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November 1, 2012

Mr. Robert Baker and Ms. Hope Cooper
Political Programming Branch
Policy Division
Mass Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

—BY HAND DELIVERY AND—
ELECTRONIC MAIL

Re: Complaint of Randall Terry for President regarding WTTG-TV's violation of 47 U.S.C. §312 and §315

Dear Mr. Baker and Ms. Cooper:

Randall Terry for President, through its counsel Gammon and Grange, is filing this letter request regarding WTTG-TV's willful and ongoing denial of reasonable access to Randall Terry for President under sections 312 and 315 of the Communications Act. As Election Day is only four days from now, the matter is urgent.

On October 15, 2012, Steve Smith of WTTG-TV left a voicemail message for the campaign stating that WTTG-TV and WDCA-TV were denying Mr. Terry reasonable access under sections 312 and 315 of the Communications Act on the basis that WTTG-TV and WDCA-TV provided only de minimis coverage in West Virginia (where Mr. Terry is on the ballot for the office of President of the United States). In our opinion, WTTG-TV and WDCA-TV are, and have been, in violation of the Commission's reasonable access rules.

On October 31, 2012, the Commission published its decision in *In re Complaint of Randall Terry for President And Pro-Life Candidates Against Station WUSA (TV) Washington, D.C.*, DA 12-1734, (released on October 31, 2012). The Commission concluded "that it would be unreasonable for the Station [WUSA-TV] not to provide reasonable access to Terry because Terry is a legally qualified candidate in West Virginia and the Station's digital noise limited service contour ("NLSC") encompasses more than a de minimis portion of the population of West Virginia." The Commission noted that before the digital television transition, a television station's grade B contour established the service area for the purpose of determining reasonable access obligations and the Commission had since stated that the NLSC is the counterpart to the Grade B contour for digital television stations. As the election is a few days away, the Commission recognized the importance of a prompt decision and

concluded it should use the NLSC, the present-day equivalent of the Grade B contour used in *Levinson*, to determine reasonable access. The Commission used the NLCS from the Station's Profile as it appeared on the Commission's website and determined that it covered all of Jefferson County and part of Berkeley County in West Virginia. The Commission then concluded that, simply looking at Jefferson County's population, the Station's contour could not be considered de minimis.

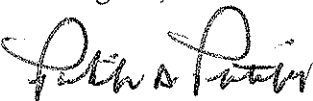
On November 1, 2012, Mr. Terry sent a copy of the Commission's decision to WTTG-TV's counsel requesting it honor the campaign's outstanding request for reasonable access in light of the decision (see attached communication). Mr. Terry noted that "[L]ike WUSA-TV, WTTG-TV's NLSC appears to cover all of Jefferson County, WV. See WTTG-TV's NLSC map at <https://stations.fcc.gov/station-profile/wttg/contour-maps/>. WTTG-TV's NLSC encompasses more than a de minimis portion of the population of West Virginia."

WTTG-TV's counsel, Joseph M. Di Scipio, responded by telephone stating that WTTG-TV would not provide reasonable access to Mr. Terry. Given the Commission's October 31 decision, Mr. Terry contends that WTTG-TV's ongoing refusal demonstrates flagrant disregard of important federally mandated laws guaranteeing access to candidates such as Mr. Terry.

Given the already substantial delay and the fact that Election Day is less than four days from now, Mr. Terry asks the Commission to immediately direct WTTG-TV to provide Mr. Terry reasonable access.

Thank you for your assistance in this matter.

Kind regards,



A. Wray Fitch III
Patrick D. Purtill
Gammon & Grange, P.C.

cc: Joseph M. Di Scipio
Vice President, Legal and FCC Compliance
Fox Television Stations, Inc.
via email: jdiscipio@newscorp.com

Attachment(s): as stated

Patrick Purtill - WTTG (Fox) and WDCA (MyTV) Continuing Denial of Reasonable Access to Terry for President

From: Patrick Purtill
To: JDiscipio@newscorp.com
Date: 11/1/2012 9:26 AM
Subject: WTTG (Fox) and WDCA (MyTV) Continuing Denial of Reasonable Access to Terry for President
CC: Kathy Offerman; Wray Fitch
Attachments: DA-12-1734A1.pdf

November 1, 2012

Joseph M. Di Scipio
Vice President, Legal and FCC Compliance
Fox Television Stations, Inc.
444 North Capitol Street NW, Suite 740
Washington DC 20001
via email: jdiscipio@newscorp.com

Dear Mr. Di Scipio:

I represent the Randall Terry for President campaign. On October 15, 2012, Steve Smith left a voicemail for the campaign indicating that WTTG-TV and WDCA-TV were denying Mr. Terry reasonable access under sections 312 and 315 of the Communications Act on the basis that WTTG-TV and WDCA-TV provided only de minimis coverage in West Virginia. In our opinion, WTTG-TV and WDCA-TV are, and have been, in violation of the Commission's reasonable access rules.

Attached to this email is a copy of the Commission's decision *In re Complaint of Randall Terry for President And Pro-Life Candidates Against Station WUSA (TV) Washington, D.C.*, DA 12-1734, MEMORANDUM OPINION AND ORDER. In this decision, the Commission concluded "that it would be unreasonable for the Station [WUSA-TV] not to provide reasonable access to Terry because Terry is a legally qualified candidate in West Virginia and the Station's digital noise limited service contour ("NLSC") encompasses more than a de minimis portion of the population of West Virginia."

Like WUSA-TV, WTTG-TV's NLSC appears to cover all of Jefferson County, WV. See WTTG-TV's NLSC map at <https://stations.fcc.gov/station-profile/wttg/contour-maps/>. WTTG-TV's NLSC encompasses more than a de minimis portion of the population of West Virginia.

Also, WDCA-TV's NLSC appears to cover all, or at least a sizable majority, of Jefferson County, WV. See WDCA-TV's NLSC map at <https://stations.fcc.gov/station-profile/wdca/contour-maps/>. WDCA-TV's NLSC encompasses more than a de minimis portion of the population of West Virginia.

As the election is four days from today, Ms. Kathy Offerman, media-buyer for the Terry campaign, will be contacting WTTG-TV and WDCA-TV first thing this morning to complete purchase of airtime for Mr. Terry's campaign. I have copied Ms. Offerman on this email.

If WTTG-TV and WDCA-TV have any questions, please contact me. Thank you.

Sincerely,

Patrick D. Purtill
Gammon & Grange, P.C.

Patrick D. Purtill

Associate



Gammon & Grange, P.C.

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>>> Kathy Offerman <kmofferman@gmail.com> 10/17/2012 10:53 AM >>>

----- Forwarded message -----

From: **Di Scipio, Joseph** <JDiscipio@newscorp.com>
Date: Mon, Oct 15, 2012 at 5:05 PM
Subject: RE: WTTG (Fox) and WDCA (MyTV) Washington DC declining ad
To: Jim Henderson <jmhenderson@verizon.net>
Cc: Kathy Offerman <kmofferman@gmail.com>

Jim, I have called and left you a voicemail. You can reach me at [202-715-2350](tel:202-715-2350).

/Joe

Joseph M. Di Scipio

Vice President, Legal and FCC Compliance

Fox Television Stations, Inc.
444 North Capitol Street NW, Suite 740, Washington DC 20001

Tel: [202.715.2350](tel:202.715.2350) | Fax: [202.824.6510](tel:202.824.6510) | Mobile: [202.679.8567](tel:202.679.8567)

jdiscipio@newscorp.com



FOX TELEVISION STATIONS, INC.
A Unit of Fox Television

From: Jim Henderson [mailto:jmhenderson@verizon.net]
Sent: Monday, October 15, 2012 4:13 PM
To: Di Scipio, Joseph
Cc: 'Kathy Offerman'
Subject: WTTG (Fox) and WDCA (MyTV) Washington DC declining ad

Dear Mr. Discipio,

Today, on behalf of Presidential Candidate Randall Terry, Kathy Offerman received a voicemail from Steve Smith indicating that neither WTTG or WDCA, in the Washington, DC, metro area, would carry Mr. Terry's candidate campaign advertisements, presently scheduled for tomorrow.

In a brief conversation, indicating that the question was one of *de minimis* coverage of West Virginia counties (Mr. Terry is a legally qualified candidate for the office of President on the West Virginia ballot).

I am writing to request your explanation of the ground of denial. Because time is of essence, could you please respond as soon as possible.

Warm regards,

James M. Henderson, Sr., Esq.

DC Bar No. 452639

Kentucky Bar No. 82072

1718 M Street # 279

Washington, DC 20036-4504

(571) 244-9066

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Kathleen Offerman
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