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

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Federal Communications Commission
Office of Secretary

In the Matter of)	
)	
Application for Renewal of Broadcast Station)	File No.
License of)	
)	BRCT-20040527AKR
Fox Television Stations, Inc.)	
)	
For Renewal of Station License WTTG,)	
Washington, D.C.)	

OPPOSITION OF FOX TELEVISION STATIONS, INC.

Fox Television Stations, Inc. ("FTS"), licensee of television station WTTG, Washington, D.C., respectfully submits this Opposition to the Informal Objection ("Objection" to the above-captioned renewal application, filed August 24, 2004 by Mr. Robert K. Phelps (the "Petitioner").¹ The Objection makes a number of allegations about WTTG's procedures and its programming, primary among them that WTTG is a "closed building" and, specifically, that a security guard would not let admit the Petitioner to WTTG's studio to review the station's license renewal application in the station's Public Inspection File on August 15, 2004. For the reasons that follow, the Commission should find that the Objection fails to provide any credible evidence that the event complained of in fact occurred and, furthermore, fails to proffer any other basis on which WTTG's license renewal should not be granted. Therefore, the Commission should promptly dismiss the Informal Objection and grant WTTG's renewal application.

¹ FTS was not served with this pleading and only became aware of the filing when it was brought to the attention of counsel for FTS by Commission staff; hence the late filing of this Opposition.

I. THE INFORMAL OBJECTION SHOULD BE DISMISSED BECAUSE THE PETITIONER LACKS STANDING TO CHALLENGE WTTG'S RENEWAL APPLICATION AND HAS OTHERWISE FAILED TO COMPLY WITH THE REQUIREMENTS OF SECTION 309 OF THE ACT

Section 309(d)(1) of the Act provides that a petition to deny a broadcast license renewal application must contain "specific allegations of fact sufficient to show that the petitioner is a party in interest and that grant of the application would be prima facie inconsistent" with the public interest.² These "allegations of fact shall, except for those of which official notice may be taken, be supported by affidavit of a person or persons with personal knowledge thereof."³ The Petitioner's letter does not contain the requisite affidavit or declaration by Petitioner that he in fact lives in WTTG's service area, is a regular viewer of WTTG or that any of the numerous other facts he alleges in the letter are true. Accordingly, the Commission should dismiss the Informal Objection as procedurally defective under § 309 of the Act without addressing its merits.

II. EVEN IF THE PETITIONER HAD STANDING AND HAD OTHERWISE COMPLIED WITH THE DICTATES OF SECTION 309 OF THE ACT, HIS ALLEGATION THAT HE WAS DENIED ACCESS TO WTTG'S PUBLIC FILE IS NOT SUPPORTED BY THE FACTS.

² § 309(k) of the Act sets forth the particular standards by which broadcast license renewal applications shall be judged: "(A) the station has served the public interest, convenience, and necessity; (B) there have been no serious violations by the licensee of th[e] Act or the rules and regulations of the Commission; and (C) there have been no other violations by the licensee of th[e] Act or the rules and regulations of the Commission which, taken together, would constitute a pattern of abuse."

³ Act at § 309(d)(1). *See also In re Application of The Pikes Peak Broadcasting Company For Renewal of License for Station KRDO-TV Colorado Springs, Colorado*, 12 FCC Rcd 4626, ¶ 3 (1997).

Unlike commercial establishments such as stores and restaurants that are routinely open to the public, but like many other television stations and businesses to which members of the public are not routinely invited, WTTG long has employed security staff in the front lobby entrance of its studio. As the attached Declaration of Jeff Andrew, WTTG's Vice President of Engineering and Operations attests, among the security staff's duties are to screen individuals who come to the station and to maintain a written log of all visitors, whether or not they ultimately enter the premises. All visitors who are admitted into the station are asked to enter their names on a sign-in sheet, which also contains the date and time of each visit.

The security staff has standing instructions to admit all individuals seeking to inspect WTTG's Public File, whether or not such individuals have a previously-arranged appointment. Security staff is instructed to call WTTG's General Manager's assistant or, in her absence, the General Sales Manager's assistant, or his or her designee, if both are unavailable, when a person seeking to inspect the Public File visits the station. When one of the assistants or their backup employee receives such a call from the lobby, it is that employee's responsibility promptly to escort the visitor from the lobby to the Public File, ask that the visitor complete a Public File sign-in sheet, if the visitor is willing to do so, remain present while the visitor inspects documents in the File, indicating to the visitor where different categories of records are located, if requested to do so, and provide the visitor with copies of documents from the File, if the visitor so requests.

Upon receiving the petitioner's letter, WTTG management reviewed the front lobby sign-in sheets and the security staff's notes from August, 2004 through the present. They could find no record of Petitioner's visit to the station or his alleged request to review the

Public File. See Declaration of Jeff Andrew. Under WTTG's standard operating procedures, even if the Petitioner had been turned away, this fact should have been duly logged. Of course, it is possible that Petitioner did not make his intention to review the Public File clear to the lobby guard, in which case the guard would not have known to call for an escort. However, other than the absence of a record corroborating the fact of the alleged visit to the station, there is no way to prove a negative.

Notwithstanding, the fact that approximately 25 people have come to WTTG and reviewed the station Public File without incident since August, 2004 cannot but call into question the Objection's allegation that WTTG is a "closed building." See copies of Public File sign-in sheets, attachment 2 hereto. Although, as indicated above, completion of a sign-in sheet is voluntary for visitors to WTTG's Public File, the attached sign-in sheets indicate that at least 25 visits have occurred since August, 2004 without incident, and there are no records or other evidence in WTTG's possession indicating that any potential visitor to WTTG's Public File ever was turned away.

III. WTTG'S REASONABLE SECURITY MEASURES DO NOT HAVE THE EFFECT OF ISOLATING STATION STAFF FROM THE PUBLIC.

It is true that, since September 11, 2001 WTTG has heightened its security procedures as part of a company-wide policy, placing security guards at each entrance in order to protect employees and visitors from unauthorized intruders. This is no different from security precautions taken by many other businesses and organizations in Washington, DC, most notably, the Commission itself. Notwithstanding, such eminently reasonable precautions, approximately 30 members of the public visited the station to inspect its Public

File since September 1, 2001. Additionally, numerous other individuals, including guests interviewed on local news programs, program suppliers, vendors and others are admitted to the premises on a daily basis. Finally, far from operating in isolation, WTTG's news reporters and advertising sales staff spend much of their time outside the station in the Washington metropolitan community interacting with a wide cross section of members of the public.

IV. THE OTHER ALLEGATIONS IN THE INFORMAL OBJECTION DO NOT STATE A BASIS ON WHICH THE COMMISSION CAN DENY WTTG'S LICENSE RENEWAL.

The Objection interposes several other grounds for denial of WTTG's license renewal, including alleged violations of the FCC's local ownership rules, technical errors, failure of WTTG's News Department to cover a particular story that the Petitioner attempted to bring to its attention, "pornographic," violent, repetitive and even boring programming, interference to an adjacent channel station, live news bulletins interrupting syndicated programs and failure to commence programs exactly at the top of the clock hour. Not only are none of these contentions supported by the requisite documentation, in substance, they are entirely without merit. Therefore, they will be addressed only briefly.

With regard to the allegation that the similarity in programming between WDCA, WTTG's duopoly partner, and WBDC is tantamount to a violation of the local ownership rules, ownership of a third television station in the Washington market, WBDC, can not as a matter of law be attributed to FTS solely because WDCA and WBDC have "almost identical program schedules," even if that fact were true, which it is not.

With respect to the petitioner's objections regarding program content, including, but not limited to "profanity" or "pornography," the Commission should uphold critical First Amendment principles by heeding its policy to "proceed cautiously and with appropriate restraint" in matters in which program content is called into question.⁴ WTTG's news management acts entirely within its discretion in determining which news stories will be of greatest interest to the viewing public. The numerous honors and awards WTTG's News Department has garnered over the years, including those described in Section V. below, attest to its success in meeting the needs and interests of the Washington public.

It would be unprecedented for the Commission to second guess WTTG on issues entirely within its discretion, such as at what time programs are scheduled to begin. Not only are the allegations of technical errors entirely baseless, even if some of them were founded in fact, none rises to a level warranting Commission intervention. In sum, Petitioner's objections to WTTG's operations during the previous license term not only are entirely unsupported by fact, even if they were true, taken together, they could not as a matter of law be a basis for the Commission's denying WTTG's license renewal.

V. CONCLUSION

Given WTTG's record of outstanding public service in the Washington, DC metropolitan area, the Commission should not permit this Informal Objection to cast a cloud of uncertainty over WTTG's license but instead should renew its license for a full term.

⁴ See *In Re KBOO Foundation; Licensee of Noncommercial Educational Station KBOO-FM, Portland, OR*, 18 FCC Rcd 2472, ¶ 5 (2003) (citing *United States v.*

Indeed, WTTG's tradition of contributions to its community was recognized at the annual Emmy Awards in 2004 where WTTG won 16 local Emmy Awards for news reporting in its local community.⁵ That was the seventh consecutive year that WTTG has won the most local Emmys in Washington, DC.⁶ Or consider the 24 awards received by WTTG in 2001, including six awards from the Radio and Television News Director Association, 14 Emmys, and four Associated Press Awards.⁷ Awards aside, FTS is very proud of the fact that it has more than *doubled* the amount of local news provided by WTTG as compared to the station's previous owner.⁸ And the Commission itself has concluded that one of the most important indicators of a station's contribution to its local community is news coverage.⁹ In sum, there can be no doubt that WTTG under FTS' stewardship has been an extremely valuable member of the Washington, DC metropolitan community.

For all of the foregoing reasons, the Commission should dismiss the Informal Objection as procedurally defective or, if the Commission does consider its arguments, it

Playboy Entertainment Group, Inc., 529 U.S. 803, 813-15 (2000); *Action for Children's Television*, 852 F.2d 1332, 1344 (D.C. Cir. 1988)).

⁵ See *WTTG wins big at local Emmys*, *The Washington Times Online Edition*, June 14, 2004, available at www.washingtontimes.com/business/20040613-102540-1426r.htm.

⁶ *Id.*

⁷ See *Joint Commenters' News Programming Exhibit No. 1, Fox Television Stations Awards 2001-2002*, at 12, filed on January 2, 2003 together with the *Comments of Fox Entertainment Group, Inc. and Fox Television Stations, Inc., et. al., In Re 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, MB Docket No. 02-277.

⁸ *Id.* at 1.

⁹ See *In Re 2002 Biennial Regulatory Review -- Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, 18 FCC Rcd 13620, ¶ 78 (2003).

should dismiss the Objection as entirely lacking in merit. In view of WTTG's superlative record of contributions to its community, moreover, the Commission should grant WTTG's renewal application for a full license term.

Respectfully submitted,

FOX TELEVISION STATIONS, INC.

By:



Molly Pauker

Vice President

Fox Television Stations, Inc.

5151 Wisconsin Avenue, N.W.

Washington, D.C. 20016

(202) 895-3088

Dated: August 1, 2006

Declaration of Jeff Andrew

I, Jeff Andrew, hereby state as follows:

1. My name is Jeff Andrew. I am employed as Vice President, Engineering and Operations, WDCA/WTTG, 5151 Wisconsin Ave., NW, Washington, DC 20016.
2. I have read the foregoing Opposition of Fox Television Stations, Inc., which was prepared in response to the Informal Objection, dated August 24, 2004, filed by Robert K. Phelps, with respect to the license renewal application of WTTG(TV).
3. I have personal knowledge of the facts contained in the Opposition and declare that such facts are true and correct.
4. In particular, in my capacity as Vice President, Engineering and Operations, I supervise security personnel at the station studio, including security officers stationed in the front lobby.
5. During regular business hours, 9 am through 5:30 pm, Monday through Friday, at least one security officer is stationed in the front lobby at all times. Among this officer's duties is to greet all visitors to the front entrance of the station and sign in all visitors who are admitted onto the premises. This officer also is tasked with maintaining written notes regarding all individuals seeking admittance to the premises, whether such person is admitted or not.
6. Front lobby security officers are instructed to admit all visitors seeking to review the Stations' Public Inspection Files, first logging them in and then telephoning one of a series of designated escorts, whose responsibility it is to come to the station lobby and escort the visitor to the Public File.
7. At the request of station management, I reviewed the sign-in sheets and notes kept by front lobby from August 2004 until the present time. The name Robert K. Phelps was not listed among the names of individuals who signed in to the station during that period of time; nor was that name mentioned in any notes regarding people who came into the lobby but were not admitted into the station.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 1, 2006.



Jeff Andrew
Vice President, Engineering and Operations
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AUG 24 2004
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August 20, 2004

Gentlemen;

AUG 31 11 30 PM '04
VIDEO SERVICES
DIVISION

I feel the broadcast license for WTTG-TV; FOX Channel 5 should not be renewed because of **NUMEROUS** violations of FCC regulations, technical problems that are allowed to go out over the air, violations of community standards of decency, and other examples of not serving the community.

FIRST-WTTG runs a closed building, and a beefy rent-a-cop sits in the lobby to keep out everybody who does not work for the station. This lack of public access means that the station employees work in a vacuum that isolates them from the viewers. There was an on-air announcement to the effect that the FCC filings of WTTG regarding the application to renew the broadcast permit would be available for public inspection. However, when I drove to the station a few days ago, (August 15, 2004) I was turned away by the rent-a-cop in the front lobby.

On previous attempts, I have tried to bring a "hot news story" to the news reporters working at WTTG, but I was again turned away by the security guard. Common courtesy would require the guard to call the news room to ask that a reporter come down to meet me in the lobby. Then, if the reporter feels the story is newsworthy, I can sign the visitor log and go to the reporter's office to handle the story.

For example, I "blew the whistle" on a criminal conspiracy that was operating at all levels of the General Services Administration (GSA) This was a **DELIBERATE** attempt to make the members of the conspiracy very rich at the expense of the taxpayers. When I got a reporter to listen to me, and read my evidence file, this triggered a series of news reports that are known as the GSA Scandal. Most of the crooks were exposed and sent to prison.

The new anti-corruption regulations allowed GSA to clean up its act for a time, but now the agency officials have found new ways to bend the rules and make themselves and their partners in crime rich at public expense. For example, when GSA signed **THE MATH BOX** contract, I opposed the move on several grounds. My protests were ignored, and the taxpayers took a bath when the scandal broke. I tried to bring the news story to WTTG, but I was turned away by the guard. I submit that his duties do not include judging the value of a news story.

Basically, **THE MATH BOX** was a small local company, which did not have the number of employees, or the warehouse space, or the financial stability to handle a major government contract. The plan was to rebuild office space in the ten GSA regional offices, and make them computer stores. This would allow the buyers from other government agencies to come in, try out the new computer equipment, and then place an order for computer equipment to be delivered to the agency.

THE MATH BOX ran into trouble with the contract on the first day. Instead of pulling the contract and re-awarding it to IBM or Honeywell, the GSA officials poured more and more money into the project to try to keep THE MATH BOX in charge.

THE MATH BOX simply ran out of money. When the coffers were empty and the balance sheet had a zero at the bottom, the company President committed suicide, rather than go to prison. Since the company bankruptcy left GSA hanging out, twisting slowly in the wind, the agency officials had to pay millions of dollars to settle the claim for unfilled orders, and other contract-termination fees. Also, several more millions of dollars had to be allocated to turn the computer stored into office space.

The computers that were delivered under THE MATH BOX contract were obsolete by the time they were installed. They simply could not handle the workload. At first, the agency tried to "fix" the obsolete computers, but eventually had to ship the machines to the nearest landfill.

For example, GSA Region 3 bought two Honeywell 66/xx model mainframe computers. During the day, these could be used as two separate computers to handle the workload. On the night shifts, the two computers could be linked to form one double-size computer; This had two data-processing sections, two sets of input/output devices, double the available memory, and other features of a modern, giant computer.

However, System B never worked right. If it were a car, it would be classified as a lemon. Since System B was still under warranty, GSA should have cracked the whip on Honeywell to come out and fix System B, or replace it at no cost to the taxpayers. Every part on System B was replaced at least two times. When the GSA officials decided System B would never work right, the computer was hauled to the landfill and GSA went out to buy a replacement computer. I still feel that Honeywell should have delivered the replacement computer at no charge to the taxpayers, instead of GSA spending a ton of money for the replacement computer.

When the purchasing agents for the Internal Revenue Service (IRS) bought computers off THE MATH BOX contract, they should have bought only enough to set up a test installation in one IRS regional center. In this way, when the new computer failed to operate properly, the other regional centers could take up the slack and get the processing of tax forms back on track.

Instead, IRS bought enough new computer equipment for all ten regional centers. There was also no testing period allowed to look for glitches. The new MATH BOX computers were set to work processing live tax returns from the whole country. When the system became clogged with unprocessed tax forms, the IRS workers tried to hide the tax forms and process them the next day. This just added to the backlog, and eventually, the IRS had to pay interest and penalties on refunds that were mailed out late. After the mess was cleaned up, the IRS took out all THE MATH BOX computers and replaced them with brand-new computers in all the regional centers.

The Federal Aviation Administration (FAA) also bought their computers off THE MATH BOX contract. Some of this old junk is still in service in the airport control towers and in the regional flight centers. The obsolete IBM-360 machines are not large enough nor fast enough to prevent the near-misses and other problems that come up every day.

This has risen to the level of becoming a threat to homeland security. I have no doubt that the planes, which crashed into the World Trade Center, were not detected in time to prevent the tragedy, because the hijacked planes did not show up on the radar equipment based on the IBM-360 computers.

Since I was not allowed to get past the security guard and talk to a WTTG reporter, THE MATH BOX scandal never saw the light of day. This failure to report on a national scandal, cost the taxpayers ONE TRILLION DOLLARS in wasted money, and the contract administrators were allowed to retire in luxury, when they should be sitting in a prison cell.

Before this closed-door policy was enacted, the WTTG employees enjoyed frequent contact with the viewers they served, and many good ideas resulted from the interaction. For example, when Maury Povich was working at WTTG, I appeared two times on his *Panorama* show. Now that he has moved to a syndicated program, he pretends not to know me.

SECOND-I feel WTTG and The FOX Network are violating the FCC regulations limiting the number of media outlets in each market area. WDCA, Channel 20 and WBDC, Channel 50 have become virtual clones of WTTG with a lot of program trading back and forth, and almost identical program schedules.

This brings up a possibility of violating the FCC SYNDEX Rule that is supposed to prevent program duplications in the same market area. For example, if WTTG shows the re-runs of *M*A*S*H*, then this show should not be aired on WBDC nor WDCA.

THIRD-There are just too many technical errors in the studio, in the control room, and in the transmitting equipment. These are fed into the broadcast signal, and into the cable-TV feeds. These range from showing the wrong tapes during a news story, allowing profanity to be sent out, either accidentally or intentionally, or airing violent and pornographic programs that are not suitable for most age groups.

For example, the camera cut to a news anchor for her story, but she was caught still applying her make-up, when the director tried to signal she was on the air, the newscaster kept insisting she was not ready yet. After about five minutes of this embarrassing spectacle, the camera was turned to another reporter to read the news story.

Most of the profanity and violence comes from the FOX Network shows. Quite frankly, I feel the network executives are scraping the bottom of the barrel when it comes to program ideas. *Method and Red* makes free use of profanity every second word. This show has such low production values that it would not make it as a skit on a high-school talent show.

Another show was set in an expensive tropical resort hotel. The sexual references were so blatant, that the audience could well imagine that the actors had a new sexual partner each night, and you could be booted off the show if you did not fill your quota of sexual contacts.

I feel that WTTG and WDCA and WBDC had the obligation to the audience to replace the network filth with local shows that were tailored to the mores of the local audience. If this had been done, the FOX network would go out of business, or be forced to eliminate the violence and pornography.

There have been numerous other cases, too many to count, of WTTG operating off-frequency and interfering with the signals from other stations, such as WRC, Channel 4.

FOURTH-WTTG aired a news story on the five major reasons you should not take diet supplements, weight-loss pills and other medicinal compounds without a doctor's prescription or his approval. However, you can tune in virtually any time day or night to see these same diet drugs and other medicines being advertised several times, often within the same commercial segment.

FIFTH-WTTG has a program schedule that is frankly BORING to watch. After the Morning News, there are several hours of courtroom shows, such as *Texas Justice*, *Divorce Court*, and *Judge Hatchett*. Each show is presented in two half-hour segments. The cases are basically the same, just the names and faces are different. Many of these shows have run out of fresh episodes, so they repeat previous shows. Really, how many times do you need to see a case in which the woman wants to get a test to see which of three men is the father of her baby?

After the noon news, the same boring mix of courtroom shows returns to fill the afternoon hours until it is time to broadcast the 5 PM news show. The live shows such as *Ambush Makeover* and *Good Day Live* are so devoid of substance, as to be the equivalent of the cotton stuffing in my teddy bear.

Following the 5 PM news, there are a few re-runs of *The Simpsons*, *Friends*, *Seinfeld*, then the FOX Network shows. Quite frankly, if I wanted to watch *Seinfeld* or *Friends*, I would have caught the show on the network.

After the 10 PM news show, there are about two hours of other re-runs, and then the rest of the night is filled with the 30-minute commercials selling all kinds of stuff that is way overpriced, and which simply does not live up to the advertising claims. Anybody who has the money can buy one of these time slots to advertise anything, with no check on whether or not it will cause harm to the consumer.

SIXTH- The 5 PM news show is supposed to start at 5 PM, but WTTG has the nasty habit of starting a few minutes early. I use my home VCR unit to tape the show, in case I am not at home to watch. Also, I can rewind the tape and review a news story I want to see again. By starting the 5 PM news story up to five minutes early, the first one or two news stories do not get picked up by my VCR. Also, during the *JUDGE JUDY* show, WTTG frequently cuts in with promos for the 5 PM news, when the viewer can simply wait a few minutes for the news broadcast. This is distracting to the people who watch Judge Judy.

In the evening, when a baseball game, football game or movie runs overtime, this forces a delay in the start time of the 10 PM news program. This is just plain sloppy planning. The delay runs the gamut from a few minutes to an hour or more. As a result, the 10 PM news show gets shoved down to become the 11 PM news, in direct competition with the other local TV stations. This is driving the viewers away from WTTG to watch the news on another TV station.

Meanwhile you have the 10 PM news crew, all highly paid professionals, standing or sitting in the studio waiting for the game to end so they can start reading the news stories. Instead of going out to eat, or driving home after the 10 PM news, the crew winds up spending half the night at the station, sucking up the overtime pay. By allowing the game or movie to run overtime, this disrupts the rest of the overnight schedule.

The bottom line is, that WTTG is no longer serving the needs of the community, so I feel the broadcast permit should be pulled and awarded to someone else. About the only time a WTTG reporter makes the journey to Manassas, is when a major crime takes place, such as the kids who were caught in sexual activity at the church camp.

Robert K. Phelps

Robert K. Phelps