

March 1, 2012

**BY ELECTRONIC FILING**

Marlene H. Dortch  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re: *"Contingent Complaint" Filed by WGCB-TV*

Dear Ms. Dortch:

On December 16, 2011, Christopher Imlay of the law firm Booth, Freret, Imlay & Tepper, P.C. filed what he styled a "contingent complaint" against DIRECTV on behalf of his client, Red Lion Broadcasting Company, licensee of WGCB-TV. (That document is attached hereto as Exhibit 1.) The complaint alleged that, although DIRECTV had acknowledged in writing that WGCB had (belatedly) provided a good quality signal to DIRECTV, DIRECTV did not provide sufficient written assurances that it would actually carry the signal.

DIRECTV responded on December 21, providing Mr. Imlay additional assurances that it would launch WGCB, including a specific date on which launch was scheduled. (DIRECTV's response is attached hereto as Exhibit 2.) DIRECTV accordingly asked Mr. Imlay to withdraw his complaint as moot. I copied Mr. Imlay by e-mail as well as with a hard copy of that response.

Mr. Imlay responded to me by e-mail the following week, stating: "I am withdrawing the contingent complaint in view of DirecTV's response and in view of the e-mail I received from Ms. Julia Dai late on December 16." (That e-mail and my subsequent unanswered responses are attached hereto as Exhibit 3.) Since that time, I have sent follow-up e-mails to Mr. Imlay on several occasions to determine whether the complaint—which has neither been placed on public notice nor been assigned a file number—had been withdrawn or, if not, when it would be withdrawn. On each occasion, Mr. Imlay failed to respond.

Accordingly, this letter is to inform the Commission that DIRECTV commenced carriage of WGCB-TV on January 18—exactly the day DIRECTV had promised Mr. Imlay. In light of Mr. Imlay’s apparent inability or unwillingness to withdraw his “contingent complaint,” DIRECTV respectfully requests that the Commission dismiss the complaint as moot.

Sincerely,



Michael Nilsson  
*Counsel to DIRECTV, LLC*

Att.

Cc: Christopher Imlay, Esq.

# Exhibit 1

# BOOTH, FRERET, IMLAY & TEPPER, P.C.

ATTORNEYS AT LAW

ROBERT M. BOOTH, JR. (1911-1981)  
JULIAN P. FRERET (1918-1999)  
CHRISTOPHER D. IMLAY  
CARY S. TEPPER

BETHESDA OFFICE:  
7900 WISCONSIN AVENUE, SUITE 304  
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BFTIPC@AOL.COM

December 16, 2011

Via Courier

FILED/ACCEPTED

Office of the Secretary  
Federal Communications Commission  
445-12<sup>th</sup> Street, S.W. Room TW-A325  
Washington, D.C. 20554

DEC 16 2011  
Federal Communications Commission  
Office of the Secretary

Attention: Chief, Media Bureau

Re: Contingent Complaint Pursuant to Section 76.66 of the  
Commission's Rules Concerning Satellite Broadcast Signal  
Carriage by DirecTV of WGCB-TV, Red Lion, PA; Facility  
ID Number 55350.

Greetings.

This letter, filed out of an abundance of caution, is a complaint pursuant to Section 76.66(m)(3) of the Commission's rules, concerning the stated refusal of DirecTV to afford local-into-local carriage on its direct broadcast satellite system of the signals of WGCB-TV, Red Lion, Pennsylvania, which is in the Harrisburg-Lancaster-Lebanon-York DMA. WGCB-TV is licensed to Red Lion Broadcasting Company, Inc. (Red Lion).

It is unclear as of today, the deadline for filing a complaint with the Commission relative to satellite signal coverage of this Station by DirecTV, whether or not DirecTV will or will not carry WGCB-TV, as explained below. If indeed DirecTV will not carry WGCB-TV commencing January 1, 2012 and during the January, 2012 through December, 2014 election cycle, such refusal is not consistent with DirecTV's obligations under Section 338 of the Communications Act of 1934, as amended, or Section 76.66 of the Commission's Rules. Red Lion has done everything possible to clarify this matter prior to today, but so far DirecTV has refused to confirm whether or not they will carry WGCB-TV commencing on January 1, 2012.

The circumstances are as follows: Red Lion sent a timely letter to DirecTV dated September 16, 2011 electing mandatory signal carriage of WGCB-TV for the upcoming election cycle commencing January 1, 2012. DirecTV responded by letter dated October 17, 2011 (copy attached as Exhibit A) that it had received this timely notification. However, it claimed that DirecTV had a "reasonable belief" that the over-the-air (OTA)

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signal of WGCB-TV at DirecTV's local receive facility in the Harrisburg-Lancaster-Lebanon-York DMA did not meet the good quality signal standard defined at Section 76.66(g) of the FCC rules. *DirecTV therefore denied the mandatory carriage request.*

Immediately thereafter, RLBC retained Fred Wise, P.E. to arrange for delivery of an acceptable signal to the DirecTV local receive facility. Mr. Wise contacted DirecTV's Locals-Technical Team starting October 24, 2011. The Locals-Technical Team provided useful information to Mr. Wise, and RLBC has now completed the installation of a good-quality signal delivery mechanism via a Channel 30 receiver at or near the DirecTV receive location and a microwave link to the final DirecTV delivery point. Mr. Wise has now, as of Thursday, December 15, 2011 received final e-mailed confirmation from DirecTV's Locals-Technical Team (and specifically from Mr. Bill Schully, the Manager, Field Engineering/Operations for DirecTV) that the signal as now delivered to DirecTV's receive point is satisfactory. Red Lion has expended many thousands of dollars implementing a microwave link in order to deliver a good quality signal to DirecTV's receive location.

On December 9, 2011, undersigned counsel on behalf of Red Lion wrote to DirecTV's Locals-Business office (copy attached), asking them to confirm (conditioned on confirmation from DirecTV's Locals-Technical Team that the signal delivery arrangement implemented by RLBC indeed provides an adequate signal to DirecTV's receive location), that DirecTV will in fact carry WGCB-TV pursuant to our timely mandatory carriage notice, beginning on or about January 1, 2012. DirecTV never responded to that letter. On December 15, 2011, undersigned counsel sent DirecTV an e-mail (copy attached), again sending a copy of Red Lion's December 9, 2011 letter, asking DirecTV to confirm that they will indeed carry WGCB-TV during the January 1, 2012 to December 31, 2014 election cycle, inasmuch as the deadline for a carriage complaint to the Commission was December 16, 2011. A representative of DirecTV called undersigned counsel to discuss the matter but would not commit to confirming that WGCB-TV would be carried.

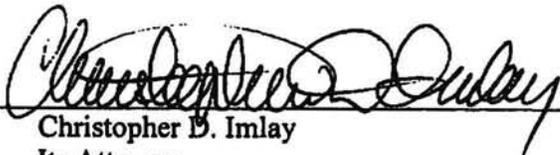
At this point, Red Lion has nothing in writing from DirecTV other than (1) its letter dated October 17, 2011 denying signal carriage, and (2) the confirmation of its Field Engineering/Operations Manager that the signal provided to DirecTV's Harrisburg receive location is adequate. Since the only basis that DirecTV claimed for refusing to carry WGCB-TV is the adequacy of the signal delivery and since that issue is now completely moot, it is unclear whether DirecTV intends to comply with its carriage obligation or not. Under the circumstances, due to DirecTV's unwillingness to confirm their intentions, Red Lion has no choice but to submit this carriage complaint.

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Therefore, given the foregoing, Red Lion Broadcasting Company, Inc. respectfully requests that DirecTV be required to commence signal carriage of WGCB-TV on or about January 1, 2012, pursuant to Red Lion's September 16, 2011 mandatory carriage election notice.

Respectfully submitted,

**RED LION BROADCASTING COMPANY, INC.**

By:   
Christopher D. Imlay  
Its Attorney

Cc: DirecTV  
Attachments (as indicated)

## Exhibit 2



**By Electronic Mail and Overnight Delivery**

December 21, 2011

Christopher Imlay, Esq.  
Booth, Freret, Imlay & Tepper, P.C.  
14356 Cape May Road  
Silver Spring, MD 20904-6011

**Re: "Contingent Complaint" Filed by WGCB-TV**

Dear Mr. Imlay:

We were disappointed to receive the "contingent complaint" you filed with the Media Bureau on behalf of your client, Red Lion Broadcasting Company, licensee of WGCB-TV. In that complaint, you do not dispute that DIRECTV correctly denied your mandatory carriage request because WGCB initially failed to deliver a good quality signal to DIRECTV. Nor do you dispute that WGCB finally provided DIRECTV with a good quality signal only as of December 15 (one day prior to WGCB's deadline to file a carriage complaint). Instead, you allege that, although DIRECTV acknowledged in writing that WGCB had provided a good quality signal, DIRECTV did not provide sufficient written assurances that it would actually carry the signal. You thus filed what you styled a "contingent complaint."

We trust you do not dispute the multiple telephone conversations you had with DIRECTV staff over the last month informing you and WGCB that DIRECTV intended to carry WGCB upon receipt of a good quality signal. And we assume that you filed your complaint on December 16 *before* receiving an e-mail from us that same day stating that we intend to carry WGCB. *See* Attachment A. (We wish, however, that you had more rapidly fulfilled your obligation to provide truthful and updated information to the Commission by amending or withdrawing your complaint. *See, e.g.,* 47 C.F.R. § 1.65.)

In any event, we will repeat here what we said in Julia Dai's e-mail dated December 16, 2011. We intend to launch WGCB within a reasonable time after it provides a good quality signal, as required by the rules. Now that WGCB has provided a good quality signal—and assuming it continues to do so—we are scheduled to launch it on or around January 18, 2012.

In light of this letter and our previous correspondence, we ask that you withdraw your complaint as moot. In any event, we are filing a copy of this letter with the Media Bureau, and ask that it be treated as our full response to your contingent complaint should you fail to withdraw it.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Burakoff". The signature is written in a cursive, slightly slanted style.

Linda Burakoff  
Vice President, Programming Acquisitions

## Exhibit 3

## Laura T. Merkey

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**From:** Michael Nilsson  
**Sent:** Thursday, March 01, 2012 10:08 AM  
**To:** Laura T. Merkey  
**Subject:** FW: DIRECTV response to Red Lion

Michael Nilsson  
Wiltshire & Grannis LLP  
1200 Eighteenth St. NW  
Washington, DC 20036  
202.730.1334 (phone)  
202.730.1301 (fax)  
mnilsson@wiltshiregrannis.com

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

**From:** Michael Nilsson  
**Sent:** Tuesday, February 21, 2012 6:01 PM  
**To:** 'bfitpc@aol.com'  
**Cc:** 'LKBurakoff@directv.com'; 'sfuller@DIRECTV.com'; 'fred.wise@wiseinc.com'; 'lcastriota@family49.com'; Dai, Hongfeng (Julia) (HDai@DIRECTV.com)  
**Subject:** RE: DIRECTV response to Red Lion

Chris,

Could you please confirm that you withdrew this complaint? I'd hate for us to start running up our respective clients' bills filing paper on this thing if it really has gone away, but I can't find any records that you withdrew it. (It's entirely possible I'm looking in the wrong places; if so, I apologize.)

Thanks in advance,

Mike

Michael Nilsson  
Wiltshire & Grannis LLP  
1200 Eighteenth St. NW  
Washington, DC 20036  
202.730.1334 (phone)  
202.730.1301 (fax)  
mnilsson@wiltshiregrannis.com

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

**From:** Michael Nilsson  
**Sent:** Tuesday, January 24, 2012 11:19 AM  
**To:** bfitpc@aol.com  
**Cc:** LKBurakoff@directv.com; sfuller@DIRECTV.com; fred.wise@wiseinc.com; lcastriota@family49.com  
**Subject:** RE: DIRECTV response to Red Lion

Chris,

Did you ever withdraw this complaint? I don't think I received anything, and we can't find any records at the FCC.

Michael Nilsson  
Wiltshire & Grannis LLP  
1200 Eighteenth St. NW  
Washington, DC 20036  
202.730.1334 (phone)  
202.730.1301 (fax)  
mnilsson@wiltshiregrannis.com

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

From: Michael Nilsson  
Sent: Thursday, December 29, 2011 9:58 AM  
To: bfitpc@aol.com  
Cc: LKBurakoff@directv.com; sfuller@DIRECTV.com; fred.wise@wiseinc.com; lcastriota@family49.com  
Subject: RE: DIRECTV response to Red Lion

Thank you, Chris. I've been out of the office dealing with a dodgy appendix so haven't seen whether you filed your withdrawal yet. Could you please send me an email copy if and when you do? With respect to the substance of your letter, I don't see any need to dispute the particulars further at this point, and hope you agree.

Best,

Mike

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From: bfitpc@aol.com [bfitpc@aol.com]  
Sent: Tuesday, December 27, 2011 11:21 AM  
To: Michael Nilsson  
Cc: LKBurakoff@directv.com; sfuller@DIRECTV.com; fred.wise@wiseinc.com; lcastriota@family49.com  
Subject: Re: DIRECTV response to Red Lion

Thanks, Michael. I am withdrawing the contingent complaint in view of DirecTV's response and in view of the e-mail I received from Ms. Julia Dai late on December 16 (which indeed was received after my courier had left with the paper copies of the complaint for filing).

Given the tenor of Ms. Burakoff's letter, however, I should explain that I tried repeatedly to avoid having to file it. I would not have had to do so had your client given me the basic courtesy of confirming its intention in writing before the due date for the complaint, which I had asked Ms. Dai for when she responded to my December 15 e-mail that same day. She never at any time committed to sending me any confirmation in writing as to DirecTV's intentions and she never confirmed even by telephone that DirecTV would carry WGCB-TV. In fact, she said she had to "speak with some people about it" and committed to nothing at all. Therefore, all I had by midday on December 16, the due date for filing the complaint, was the denial of carriage letter that DirecTV had sent, which was not conditional, but absolute.

Ms. Burakoff "trusts" that I won't dispute having "multiple" telephone conversations with DirecTV staff over the last month informing me that DirecTV intends to carry WGCB-TV upon receipt of a good quality signal. Actually, I do in fact dispute that. I had exactly one telephone call from DirecTV staff, and that was from Ms. Dai on December 15. No one responded to my e-mail of December 5 whatsoever. This is in my experience typical of DirecTV's rather complete lack of

professionalism, the sole exception being the technical staff, which was quite responsive and worked cooperatively with Mr. Fred Wise, P.E. on behalf of WGCB-TV.

I highly recommend that DirecTV's management review the policies and procedures for DirecTV's non-technical staff's interactions with the broadcasting industry.

Also for Ms. Burakoff's information, the signal delivery system was complete long before December 15. That was the day that the DirecTV engineers confirmed the good quality signal, not when it was installed.

In any case, the matter is now in fact moot, and we will withdraw the complaint this week.

Regards, Chris Imlay  
Christopher D. Imlay  
BOOTH, FRERET, IMLAY & TEPPER, P.C.  
14356 Cape May Road  
Silver Spring, Maryland 20904-6011  
(301) 384-5525 telephone  
(301) 384-6384 facsimile  
BFITPC@AOL.COM

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

From: Michael Nilsson <MNilsson@wiltshiregrannis.com>  
To: 'bfitpc@aol.com' <bfitpc@aol.com>  
Cc: Burakoff, Linda K [LKBurakoff@directv.com] [LKBurakoff@directv.com] <LKBurakoff@directv.com>; fuller <sfuller@DIRECTV.com>  
Sent: Thu, Dec 22, 2011 10:05 am  
Subject: DIRECTV response to Red Lion

Dear Mr. Imlay:

DIRECTV asked me to forward you an electronic copy of the attached letter, which responds to Red Lion's "contingent complaint." You should be receiving a hard copy in the mail. We will be filing a copy with the Commission later this morning.

Best regards,

Mike

Michael Nilsson  
Wiltshire & Grannis LLP  
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