

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
New Day Broadband, LLC)	MB Docket 12-75
)	CSR 8597-C
Enforcement Complaint Concerning)	
KIRO-TV, Seattle, Washington)	
)	
)	

ANSWER and RESPONSE

New Day Broadband of Washington, LLC¹, (New Day of Washington”) by its attorneys files this Answer and Response to the Enforcement Complaint filed by KIRO-TV, Inc. (“KIRO”). The parties have resolved their differences, have reached an agreement, and thus will be seeking a dismissal of the Complaint. New Day of Washington, files this Answer to complete the record and to request that the Commission, upon submission of the proper paperwork by KIRO, dismiss this matter without further action.

BACKGROUND

In mid-2010 New Day Broadband began negotiating with Broadstripe, LLC (“Broadstripe”) for the purchase of some very small systems in Washington (the “Systems”).² Broadstripe was a multi-system operator with operations in Anne Arundel County Maryland, Michigan and the Northwest, including the city of Seattle. Broadstripe filed for bankruptcy on January 2, 2009 and the Systems, along with many others, were part of the bankruptcy estate. Because of their small size and limited customers, the Systems were non-strategic in the

¹ The Complaint was filed against New Day Broadband, LLC however the correct party in interest, as identified in the FCC database for the systems, is actually New Day Broadband of Washington, LLC.

² The Systems were Anderson Island, Bridgeport, Creston, Darrington, Forks, Mansfield, Marblemount, Pe Ell, Twisp and Waterville.

bankruptcy and a burden to the operations. Broadstripe estimated that they were losing approximately \$8,000 per month on the systems.³ Thus, several of the systems were slated for closure.

The bankruptcy court approved the sale of the Systems to New Day Broadband on July 1, 2010 for \$1,200. The transaction closed on August 1, 2010. On the day of the closing, one System was transferred to an unaffiliated third party and 3 systems were turned off. New Day of Washington determined that the systems had been severely neglected, were experiencing various operational problems, and additional system closures followed. New Day of Washington currently operates just the Anderson Island and Forks systems as on-going operations. The other Systems have either been shut down or have had no customers for some period of time and are in the process of being shut down.

When the Systems were acquired from Broadstripe a notice was sent out to the broadcasters and programmers. New Day of Washington's hope was that they would be able to continue under the same arrangements that Broadstripe had negotiated. As noted in the attached declaration, there was confusion regarding the right to carry KIRO. Upon receipt of the Complaint, New Day of Washington discontinued carriage of the signal out of an abundance of caution. New Day of Washington and KIRO have reached an agreement which includes New Day of Washington's authorization to carry KIRO as of August 1, 2010.

I. New Day of Washington had authority to carry the signal beginning August 1, 2010.

For its Answer to the Complaint New Day of Washington respectively submits that an agreement has been reached with KIRO regarding any confusion surrounding carriage of the signal and that the result of the agreement is that there is no period of time where New Day of

³ In re Broadstripe, LLC, *Debtors Motion for an Order (A) Authorizing the Sale of Certain Assets, (B) Approving the Asset Purchase Agreement; (C) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (D) Granting Related Relief*, filed June 17, 2010, Case No 09-10006 (Bankr Del.).

Washington carried the signal without authorization. Based on the agreement with KIRO, New Day of Washington's authority to carry the signal began August 1, 2010. Accordingly, KIRO will be filing a motion to dismiss the Complaint.

II. Upon receipt of the Motion to Dismiss, the Commission should dismiss this matter without further action.

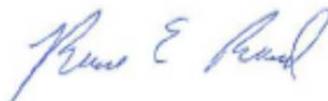
The Commission should grant KIRO's motion to dismiss the Complaint upon receipt and should not take further action. The agreement reached expressly provides authority for the carriage of the signal beginning August 1, 2010 and thus there is no rule violation for unauthorized carriage.

As noted in the declaration by Neal Schnog, President of New Day Broadband of Washington, there was confusion regarding whether authority had been granted. Once the Complaint was filed New Day of Washington realizing the confusion immediately pulled the station from its Systems. Further, the parties worked together on an agreement that expressly addresses New Day of Washington's authority to carry the signal as of August 1, 2010, the date it acquired the Systems.

The Commission should not ignore the parties' subsequent agreement and attempt to determine whether a rules violation might have occurred had the subsequent agreement not been reached to clarify the carriage authorization. Such a result would have a chilling effect on a party's desire to settle their differences, especially when one party has limited resources such as New Day of Washington.

For these reasons, the Commission should grant KIRO's Motion to Dismiss the Complaint when filed and terminate this matter.

Respectfully Submitted,



Bruce E. Beard
Attorney for New Day Broadband of
Washington, LLC

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In the Matter of

New Day Broadband, LLC

**Enforcement Complaint Concerning
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DECLARATION OF NEAL SCHNOG

1. My name is Neal Schnog and I am President of New Day Broadband of Washington, LLC.
2. In mid-2010 we began negotiations to purchase a few very small cable systems in Washington from Broadstripe, LLC, which had filed bankruptcy on January 1, 2009. The systems were not strategic to Broadstripe bankruptcy plans and were basically orphaned. The negotiations resulted in a contract for the sale of assets consisting of 10 systems including several that were in the process of being shut-down by Broadstripe. The agreed upon total purchase price was \$1200.
3. The bankruptcy court approved the sale on July 1, 2010 and we closed on August 1, 2010.
4. Sale, announcements were sent out to the various broadcasters and programmers indicating that we had purchased the properties. Our thought was to continue relationships on the same terms that Broadstripe had established.
5. With the exception of Forks and Anderson Island, all systems have either been turned off or are without customers and in the process of being turned off. The following following systems were turned off at closing: Creston, Mansfield, and Marblemont. Shortly thereafter Pe Ell was turned off also. In addition, the Darrington, Washington system was transferred at close from New Day Broadband to an unaffiliated third party. We currently do not have any customers on the Twisp, Bridgeport or Waterville systems and those are in the process of being turned off. Thus, the only systems we are operating are Anderson Island and Forks. There are 83 subscribers on the Anderson Island system and 30 subscribers on the Forks system.
6. I recall being contacted by e-mail by Therese Weiler of KIRO in late summer of 2011 regarding an agreement for KIRO. She included an agreement, covering the period from August 1, 2010 through December 31, 2011. We also talked by phone and I explained that we would pay any retransmission consent fees owed back to the date of acquiring the systems from the bankruptcy estate.

7. In November I received another agreement from Ms. Weiler which would cover the period from August 1, 2010 through December 31, 2014. This made sense given the upcoming new retransmission consent cycle.

8. To the best of my memory, on or about January 3, 2012 I completed and executed the agreement that had been sent by Ms. Weiler and forwarded it back indicating consent for the period from August 1, 2010 through December 31, 2014.

9. In reviewing the various documents attached to the filing of complaint I was confused because there were documents that I do not recall receiving and reviewing. In addition the complaint did not include reference to the agreement I had executed and forwarded back. In reviewing the documents it appears that several were sent to a residential address, 2457 Lupine Bush Court, Las Vegas, NV 89153, rather than our office address of 9179 West Flamingo Rd. Ste 120 Las Vegas, NV 89147 which is on file with the FCC. The retransmission consent election notice attached to the complaint contains the proper office address however the other correspondence was mailed to the residential address. Upon investigation we discovered the residential address was listed when New Day Broadband of Washington, LLC was incorporated however the mailing address listed on the Nevada Secretary of State's website is the office address. Also, we realized that the residential address was listed on the purchase agreement with Broadstripe.

10. Upon receipt of notice of the filing of the Complaint I participated on a call with FCC staff and counsel for Complainant. Out of an abundance of caution I immediately removed KIRO from the two systems on which it was carried on March 15, 2012 and informed all parties of such action. I also again offered to pay any retransmission consent fees owed under the contract proposed by KIRO.

11. On April 19, 2012 I retained counsel to assist me in this process. Prior to that date I had not retained counsel regarding this matter.

12. We have reached agreement with KIRO which will clear up the confusion in this matter, including KIRO's express permission to carry the signal effective August 1, 2010. My understanding is that upon execution of the applicable documents KIRO will file to dismiss its complaint and this action.

13. I declare under penalty of perjury that the facts contained herein and within the foregoing Reply are true and correct to the best of my knowledge, information and belief formed after reasonable investigation.


Neal Schnog
9179 West Flamingo Rd. Ste 120
Las Vegas, NV 89146

Dated : May 7, 2012

Certificate of Service

I hereby certify that copies of the foregoing **Answer and Response** were served via electronic mail on this 7th day of May, 2012 to the following:

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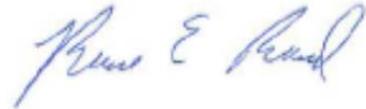
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