ORIGINAL

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

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Federal Communications Commission
Bureau / Office

In re Application of	)	
	)	
Hoak Media of Panama City License, LLC	)	
	)	
For License Renewal of	)	FCC File No. BRCDT-20120927AKV
WMBB (Facility ID No. 66398),	)	
Panama City, Florida	)	

TO: Chief, Video Division
Media Bureau

INFORMAL OBJECTION

Bright House Networks, LLC ("BHN"), pursuant to 47 C.F.R. §73.3587, hereby submits this Informal Objection against the license renewal application filed by Hoak Media of Panama City License, LLC ("Hoak") on September 27, 2012, for television station WMBB in Panama City, Florida ("WMBB" or the "Station").[1] For the reasons stated herein, the Commission should deny Hoak's renewal application or designate it for hearing based on the Station's failure to serve the public interest, convenience and necessity as required by Section 309 of the Communications Act, 47 USC §309.

Specifically, after demanding exorbitant retransmission consent fees, Hoak has withdrawn WMBB from BHN's cable systems in the Panama City Designated Market Area ("DMA"), thereby depriving thousands of rural cable subscribers of access to the only ABC

[1] Although unnecessary for an Informal Objection, Bright House Networks has standing as a "viewer" of WMBB, located in the same television market.

affiliate in the Panama City market.[2] Hoak's extraordinary retransmission consent demands (which are 300% higher than the amount BHN paid under its previous retransmission consent agreement with Hoak and well above what BHN pays to any other local broadcast station in the Panama City television market or elsewhere), coupled with its termination of BHN's carriage of WMBB, are so antithetical to the public interest as to compel denial of its pending renewal application.[3] Unfortunately, Hoak has placed its own mercenary goals above the interests of the television audience it is licensed to serve.

I. IN EVALUATING LICENSE RENEWALS, THE COMMISSION MUST CONSIDER WHETHER THE LICENSEE'S EXERCISE OF ITS RETRANSMISSION CONSENT AUTHORITY SERVES THE PUBLIC INTEREST.

It has long been recognized that television broadcast spectrum is a scarce resource and that broadcast licensees hold their licenses as trustees for the public. In the seminal *Red Lion* case, the Supreme Court noted that "[a] license permits broadcasting, but the licensee has no constitutional right to be the one who holds the license or to monopolize a radio frequency to the exclusion of his fellow citizen."[4] And, of course, "[i]t is the right of the viewers and listeners, not the right of the broadcasters, which is paramount."[5]

The broadcast industry has changed dramatically in the four decades since *Red Lion*. The vast majority of the nation's television viewers now rely on multichannel video program distributors ("MVPDs") to access broadcast programming, and broadcasters increasingly demand

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[2] BHN was compelled to suspend carriage on September 1, 2013, upon the expiration of its prior retransmission consent agreement with Hoak. The suspension affected approximately 5,500 BHN subscribers in the Panama City DMA.

[3] *See* attached Declaration of Scott Horne.

[4] *Red Lion Broadcasting Co. v. FCC*, 395 US 367, 388-89 (US 1969).

[5] *Id.*, 395 US at 390.

costly fees before granting retransmission consent to these MVPDs. This business transformation constitutes a fundamental shift in the traditional broadcast model – which assumed that broadcast licensees were providing local television audiences with *free*, over-the-air programming in exchange for their *free* spectrum grant.

In fact, Congress and the Commission have extended a host of valuable spectrum and regulatory benefits to broadcasters in the transition to digital operations so as "to promote the smooth introduction of a *free and universally available* digital broadcast television service."[6] In adopting the DTV standard, for example, the Commission explained:

> As we have recognized before, broadcast television is unique. It is *free, available to nearly every American*, and many Americans rely on broadcast television programming as a primary source of information and entertainment. . . . . The DTV Standard we adopt today will help ensure that broadcast television remains available to all Americans in the digital era.[7]

In evaluating whether a broadcast licensee has been operating in the public interest so as to justify license renewal, the Commission can no longer ignore how that licensee exercises its retransmission consent authority. A licensee's decisions regarding retransmission consent, after all, can have a dramatic impact on whether the public actually *receives* the licensee's programming and how much the public pays to do so. When all is said and done, retransmission consent fees are ultimately borne by the public whom the licensee is licensed to serve.

If WMBB were a cable network seeking a dramatic increase in its license fees, that business decision (however aggressive it might be) ordinarily would not be a matter of FCC

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[6] *Id.* 11 FCC Rcd at 17788 (emphasis added).

[7] *Id.* (emphasis added). *See also Carriage of Digital Television Broadcast Signals, Fourth Further Notice of Proposed Rulemaking and Declaratory Order,* CS Docket 98-120, 27 FCC Rcd 1713, 1716 (2012)(recognizing "both the statutory directive and the important governmental interests of preserving the benefits of free, over-the-air local broadcast television service . . . ."); 47 USC §6402; *NPRM in Docket 12-268*, 27 FCC Rcd 12357, 12362 (2012)("[b]roadcast television stations provide free video programming. . . .").

concern. But WMBB is not a cable network; it is a broadcast station. Broadcasters, unlike cable networks, have been given valuable spectrum in exchange for their obligation to serve the public interest. As custodians of this valuable spectrum, broadcast licensees have a responsibility to exercise retransmission consent authority in a manner that serves (or at least does not disserve) the public interest. Deliberately exercising that authority in an exploitive manner that denies consumers access to broadcast programming and/or conditions continued access on a fee increase that is many times the rate of inflation clearly disserves the public interest.

II. HOAK HAS DISREGARDED THE INTERESTS OF TELEVISION VIEWERS IN DENYING RETRANSMISSION CONSENT UNLESS BHN AGREES TO EXCESSIVE FEE DEMANDS.

In this case, Hoak has clearly disregarded the interests of its local viewers in favor of its own pecuniary interests. Indeed, WMBB's removal of its signal from the BHN cable systems flies in the face of the broadcaster's "paramount" obligation to serve the public.

Hoak's actions here are particularly egregious for several reasons. First, WMBB is not viewable "off-air" through conventional indoor antenna in the communities within the Panama City DMA served by BHN. These communities include DeFuniak Springs, Chipley, Graceville, Blountstown, and Bristol, Florida.[8] Accordingly, citizens in these communities ordinarily cannot view the television programming broadcast by WMBB unless they receive it through an intermediary MVPD. In denying retransmission consent to BHN, Hoak is effectively denying citizens located within the Panama City DMA the ability to view WMBB's programming. Such actions render all of the Commission's broadcast-related obligations a nullity, as those obligations are necessarily premised on viewer accessibility.

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[8] *See* attached Declaration of Scott Horne.

Second, Hoak has expressly denied BHN retransmission consent because BHN refuses to give in to Hoak's extraordinary fee demands. As noted above, those fee demands are *triple* the amount that Hoak has been receiving under its prior agreement with BHN and well in excess of what BHN is paying other local broadcast stations in the Panama City market and other television markets in which BHN operates.[9] Hoak has not claimed that WMBB's unique operating costs compel unprecedented retransmission consent fees, nor has Hoak promised an enhanced level of local programming to justify unprecedented retransmission consent fees.[10]

Whatever the Commission's reluctance might be to mediate individual retransmission consent disputes, it must not abdicate its responsibility to ensure that broadcast licensees (who enjoy use of valuable public spectrum at no cost) are truly acting in the public interest. Where a broadcast licensee is far more interested in maximizing "affiliation" fees than in delivering its programming to the public, the FCC should reclaim the underlying broadcast spectrum, leaving the former licensee to compete in the marketplace like any other cable network. The simple truth is that Hoak is an "outlier" – committed to extracting the highest possible retransmission consent fees regardless of the adverse impact on viewers. Considering the hardships faced by many in the current economy (including those who cannot afford to pay increased fees that are well in excess of the rate of inflation), Hoak's exploitation of the retransmission consent process is a clear violation of its statutory obligation to serve the public interest.

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[9] *See* attached Declaration of Scott Horne.

[10] BHN believes that Hoak has been emboldened in this case because of BHN's relatively small presence in the small rural local television market.

CONCLUSION

In withdrawing WMBB's signal from BHN's cable systems and demanding unprecedented retransmission consent fees to restore service, Hoak is violating the sacred public interest obligation entrusted to it as a broadcast licensee. If BHN (and other MVPDs) accede to Hoak's unreasonable financial demands, the ultimate victim will be the very public whom Hoak is licensed to serve. Accordingly, the Commission should deny the captioned renewal application or designate it for hearing.

Respectfully submitted,

BRIGHT HOUSE NETWORKS, LLC

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September 23, 2013

DECLARATION OF SCOTT HORNE

I, Scott Horne, hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge, information, and belief:

1) I am Vice President/General Manager of Bright House Networks / Birmingham Division ("BHN"). In that capacity, I am familiar with the facts set forth in the attached Informal Objection to the license renewal application filed by Hoak Media of Panama City License, LLC ("Hoak").

2) I have reviewed the attached Informal Objection and all of the facts stated therein are true and correct.

Dated this 23RD day of September, 2013.

Scott Horne

Scott Horne

CERTIFICATE OF SERVICE

I, Nichele Rice, do hereby certify that copies of the foregoing "Informal Objection" were sent via first class, postage prepaid, United States mail, this 23rd of September, 2013 to the following:

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