DAYTON

WASHINGTON, D.C.

MEMORANDUM

April 16, 2007

To:

Mario Carrerra

CC:

FROM:

Barry A. Friedman

RE:

Station KGWN

Enclosed please find a copy of the Opposition we submitted today in response to the request of KGWN for a modification of its market to include certain Colorado counties.

We will let you know what happens in this case.

Should you have any questions, please do let me know.

Enclosure

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, DC

In re Petition of:)	
SagamoreHill Broadcasting of)	CSR-7132-A
Wyoming/Northern Colorado, LLC	.)	
For Modification of the Television Market for)	
Station KGWN-TV, Cheyenne, Wyoming)	
Station RO VIV 1 V, Oneyonio, A young)	
Facility ID No. 63166)	
)	

To:

The Secretary

Attn:

The Chief, Media Bureau

OPPOSITION

Entravision Holdings, LLC ("Entravision"), the licensee of Station KCEC(TV),
Denver, Colorado, by its attorneys and pursuant to Section 614 of the Communications
Act of 1934, as amended (the "Communications Act"), and Section 76.7(b) of the
Commission's Rules and Regulations, hereby opposes the Petition for Special Relief
("Petition") filed by SagamoreHill Broadcasting of Wyoming/Northern Colorado, LLC
("SagamoreHill"), the licensee of Station KGWN-TV, Cheyenne, Wyoming ("KGWN"),
in which SagamoreHill requests modification of KGWN's market to include various cable
communities located in Larimer County and Weld County, Colorado ("Colorado
Communities"),
in the Denver Designated Market Area ("DMA"). In support thereof,
Entravision states as follows.

See Public Notice, Report No. 0204, released March 26, 2007.

The Colorado Communities are listed in Exhibit A to the Petition.

INTRODUCTION

SagamoreHill's promise to bring new local programming to the Colorado

Communities is an empty one. KGWN's much-touted Northern Colorado news program
airs on a non-primary digital programming stream not entitled to must-carry rights and is
not entitled to cable carriage whether or not the Petition is granted. The remainder of
KGWN's programming is substantially duplicative of the CBS network programming
already carried throughout the Denver DMA by Station KCNC-TV, Denver, Colorado
("KCNC"), the network owned CBS affiliate in the Denver television market.

Accordingly, the proposed modification of KGWN's market does nothing to advance the
goal of localism underpinning the Commission's market modification policies and
SagamoreHill's Petition must, therefore, be rejected.

I. THE COMMISSION'S MARKET MODIFICATION REQUIREMENTS

In accordance with Section 614(h)(1)(C)(ii) of the Communications Act, in evaluating market modifications, the Commission considers the following factors:

- (I) Whether the station, or other stations located in the same area, have been historically carried on the cable system or systems within such community;
- (II) Whether the television station provides coverage or other local service to such community;
- (III) Whether any other television station that is eligible to be carried by a cable system in such community in fulfillment of the requirements of this section provides news coverage of issues of concern to such community or provides carriage or coverage of sporting and other events of interests to the community; and
- (IV) evidence of viewing patterns in cable and noncable households within the areas served by the cable system or systems in such community.³

³ 47 U.S.C. § 534(h)(1)(C)(i). See also Second Report and Order, Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules, 14 FCC Rcd 8366, 8369-8370 (1999).

In its Petition, SagamoreHill asserts that historical carriage, local service and viewership factors support modification of KGWN's market to include the Colorado Communities. While each of these factors contribute to the Section 614 analysis, Entravision believes local service considerations ultimately are the crux of market modification proceedings. Accordingly, in this Opposition, Entravision focuses exclusively on whether carriage of KGWN in the Colorado Communities would further the Commission's localism policies by bringing an original new voice and meaningful local service to cable television subscribers located in the affected Coloardo Communities. As discussed below, the answer to that question is clearly no and, accordingly, the Petition should be denied.

II. CARRIAGE OF KGWN WILL NOT ADVANCE LOCALISM IN THE COLORADO COMMUNITIES

In its Petition, SagamoreHill discusses at length the fact that KGWN has "launched the first ever broadcast news program for Northern Colorado." Petition at 6. While Entravision commends this commitment to local service, in the instant proceeding it rings hollow. KGWN's Northern Colorado news program appears on a digital multicast stream, and, as such, is wholly unconnected to the carriage rights at issue in this proceeding. Despite SagamoreHill's many claims, and the testimonies of community leaders marshaled (somewhat disingenuously on SagamoreHill's part) in support of those claims, the programming actually at issue here – the Cheyenne-based network content comprising KGWN's primary programming stream – does not serve the local interests and needs of viewers in the Colorado Communities.

In deciding market modification cases, Congress has directed the Commission to "afford particular attention to the value of localism." 47 U.S.C. 534(h)(1)(C)(ii). See also Broadcast Localism, 19 FCC Rcd 12425 (2004) ("Broadcast Localism NOI").

1. KGWN's Northern Colorado News Program is not Relevant to the Instant Market Modification Proceeding

In its Petition, SagamoreHill attempts to bolster its local service credentials by discussing, at length, its daily 10 p.m. newscast for viewers in Northern Colorado. However, as SagamoreHill concedes, the news program appears on a "separate program stream" on KGWN's "digital feed." Petition at 14. In other words, the news program devoted to viewers in Northern Colorado does not appear on KGWN's primary programming stream, but, rather, on a digital multicast program stream. As SagamoreHill is no doubt aware, but fails to acknowledge in the Petition, non-primary programming streams are not eligible for mandatory carriage rights. As the Commission stated in its 2005 decision concerning the must carry-rights of digital television stations:

[I]f a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated programming streams, only one of these streams is considered primary and entitled to mandatory carriage. The broadcaster must elect which stream is its primary video, and the cable operator is required to provide carriage of that stream.⁵

Thus, KGWN's Northern Colorado news program has no relationship to the carriage rights at issue instant market modification proceeding. Whatever local service KGWN's Northern Colorado news program may offer viewers in the Colorado Communities, it cannot be made available to them via mandatory carriage and thus has no bearing on the outcome of the instant market modification proceeding. The only programming properly

Carriage of Digital Television Broadcast Signals: Amendments to Part 76 of the Commission's Rules, 20 FCC Rcd 4516, 4537 (2005).

at issue in this proceeding is the Cheyenne-based programming, serving the needs and interests of Wyoming viewers, that KGWN broadcasts on its primary stream.6

2. KGWN's Programming is Duplicative of Programming Already Available in the Colorado Communities

KGWN's Cheyenne-based programming adds little in the way of local service to the programming already available to viewers in the Colorado Communities. KGWN is the CBS affiliate in the Cheyenne market. KCNC is the CBS affiliate in Denver. KGWN's programming schedule for Thursday, April 12, 2007 through Sunday, April 15, 2007, is attached hereto as Exhibit A. KCNC's programming schedule for the same dates and times is attached hereto as Exhibit B. As a quick review of these schedules indicates, the CBS network programming available on the two Stations is substantially duplicative. Section 76.56(b)(5) of the Commission's Rules provides that cable operators are not required to carry the signal of any local commercial television station that substantially duplicates the signal of another local commercial television station that is carried on its cable system, or to carry the signals of more than one local commercial television station affiliated with a particular broadcast network.⁷ The purpose of this Rule is to prevent redundant programming from occupying limited channel space on cable systems.

Obviously, allotting two cable channels to CBS affiliates on cable systems serving

Sagamore Hill is not prevented by seeking retransmission consent for its Northern Colorado programming on Colorado cable television systems or even licensing the program for carriage on stations already being carried by local cable operators.

⁷ 47 C.F.R. 76.56(b)(5). Section 76.56(b)(4)(ii) of the Commission's Rules further provides that if a cable operator elects to carry an affiliate of a broadcast network, the cable operator must carry the affiliate whose community of license reference point is closest to the principal headend of the cable system. 47 C.F.R. 76.56(b)(4)(ii).

Northern Colorado, for the sake of adding one single program, constitutes such a redundancy.8

And, as a practical matter, granting KGWN's market modification request will surely lead to such a redundancy. If KGWN's market modification request is granted, it can be expected that it will assert is carriage rights in the Colorado Communities. Entravision believes that local cable operators will have to honor the request since, as between KGWN and KCNC, KGWN meets the test of being closer geographically to the Colorado Communities. However, at the same time, Entravision submits that rather than drop Denver-based KCNC from their channel lineups, cable operators in Northern Colorado will continue to carry KCNC on a retransmission consent basis owing to the superior programming, long connection to the communities, and relationship of Denver to the rest of Colorado.9 The losers in this scenario will be viewers in the Colorado Communities, whose local interests and needs will hardly be well served by the duplicative programming of two CBS affiliates, both based in urban markets and both providing local coverage to Northern Colorado on a peripheral basis.10

To best promote the Commission's localism policies, ¹¹ valuable channel space on local cable systems should be reserved for local programming that truly serves the

See, e.g., Broadcast Localism NOI, supra.

⁸ Entravision takes note that SagamoreHill has not committed to undertake any other programs or provide any other information geared to the needs and interests of Northern Colorado residents.

Entravision does not know what carriage arrangements currently exist between KCNC and cable operators in the Colorado Communities. However, Section 76.92 appears not to allow SagamoreHill to exercise network non-duplication protection against KCNC.

In fact, Entravision believes that if the cable operators fail to carry KCNC they will disserve their local viewers, since those viewers would no longer receive Colorado-based news, learn the views of Colorado politicians and candidates, and be able to view public service programming geared to Colorado matters.

perspectives on the news and public affairs affecting residents in Northern Colorado is much more in keeping with the robust localism and viewpoint diversity espoused by the Commission than the duplicative programming of two large network affiliates. The Commission should commit to localism in practice, instead of just in theory, by making decisions that facilitate rather than deter the introduction of new programming voices in local markets. Preventing two CBS affiliates from occupying valuable cable channels in Northern Colorado through the instant proceeding is a good place to start.

If only one CBS affiliate is entitled to carriage in the Colorado Communities, it should be the incumbent, Colorado-based KCNC. As expected of a commercial television station whose broadcast authority is predicated on local service to Colorado citizens, KCNC's local service to the Colorado Communities surpasses the minimal local coverage of Northern Colorado offered on KGWN's primary, Cheyenne-based programming stream. As the sample of KCNC news pieces, attached hereto as Exhibit C, demonstrates, KCNC frequently covers breaking news, crimes, sports and human interest stories in the Colorado Communities, including Fort Collins, Berthoud, Loveland, Greeley and Platteville. Moreover, KCNC provides regular in-depth coverage of state politics and other issues affecting Colorado citizens. In contrast, KGWN is obligated as a Commission licensee to serve the needs and interests of its local community, which means that Wyoming state politics and issues affecting citizens of Wyoming take precedence in the KGWN newsroom over similar events and issues arising in Colorado. KGWN's and KCNC's obligations to their respective communities of license give rise to important geopolitical differences in the nature of the local coverage each Station offers

its viewers. While viewers in Northern Colorado would best be served by available programming specifically directed to their local interests and needs, given the choice between two urban network affiliates with substantially duplicative network programming, KCNC's Colorado-based programming should prevail.

CONCLUSION

In sum, carriage of KGWN in the Colorado Communities will neither serve the interests and needs of local viewers nor advance the Commission's localism policies. While KGWN's Northern Colorado news program sounds good on paper, in reality KGWN broadcasts this program on a non-primary programming stream that is not entitled to mandatory carriage rights. In other words, this program would not reach cable subscribers in Northern Colorado even if KGWN were granted its market modification and requested must-carry treatment in the Colorado Communities. As such, this muchtouted program should have no bearing on the outcome of the instant proceeding. Moreover, KGWN's primary Cheyenne-based programming stream is substantially duplicative of the CBS network programming already available to Northern Colorado viewers on the superior, Denver, Colorado-based KCNC. The Commission should not disserve local viewers as well as its own localism policies by allowing two network affiliates with duplicative programming to occupy valuable cable channels in the Colorado Communities.

WHEREFORE, Entravision Holdings, LLC respectfully requests that the Commission deny the Petition filed by SagamoreHill Broadcasting of Wyoming/Northern Colorado, LLC seeking modification of the market of Station KGWN-TV, Cheyenne, Wyoming to include the Colorado Communities.

VERIFICATION

The undersigned certifies that he has read the submission and to the best of his knowledge, information and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law; and that it is not interposed for any improper purpose.

Respectfully submitted,

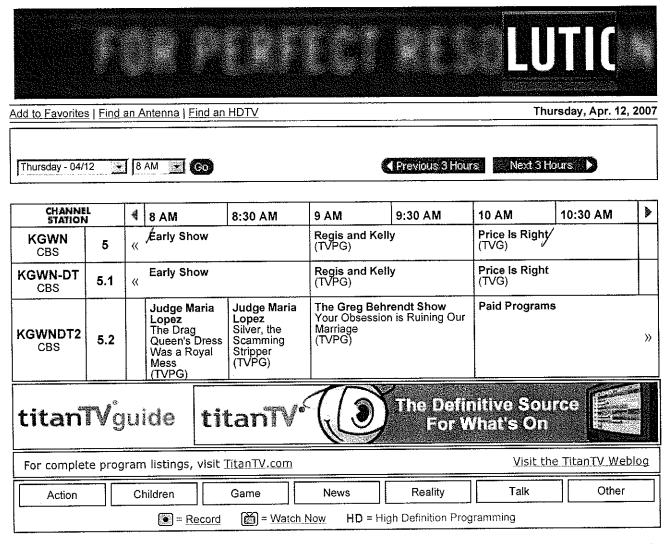
ENTRAVISION HOLDINGS, LLC

By: / V

Barry A. Friedman Thompson Hine LLP 1920 N. Street, N.W. Washington, D.C. 20036 (202) 331-8800 Its Attorney

Dated: April 16, 2007

EXHIBIT A



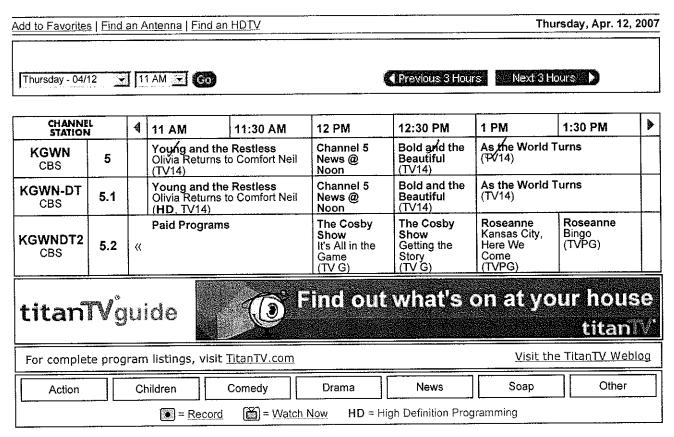
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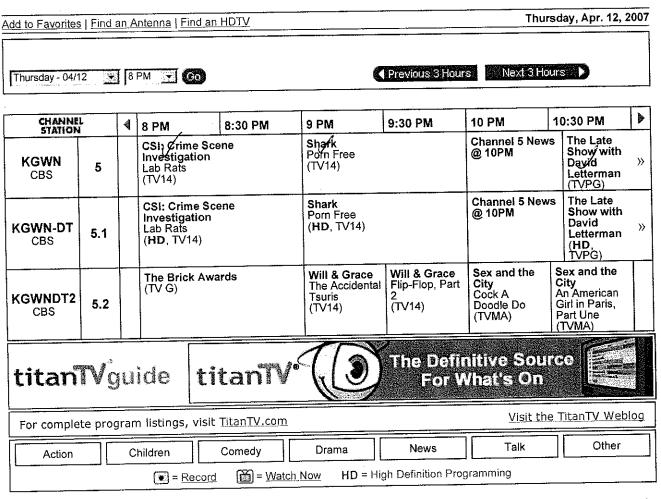
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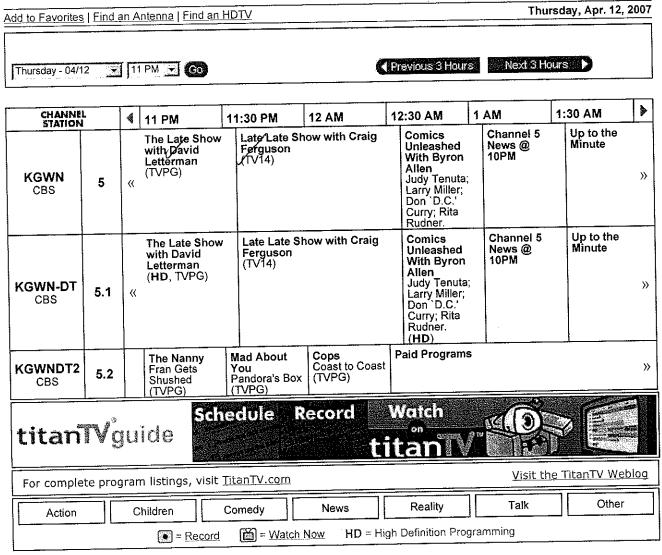
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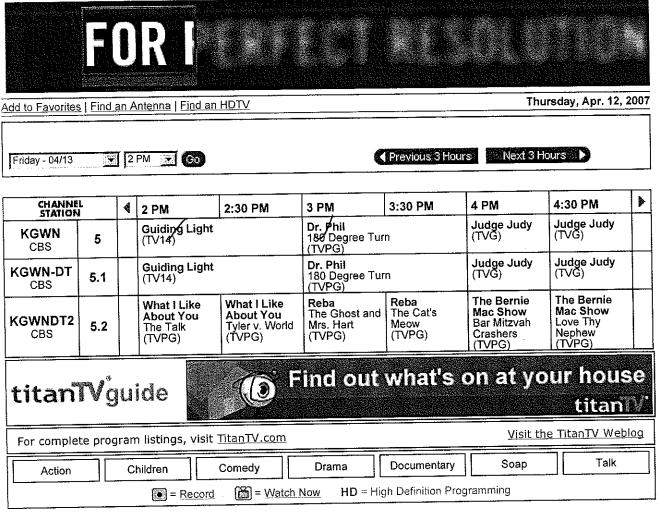
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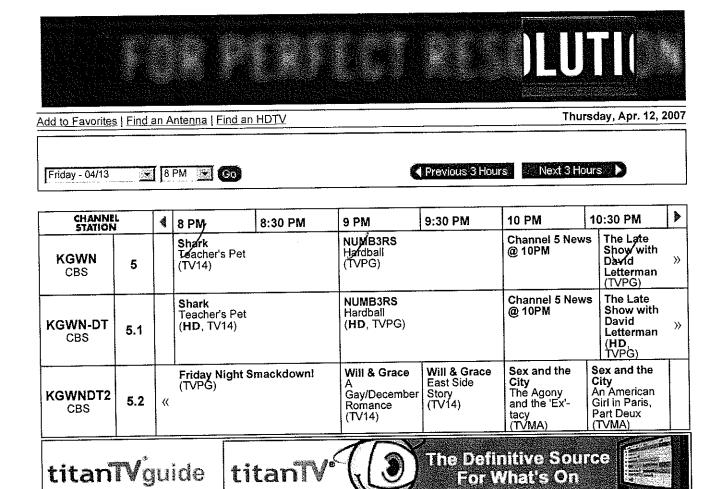
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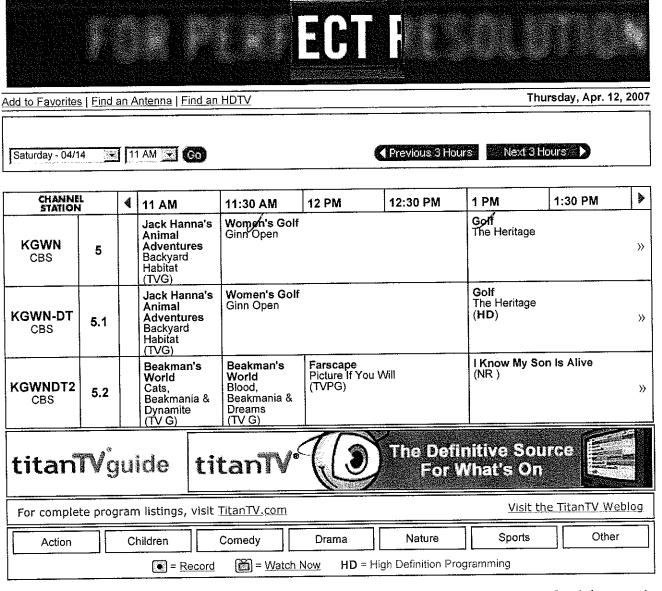
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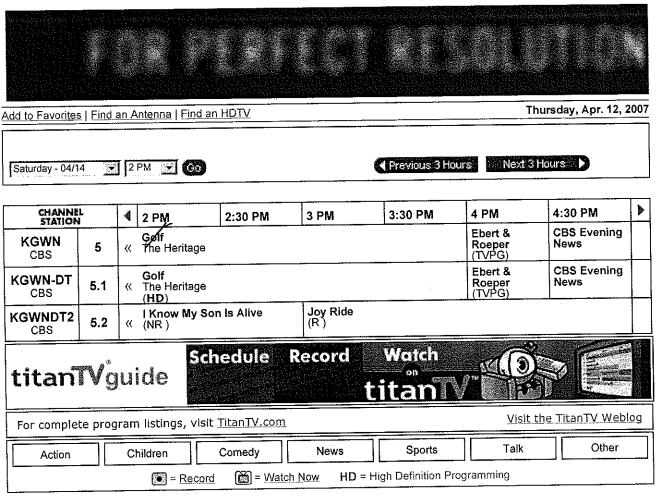
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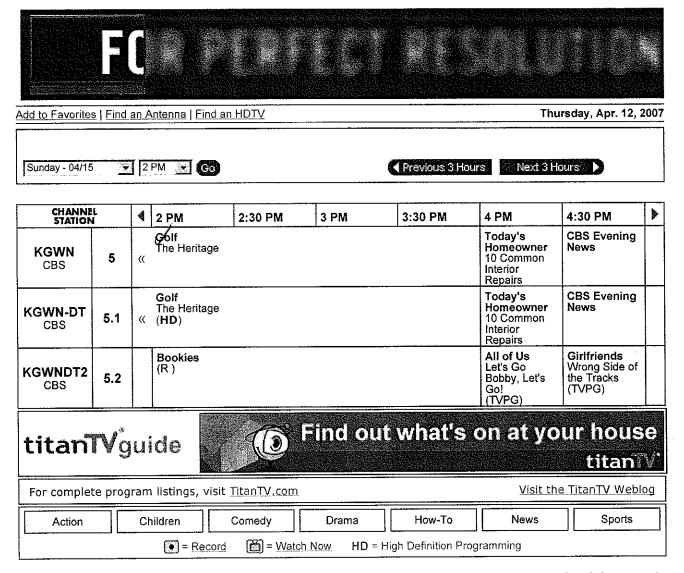
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