment to that Retransmission Consent Agreement, dated as of January 1, 2011, by and between Raycom Media, Inc. and DIRECTV, Inc., and amended as of December 31, 2014, by and between Raycom Media, Inc. and DIRECTV, LLC (successor-in-interest to DIRECTV, Inc. "DIRECTV") (collectively, the "Agreement"), which governs the retransmission by DIRECTV of the television station KFVE in the Honolulu, HI Local Territory (the "Station") that is licensed to and owned by HITV License Subsidiary, Inc. ("Station Group").

Please acknowledge by reply email that, on behalf of Station Group, you hereby acknowledge and agree to maintain in confidence all data, summaries, reports or other information acquired, devised or developed in connection with the renewal discussions of the Agreement in accordance with the confidentiality provisions set forth in the Agreement or, if applicable, the confidentiality provisions set forth in any definitive renewal agreement that supersede such confidentiality provisions in the Agreement commencing as of the date upon which the parties first engaged in such discussions (the "Effective Date") and continuing through the later of: (i) the expiration of the confidentiality provisions set forth in the Agreement; and (ii) the expiration of any confidentiality provisions included in any definitive renewal agreement or successor agreement entered into between Station Group and DIRECTV for retransmission by DIRECTV of the signals of any of the broadcast television stations that are owned and operated by Station Group.

Julia Hongfeng Dai



DIRECTV

2260 E. Imperial Hwy | LA5 | El Segundo, CA 90245
☎: 310.964.0982 | ✉: hd619r@att.com

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Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Wednesday, August 16, 2017 5:54 PM
To: Dan Kirkpatrick
Cc: MALLETT, BROOKE E (Legal)
Subject: FW: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)
Attachments: 2017.08.15 HITV License Subsidiary - ConfidentialityAgmt (Fletcher, Heald).pdf

Here you go..

Julia Hongfeng Dai



DIRECTV

2260 E. Imperial Hwy | LA5 | El Segundo, CA 90245

☎: 310.964.0982 | ✉: hd619r@att.com

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DIRECTV

August 15, 2017

Fletcher, Heald & Hildreth
1300 N. 17th Street, Suite 1100
Arlington, VA 22209

Re: CONFIDENTIALITY AGREEMENT – HITV LICENSE SUBSIDIARY, INC.

Dear Sir or Madam:

Reference is hereby made to that certain Revival Agreement and Amendment to that Retransmission Consent Agreement, dated as of January 1, 2011, by and between Raycom Media, Inc. and DIRECTV, Inc., and amended as of December 31, 2014, by and between Raycom Media, Inc. and DIRECTV, LLC (successor-in-interest to DIRECTV, Inc. "DIRECTV") (collectively, the "Agreement"), which governs the retransmission by DIRECTV of the television station KFVE in the Honolulu, HI Local Territory (the "Station") that is licensed to and owned by HITV License Subsidiary, Inc. ("Station Group").

Fletcher, Heald & Hildreth ("FHH"), through its employees, agents and advisors (collectively, "FHH"), is representing the Station Group in its negotiations with DIRECTV for the continued carriage of the Station (the "Negotiations"). In connection with such representation, in consideration for DIRECTV entering into the Negotiations and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, FHH hereby agrees to maintain in confidence all data, summaries, reports or other information acquired, devised or developed in connection with the Negotiations in accordance with, and otherwise agrees to be bound by, the confidentiality provisions set forth in the Agreement or, if applicable, the confidentiality provisions set forth in any definitive renewal agreement that supersede such confidentiality provisions in the Agreement commencing as of the date upon which the parties first engage in Negotiations (the "Effective Date") and continuing through the later of: (i) the expiration of the confidentiality provisions set forth in the Agreement; and (ii) the expiration of any confidentiality provisions included in any definitive renewal of the Agreement or successor agreement entered into by DIRECTV and Station Group for retransmission of any of the broadcast television stations that are owned and operated by Station Group.

This letter agreement shall be governed by and construed in accordance with the laws of the State of California. This letter agreement, except as otherwise set forth herein, constitutes the entire agreement and understanding with respect to the subject matter hereof and supersedes all prior or contemporaneous, express or implied, written or oral, agreements, representations or conditions between the parties with respect thereto. This letter agreement may be executed in counterparts, each of which is an original and together will constitute one and the same agreement. Any signature delivered by facsimile or PDF will be deemed an original signature for all purposes and will be binding on the signing party.

If you are in agreement with the foregoing, please execute and return this letter agreement to me.

Very truly yours,

DIRECTV, LLC

By: Linda Burakoff
Name: Linda Burakoff
Title: Vice President
Content & Programming

Agreed and Accepted By:

Fletcher, Heald & Hildreth

By: Daniel Kirkpatrick
Name: Daniel Kirkpatrick
Title: Member

EXHIBIT 3

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Thursday, August 17, 2017 5:45 PM
To: Dan Kirkpatrick
Cc: MALLETT, BROOKE E (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Yep. That's the plan.

Julia Hongfeng Dai



DIRECTV

2260 E. Imperial Hwy | LA5 | El Segundo, CA 90245
☎: 310.964.0982 | ✉: hd619r@att.com

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From: Dan Kirkpatrick [mailto:kirkpatrick@fhhlaw.com]
Sent: Thursday, August 17, 2017 12:25 PM
To: DAI, HONGFENG
Cc: MALLETT, BROOKE E (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Thanks. I assume that you will be sending us a draft agreement as the next step?

Dan

Daniel A. Kirkpatrick



Fletcher, Heald & Hildreth

1300 N. 17th Street, Suite 1100 | Arlington, VA 22209
Tel: 703.812.0432 | Fax: 703.812.0486 | Mobile: 703.967.1927
✉ kirkpatrick@fhhlaw.com | www.fhhlaw.com | www.commlawblog.com

EXHIBIT 4

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Thursday, August 24, 2017 12:25 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)
Attachments: KFVE RLMC 8-24-17.doc

Hi Dan,

Please find the attached draft proposal for HITV.

Thanks,
Julia

Julia Hongfeng Dai



DIRECTV

2260 E. Imperial Hwy | LA5 | El Segundo, CA 90245

☎: 310.964.0982 | ✉: hd619r@att.com

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DIRECTV

August 24, 2017

VIA PDF

HITV License Subsidiary, Inc.
KFVE-TV
Attention: John Fink, General Manager

Re: DIRECTV's Carriage of KFVE-TV in the Honolulu, HI Local Territory

Dear John:

This letter will serve as a grant of retransmission consent for DIRECTV, LLC ("DIRECTV") with HITV License Subsidiary, Inc. ("HITV"). HITV owns the television station KFVE in the Honolulu, HI Local Territory ("Station").

DIRECTV and HITV would like to start negotiating a new carriage agreement, as the current agreement expires by its terms on August 31, 2017.

Therefore, HITV hereby authorizes DIRECTV to continue to retransmit, and DIRECTV will continue to retransmit the Station during the period beginning September 1, 2017 and ending December 31, 2020 (the "Term"). DIRECTV shall have the contractual (but not the statutory) obligation to carry the Station pursuant to the applicable terms, conditions and requirements of the Must Carry Rules (as defined below) as such rules exist during the Term and only such rules that would have applied to the Station had the Station exercised its rights under the Must Carry Rules for the Term. The "Must Carry Rules" shall mean the statutory provisions of 47 U.S.C. § 338 and 17 U.S.C. §§ 122 and 501; the regulations adopted by the United States Federal Communications Commission implementing these statutory provisions, currently codified at 47 C.F.R. 76.66 et seq., as those regulations may be amended from time to time; and the requirements of applicable decisions of the Federal Communications Commission or federal courts interpreting such statutory provisions or regulations.

HITV represents and warrants to DIRECTV that the individual executing this letter agreement on behalf of the Station has the authority to do so. Each party shall keep the terms of this letter agreement confidential except as otherwise agreed to by the parties.

Please acknowledge your acceptance and agreement with the above by your signature below.

Very truly yours,

DIRECTV, LLC

By: _____
Name: _____
Title: _____

AGREED TO AND ACCEPTED:
AS OF THE DATE WRITTEN ABOVE:

HITV LICENSE SUBSIDIARY, INC.

By: _____
Name: _____
Title: _____

EXHIBIT 5

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Saturday, August 26, 2017 10:16 AM
To: DAI, HONGFENG
Cc: ZARROW, JOSHUA D (Legal)
Subject: Re: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

Unless I am misreading something here, this is going to basically be a non-starter for my client. As I read this, it would simply mean that DIRECTV would carry the station for the next three years as if it were a must-carry station. As you know, the station is currently receiving payments of [REDACTED] per subscriber per month, and they have no interest in moving backwards from that. While they are willing to negotiate on the specific numbers, and other terms as are usually included in an agreement, there is no reason to believe that the station's programming is any less valuable than it has been in the past.

My client would be open to extension of the existing arrangement while a new agreement is worked out, based on the limited time remaining in the current deal, but, as noted, is not interested in moving backwards.

Please let me know if you would like to discuss.

Thank you.

Dan

EXHIBIT 6

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Monday, August 28, 2017 7:30 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Hi Dan,

Unfortunately, we are not in a position to offer a fee for carriage of HITV/MNT. But we would be willing to continue the carriage, on an RLMC basis.

Please let me know how your client would like to proceed after 8/31/17.

Thanks,
Julia

EXHIBIT 7

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Wednesday, August 30, 2017 11:17 AM
To: 'DAI, HONGFENG'
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

Not surprisingly, my client is extremely surprised and disappointed by DIRECTV/AT&T's position on this. With the station having received fee payments for at least the last three years, and with the station continuing to carry the same network programming, and increasing amounts of very popular local programming, we find it difficult to see the rationale for refusing to negotiate on a fee payment at this point. That being said, my client would like some additional time to consider their response. To that end, we would propose an extension of the existing agreement for two weeks (until September 14).

To address your concerns about fee payments, we would propose that, while carriage would otherwise continue under the existing terms, any fee payments would be suspended. If we ultimately agree to some fee payment, it would be applied retroactively to September 1. If we ultimately agree to carriage with no fee, that would also be applied retroactively to September 1. In either case, we would not expect to receive payment during the extension period.

Please let me know if this arrangement is acceptable and, if so, if you need a more formal document memorializing it.

Thank you.

Dan

Daniel A. Kirkpatrick



Fletcher, Heald & Hildreth

1300 N. 17th Street, Suite 1100 | Arlington, VA 22209

Tel: 703.812.0432 | Fax: 703.812.0486 | Mobile: 703.967.1927

✉ kirkpatrick@fhhlaw.com | www.fhhlaw.com | www.commlawblog.com

EXHIBIT 8

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Tuesday, September 12, 2017 4:02 PM
To: 'DAI, HONGFENG'
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)
Attachments: K5 Local Programs Report.pptx; Generic Merrie Monarch TV Demos and by County MM May 2016.pptx; COMPARE NEWS aka NEWS SNAPSHOTS.PPTX

Julia:

I wanted to follow up regarding KFVE in Honolulu. As I indicated before, my client continues to be surprised by DIRECTV's position that it cannot compensate KFVE for carriage. While I understand DIRECTV's general position of not compensating non-Big 4 affiliates, this station is in a unique position of having received fees under its existing agreement and now, with no negative change in the station's programming or popularity with viewers, essentially being told that their station is now worth less. As shown in the attached, the station has extremely popular local programming, including local news that is competitive with the Big 4 affiliates in the market. My client remains interested in coming to an agreement, but is having difficulty understanding how their station is suddenly worth so much less to DIRECTV.

In any event, we would propose a further two week extension, under the same terms outlined below, to allow us to discuss further.

Thanks

Dan



Local Specials Watched On TV Past 12 Months

“Which of the following have you watched on K5 in the past 12 months?”

	Total Adults		W18+		M18+		M25-54		W25-54	
	%	Pop	%	Pop	%	Pop	%	Pop	%	Pop
Merrie Monarch Festival	39%	438,948	46%	256,320	32%	182,628	31%	88,110	43%	120,150
Na Hoku Hanohano Awards	12%	134,568	13%	73,692	11%	60,876	7%	20,826	8%	20,826
Keiki Hula Competition	8%	92,916	11%	60,876	6%	32,040	4%	12,816	7%	19,224



Watched On K5 Past 30 Days

“Which of the following television programs have you watched on K5 in the past 30 days?”

	Total Adults		W18+		M18+		M25-54		W25-54	
	%	Pop	%	Pop	%	Pop	%	Pop	%	Pop
Livin' Hawaii	15%	168,210	18%	102,528	12%	65,682	7%	20,826	23%	62,478
What's Cooking Hawaii	9%	104,130	11%	60,876	8%	43,254	8%	24,030	9%	25,632
Hot Hawaiian Nights	8%	88,110	7%	41,652	8%	46,458	7%	20,826	5%	14,418
Discover Digest Asia	7%	76,896	5%	30,438	8%	46,458	6%	16,020	3%	8,010
Love Hokkaido	4%	41,652	3%	16,020	5%	25,632	3%	8,010	2%	6,408
HI Sessions	3%	32,040	1%	8,010	4%	24,030	3%	8,010	1%	3,204
It's Academic Hawaii	3%	28,836	2%	12,816	3%	16,020	2%	4,806	3%	8,010
Chef Roc	2%	27,234	3%	14,418	2%	12,816	3%	8,010	2%	4,806
ANY OF THE ABOVE	35%	389,286	35%	197,046	34%	192,240	29%	83,304	35%	97,722

Merrie Monarch FESTIVAL

“Which of the following local TV specials have you watched in the past 12 months?”

	Total Adults		18 - 34		18 - 49		25 - 54		35 - 64		65+	
	%	Pop	%	Pop	%	Pop	%	Pop	%	Pop	%	Pop
Merrie Monarch Festival	39%	438,948	28%	96,120	32%	192,240	37%	208,260	43%	233,892	47%	108,936

Merrie Monarch FESTIVAL

“Which of the following local TV specials have you watched in the past 12 months?”

	Hawaii		Honolulu		Kauai		Maui	
	%	Pop	%	Pop	%	Pop	%	Pop
Merrie Monarch Festival	57%	88,110	35%	275,544	44%	24,030	40%	51,264

Morning News Snapshot

In the past 7 days, which of the following programs did you watch at least once?

	Total Adults		25 - 54		18 - 49		50+	
	%	Pop	%	Pop	%	Pop	%	Pop
Hawaii News Now Sunrise 8-9a M-F K5 The Home Team	10%	113,742	10%	56,070	10%	59,274	10%	54,468
Hawaii News Now Sunrise KGMB 4:30a-8a M-F	22%	251,514	19%	107,334	17%	102,528	29%	148,986
KHON2 Wake Up 2Today Morning News 4:30-8a M-F	17%	187,434	15%	86,508	14%	81,702	20%	105,732
Hawaii News Now Sunrise KHNL 5-7a M-F	14%	158,598	16%	89,712	15%	88,110	14%	70,488
KITV Good Morning Hawaii 5-7a M-F	8%	86,508	7%	40,050	7%	43,254	8%	43,254

Early News Snapshot

In the past 7 days, which of the following programs did you watch at least once?

	Total Adults		25 - 54		18 - 49		50+	
	%	Pop	%	Pop	%	Pop	%	Pop
Hawaii News Now 6:30p M-F K5 The Home Team	15%	163,404	15%	83,304	13%	76,896	17%	86,508
Hawaii News Now KGMB 6p M-F	29%	326,808	26%	148,986	24%	145,782	35%	181,026
KHON2 News 6p M-F	26%	291,564	23%	128,160	22%	131,364	31%	160,200
KITV4 Island News 6-7p M-F	19%	217,872	18%	100,926	16%	94,518	24%	123,354

Late News Snapshot

In the past 7 days, which of the following programs did you watch at least once?

	Total Adults		25 - 54		18 - 49		50+	
	%	Pop	%	Pop	%	Pop	%	Pop
Hawaii News Now 9p M-Sun K5 The Home Team	21%	230,688	23%	129,762	21%	124,956	20%	105,732
Hawaii News Now KGMB 10p M-F	24%	265,932	20%	110,538	17%	100,926	32%	165,006
KHON2 News 9p M-F	22%	241,902	20%	115,344	18%	105,732	26%	136,170
KHON2 News 10p M-F	21%	237,096	21%	120,150	20%	118,548	23%	118,548
Hawaii News Now KHNL 10p M-F	16%	177,822	18%	99,324	17%	99,324	15%	78,498
KITV4 Island News 10-11p M-F	11%	124,956	11%	64,080	11%	64,080	12%	60,876

EXHIBIT 9

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Wednesday, September 13, 2017 3:25 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Dan,

Thank you for sharing the programming information about KFVE and thank you again for understanding DIRECTV's position.

We agree to further extend through 9/28 on the terms/arrangement you outlined in your Aug. 30th email attached below.

Best,
Julia

Julia Hongfeng Dai



DIRECTV

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EXHIBIT 10

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Tuesday, September 26, 2017 7:00 PM
To: 'DAI, HONGFENG'
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

I wanted to follow up again regarding KFVE. As I have expressed before, we continue to believe that, regardless of DIRECTV's general position on non-Big 4 stations, KFVE presents a unique and exceptional situation. The station has extensive local programming that draws a devoted, and expanding, local audience. The station's late news, for example, draws overall viewership that is comparable to the market's Big 4 stations and exceeds those stations in the 25-54 demo. Many other locally-produced non-news programs are highly viewed as well (documentation of this can be provided on request). Moreover, the station has been receiving retransmission payments from DIRECTV since at least 2011. We continue to be unable to understand why, with this history and programming, the station is no longer worth any payment. In any event, to allow both sides to consider their positions, and to avoid having the station go dark, we would at this point propose a further two week extension, through October 12, on the same terms outlined in my August 30 e-mail.

If you could please confirm the extension prior to the current expiration on Thursday, we would appreciate it.

Thank you.

Dan

Daniel A. Kirkpatrick

 **Fletcher, Heald & Hildreth**

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EXHIBIT 11

Dan Kirkpatrick

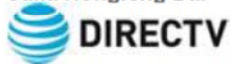
From: DAI, HONGFENG <hd619r@att.com>
Sent: Wednesday, September 27, 2017 5:26 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Hi Dan,

I confirm we further extend through 10/12 on the same terms outlined in your Aug. 30th email attached below.

Thanks,
Julia

Julia Hongfeng Dai



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EXHIBIT 12

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Thursday, October 05, 2017 8:01 PM
To: 'DAI, HONGFENG'
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

I wanted to circle back one more time on KFVE. As we have indicated before, my client believe that based on the station's performance, and in light of the fact that it has been compensated by DIRECTV for carriage as far back as 2003, there is no reason that DIRECTV should be unwilling to provide any compensation to the licensee for continued carriage. Before my client can consider further extension, can you please confirm if there is any flexibility on DIRECTV's part in this regard. If DIRECTV is willing to consider carriage on terms other than the "must-carry-like" proposal you presented previously, we would be happy to present a counter-offer and negotiate further. Please just let us know how you would like to proceed.

Thanks

Dan

EXHIBIT 13

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Monday, October 09, 2017 7:49 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Dan,

Just wanted to circle this back and confirm that DIRECTV is willing to continue the carriage of KFVE on the RLMC "must-carry-like" proposal we offered previously.

Thanks,
Julia

Julia Hongfeng Dai



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EXHIBIT 14

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Thursday, October 12, 2017 3:28 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal); PANDURO, GLORIA L
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Ok, Dan. Thanks for the clarification.

Extension confirmed through midnight eastern on Thursday Oct. 19th.

Julia

Julia Hongfeng Dai



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From: Dan Kirkpatrick [mailto:kirkpatrick@fhhlaw.com]
Sent: Thursday, October 12, 2017 12:07 PM
To: DAI, HONGFENG <hd619r@att.com>
Cc: ZARROW, JOSHUA D (Legal) <jz6880@att.com>
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Thank you. Just to confirm an inconsistency in my earlier e-mail, the one-week extension would be through midnight eastern on Thursday, October 19th, not 18th.

Dan

From: DAI, HONGFENG [mailto:hd619r@att.com]
Sent: Thursday, October 12, 2017 1:40 PM
To: Dan Kirkpatrick <kirkpatrick@fhhlaw.com>
Cc: ZARROW, JOSHUA D (Legal) <jz6880@att.com>
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Extension confirmed.

Julia

Julia Hongfeng Dai



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From: Dan Kirkpatrick [<mailto:kirkpatrick@fhhlaw.com>]
Sent: Wednesday, October 11, 2017 6:25 PM
To: DAI, HONGFENG <hd619r@att.com>
Cc: ZARROW, JOSHUA D (Legal) <jz6880@att.com>
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

My client remains disappointed and surprised that DIRECTV is no longer willing to negotiate for compensation for reasonable compensation for carriage of KFVE. That said, we are willing to extend for a further week, through midnight eastern on October 18, on the same terms as previous extensions, while we consider our options moving forward (and hope that DIRECTV does as well).

Thanks

Dan

Daniel A. Kirkpatrick
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EXHIBIT 15

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Wednesday, October 18, 2017 12:52 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: Re: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Hi Dan,

Could you forward me your last email regarding HITV 's latest extension? - I think the extension is through 11:59pm ET (8:59pm PT) tomorrow 10/19. Can you reconfirm?

I am currently traveling, and be back in the office on Monday. But please let me know how HITV would like us to proceed beyond current extension.

Thanks
Julia

Sent from my iPhone

EXHIBIT 16

Dan Kirkpatrick

From: Dan Kirkpatrick
Sent: Wednesday, October 18, 2017 1:37 PM
To: 'DAI, HONGFENG'
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Julia:

Yes, I can confirm that the extension is through 11:59PM Eastern tomorrow, October 19 (Thursday).

As to where we go after the current extension, if DIRECTV has reconsidered its previous position and is open to carriage on conditions other than those you have laid out previously (*i.e.*, other than carriage as a must-carry station), we would be open to discussing further extension while we negotiated those terms. If DIRECTV is not willing consider other terms, then we do not see the purpose of further extensions.

Thank you.

Dan

Daniel A. Kirkpatrick



Fletcher, Heald & Hildreth

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EXHIBIT 17

Dan Kirkpatrick

From: DAI, HONGFENG <hd619r@att.com>
Sent: Wednesday, October 18, 2017 8:59 PM
To: Dan Kirkpatrick
Cc: ZARROW, JOSHUA D (Legal)
Subject: RE: HITV License Subsidiary - Confidentiality Agmt (Fletcher, Heald & Hildreth)

Dan,

Thanks for the confirmation. Sorry to hear that HITV decided to turn down DIRECTV's continued carriage offer of KFVE on a RLMC basis. I will instruct our BOC to prepare for the removal of KFVE upon the expiration of the extension. Let me know if there is any change in HITV's decision.

Thanks,
Julia

Julia Hongfeng Dai



DIRECTV

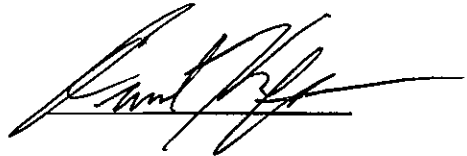
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CERTIFICATE OF SERVICE

I, Daniel Kirkpatrick, hereby certify that on this 20th day of October, 2017, I caused a copy of the foregoing "Retransmission Complaint" to be served via U.S. mail, postage prepaid, upon the following:

DIRECTV, LLC
2260 E. Imperial Hwy
El Segundo, CA 90245

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